

MINUTES
HOUSE REVENUE & TAXATION COMMITTEE

DATE: Monday, March 26, 2012

TIME: 9:00 A.M.

PLACE: Room EW42

MEMBERS: Chairman Lake, Vice Chairman Collins, Representative(s) Barrett, Moyle, Raybould, Roberts, Schaefer, Smith(24), Wood(35), Bedke, Harwood, Barbieri, Bayer, Ellsworth, Gibbs, Killen, Burgoyne, Rusche

**ABSENT/
EXCUSED:** None.

GUESTS: Ann Heltsley, Citizen; Jayne Reed, Citizen; Carl Olsson, Office of the Attorney General, Tax Commission and Citizen; Oscar Baumhoff, Citizen; Brent Adamson, Boise County; Susan Budge, SBS Associates LLC

Chairman Lake called the meeting to order at 9:02 am.

MOTION: **Rep. Collins** made a motion to approve the minutes of the March 12, 2012 committee meeting. **Motion carried by voice vote.**

MOTION: **Rep. Collins** made a motion to approve the minutes of the March 14, 2012 committee meeting. **Motion carried by voice vote.**

MOTION: **Rep. Collins** made a motion to approve the minutes of the March 15, 2012 committee meeting. **Motion carried by voice vote.**

MOTION: **Rep. Collins** made a motion to approve the minutes of the March 20, 2012 committee meeting. **Motion carried by voice vote.**

RS 21565: **Rep. Roberts** presented **RS 21565**. The proposed legislation is identical to **H 585aa** with one exception. The new Section 2 allows for a vote by the people of a taxing district. A concern with **H 585** was the lack of public involvement and **RS 21565** provides for that. Last week there were meetings held in Idaho City, Horseshoe Bend and Garden Valley. The taxpayers understand that the County is in dire straits due to the judgement. This provides a mechanism to allow the taxpayers in Boise County and other counties to stretch out a judgement payment over time and with a lower interest rate.

Carl Olsson, Office of the Attorney General, Tax Commission, and Citizen, stated that the Office of the Attorney General has no position on this proposed legislation. He is representing the Tax Commission who is **in favor of RS 21565**. He is also a resident of Boise County and is personally **in favor of RS 21565**. **RS 21565** allows for a vote of the people before the governing board can avail themselves of the relief afforded in the proposed legislation. There are two ways to incur long-term indebtedness; by a vote of the people (super majority) or if incurred to cover ordinary and necessary expenses (no vote required at all). The proposed legislation permits a vote even for ordinary and necessary expenses when it was not required before.

In response to Committee questions, **Mr. Olsson** said the county can still go back to the old way of doing business. Satisfying the judgement is considered an ordinary and necessary expense. If the voters approve the proposed legislation, the county can get a bond. This is due to the judge stating that the payment is an ordinary and necessary expense and it can go outside the 3% cap. Therefore, no vote is required.

A bond is only one of multiple ways to pay off the judgement. Boise County has paid part in cash and the rest in warrants, but they don't have the money to pay the warrants. The Warrant Redemption Fund is now outside of the 3% cap. The Tax Commission's position is that the Fund is under the 3% cap. The 3% cap has a strict interpretation of exceptions which are contained in Idaho Code, Section 63-802. The Warrant Redemption Fund can be used for anything the county cannot pay for in cash, such as paving a road. The proposed legislation is more narrowly tailored than that.

Mr. Olsson responded to additional Committee questions by saying that what is ordinary and necessary for one taxing district may not be ordinary and necessary for another taxing district. The proposed legislation only deals with the payment of judgements. It is very restrictive and can only be used when there is a serious judgement. This is not a way around the Idaho Constitution, Article 8, Section 3. It takes an ordinary and necessary finding. The purpose of the vote is to allow a way to pay ordinary and necessary expenses that fall outside 3% cap.

The 3% cap would restrict in the budget the amount a county can levy if the bill fails or if the voters vote it down. In this case, Boise County would then have to sue the Tax Commission. If the Tax Commission prevails in a court action, Boise County would be required to pay the judgement under the 3% cap. If the County prevails, the Warrant Redemption Fund will be found to be outside the 3% cap and not unconstitutional.

Mr. Olsson said that Article 7, Section 15 lists county budget requirements. In that section, even after they meet all requirements and still can't meet the budget, they can go up to 10 mils. Right now, the Warrant Redemption Fund falls under the 3% cap. This is the first court case that would challenge it. The Tax Commission is not specifically excluded in Idaho Code, Section 63 and 63-806. Since it is not specifically exempted, our law is silent.

