

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, March 27, 2012

TIME: 2:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Corder, Vice Chairman Johnson, Senators McKenzie, Hammond, Siddoway, Rice, Werk, and Bilyeu

ABSENT/ EXCUSED: Senator Hill

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.

Chairman Corder called the meeting to order at 2:50 pm.

MINUTES APPROVAL: **Vice Chairman Johnson** made a motion to approve the minutes of March 15, 2012. **Senator Rice** seconded, and the motion carried by Voice Vote.

Senator Hammond made a motion to approve the minutes of March 20, 2012. **Senator Siddoway** seconded, and the motion carried by Voice Vote.

PAGE PRESENTATION: **Chairman Corder** introduced the Page, **Marc Christensen**, presented him with a gift and thanked him for his service in the second half of the session. **Mr. Christensen** said he will be going to Alaska for the summer and then on a mission. After that, he intends to go to college and then medical school.

H 687 Relating to the Unclaimed Property Program. **Chairman Corder** introduced **Cozette Walters** of the Idaho Treasurer's Office. **Ms. Walters** said when the unclaimed property program was transferred from the Tax Commission to the Treasurer's office, there was code created that would allow both groups to exchange information. Prior to January of this year, the groups had shared the same computer system which allowed access to the taxpayer identifying numbers. Now, the Treasurer's Office has a computer system of their own and the taxpayer identifying numbers were left off the list of the items the Tax Commission is allowed to share. This legislation would allow them to share that information again. The Tax Commission and the Treasurer's Office are both in support of this legislation.

MOTION: **Senator Hammond** made a motion to send H 687 to the floor with a Do Pass Recommendation. **Senator Bilyeu** seconded, and the motion carried by Voice Vote. **Senator Rice** will be the floor sponsor.

H 691 Relating to Special Use Permits, Conditions, and Procedures; To Establish Provisions Relating to Exceptions or Waivers of Certain Standards. **Chairman Corder** introduced **Ken McClure**, representing Milk Producers of Idaho, Chobani and Sorrento/Lactalis. **Mr. McClure** said this legislation was meant to address a decision of the Idaho Supreme Court that was issued on January 25, 2012. See attachment #1. In that case, the Supreme Court ruled that a Conditional Use Permit (CUP) cannot be used to allow something to occur within a zone which is not otherwise allowable in the zone. A Conditional Use Permit is only to be used to create additional restrictions on something that is already allowable.

The only item now that can be used to allow building a different structure is a variance. This is a very large problem; the CUP has been used for at least thirty years to allow something that is not usually allowed. Variances are only allowed if there is something uniquely different about the land. Most of the land in Idaho is not unique. Any CUP that has been granted that allows exceptions or waivers is now void. Anyone who has a manufacturing facility or transmission line under a CUP has exposure and there is a question as to whether that is a non-conforming, non-permitting use of the zone, which would need to be modified or removed.

This bill amends the same section of Code twice. People who are concerned with very large structures, such as windmills in rural areas wanted additional notice that landowners in the adjoining parcels would receive individual notice. If there is an unincorporated area and the structure will be taller than 400', all people who own property within a mile need to be notified. The notice must identify the precise points on the parcel where the structure will be built.

The second section of the bill says a CUP may be offered that has exceptions and waivers. Some counties, such as Ada, have a requirement that there can not be a structure taller than 35' without a special use permit. Under the Supreme Court case, a special use permit can not be given, so in order to have one structure of that height, it would have to be allowed at any place in the county for any structure. Some of these decisions should be made on a site suitability criteria.

Section 3 has an explicit, specific retroactive clause. Any CUP which has been issued previously is confirmed on a going-forward and going-backward basis if the time for administrative appeal has expired. The statute is retroactive back to the passage of the CUP. The entire statute could not be made retroactive because of Subsection F and subsection B. This statute does not prevent people who feel they have been harmed by windmills to file a lawsuit.

Senator McKenzie asked what other statutes have notices that effectively cross county lines and what is the obligation of county commissioners to consider testimony from outside the county. **Mr. McClure** said the current statutes for variances are based upon footages and if those footages are across counties, they would apply. There must be at least one public hearing which allows testimony. Some counties do have limitations on who may testify at a hearing.

Senator Werk asked what the specific difficulties are with the Supreme Court judgment. **Mr. McClure** said a few of the examples would be: a residential subdivision was platted and there was relief from a setback requirement and it was run through the proper process and was approved. However, under the Supreme Court's ruling, the CUP is now arguably void, so the owners of the subdivision have questions about clarity of the title and the soundness of the legal authority which they platted the subdivision under. With a feedlot or a dairy, there are extensive setback requirements and in some counties those requirements are 1/2 mile from a subdivision or so many yards from a public road. The owner of the ground which was going to be developed using the CUP obtained the consent of the adjoining property owners. A power utility's transmission lines are almost always built on CUP's.

Senator Werk asked why the legislation required mailing notices rather than some other way of notification. Notification of those who live within a mile, which is required, could be a huge amount of people to contact. **Mr. McClure** said there is a publication requirement that appears in statute already. The mailing was mentioned specifically because not everyone has email; there is not a central location for email addresses. Because of the nature of the area where very tall structures are built, there are very few people who live around them.

Chairman Corder introduced **Jerry Mason**, representing the Association of Idaho Cities, who spoke in support. **Mr. Mason** said the decision by the Supreme Court was a surprise and is inconsistent with how the world has worked. It is not unusual for cities and counties to have ordinance provisions that use the threshold of CUP to address uses that are shades of gray. Counties and cities would need to wholesale revise their ordinances.