Oscar Baumhoff, Citizen, spoke **in favor** of **RS 21565**. He previously held a County Commissioner role and when the County previously had to cut back, it took 10 years for the County to get back to normal. The current commissioners are ready to cut county government. There is a need for resolution to the federal judgement.

Brent Adamson, Boise County, spoke **in favor** of **RS 21565**. There will be an overall impact to county employees. The commissioners are hesitant to cut too deep. The County is required to follow statutes which might be in jeopardy.

Ann Heltsley, Citizen, spoke **in favor** of **RS 21565**. Throughout the process, there has been no voice of the people and no citizen involvement. She has been working with **Rep. Roberts** to get those. The proposed legislation protects the taxpayers right to vote. It may not be perfect, but people can have a bond election and hold their officials accountable. There will be some checks and balances. Section 63-802 has been tested in court and has been held to be constitutional. If the County is required to sue the Tax Commission, the County will be stuck in the middle of a Catch 22. This won't negate the responsibilities of the officials.

Jayne Reed, Citizen, spoke **in favor** of **RS 21565**. The Commissioners are crafting the verbiage to put on the ballot. It will include that this is a vote of the people to cover the bond. The wording must also go before the Secretary of State for approval. The overwhelming conclusion at the meetings is that the citizens need to know the steps to bond. Bonding is absolutely necessary for the County to go forward. To address concerns about other taxing districts using this, they would have to hold meetings, show the County's books, and explain how they got to that point before a vote could take place.

Rep. Roberts said the County goes through the process of certifying their budget in September for the following year. There is a very tight timeframe to meet all the required deadlines. The ballots must be mailed this Friday to meet those deadlines. The County doesn't have money available to sue the Tax Commission.

In response to Committee questions, **Rep. Roberts** said the County is required to go to court if the proposed legislation does not pass. Passage of the proposed legislation preserves the 3% cap and discusses how to deal with judgements. Normally taxpayers would vote on whether to incur debt. The debt is already there due to the judgement, so the taxpayers are not voting to incur debt. They are voting to allow the Commissioners to proceed as they would under the ordinary and necessary standard. This would probably never be used by a County again. With a sunset clause, it becomes a special interest bill.

In response to Committee questions, **Mr. Olsson** said this judgement has been deemed ordinary and necessary by the court. The bond falls under the 3% cap and, if passed with a supermajority, it would be outside the 3% cap. Ordinary and necessary falls outside the 3% cap. It is clearer to leave ordinary and necessary verbiage in the proposed legislation. Adding a sunset provision brings up the question of special legislation. Various factors could be reviewed by the Supreme Court. This has never arisen before, but a sunset provision would possibly make it appear that this is special legislation.

MOTION:

Rep. Killen made a motion to introduce **RS 21565** and send it directly to the Second Reading Calendar.

SUBSTITUTE MOTION:

Rep. Barrett made a substitute motion to introduce **RS 21565** and send it to General Orders with a sunset provision.

AMENDED SUBSTITUTE MOTION:

Rep. Ellsworth made an amended substitute motion to introduce **RS 21565** with a five year sunset clause and send it to the Second Reading Calendar.

SUBSTITUTE MOTION WITHDRAWN:

Rep. Barrett withdrew the substitute motion to introduce **RS 21565** and send it to General Orders with a sunset provision.

AMENDED AMENDED SUBSTITUTE MOTION:

Rep. Rusche made an amended amended substitute motion to introduce **RS 21565**.

During Committee discussion, the following comments were made: The timeliness issues prohibit introducing **RS 21565** without sending it to the Second Reading Calendar. The current Section 9 can spell out the provisions. Funds are available to make the next payment, but it is unwise to use them. There are two ballot opportunities; May and November. The other problem is Sine Die which is possibly this Thursday or Friday.

AMENDED AMENDED SUBSTITUTE MOTION WITHDRAWN:

Rep. Rusche withdrew the amended amended substitute motion to introduce **RS 21565**.

**ROLL CALL
VOTE ON
AMENDED
SUBSTITUTE
MOTION:**

Roll call vote was requested. On amended substitute motion to introduce **RS 21565** with a five year sunset provision and send it to the Second Reading Calendar. **Motion carried by a vote of 15 AYE, 3 NAY, 0 Absent/Excused. Voting in favor of the motion: Rep. Collins, Barrett, Moyle, Raybould, Roberts, Schaefer, Wood(35), Bedke, Harwood, Barbieri, Bayer, Ellsworth, Gibbs, Burgoyne, Lake. Voting in opposition to the motion: Reps. Smith(24), Killen, Rusche. Rep. Roberts will sponsor the bill on the floor.**

ADJOURN:

There being no further business to appear before the committee, the meeting was adjourned at 10:21 am.

Representative Lake
Chair

Janet Failing
Secretary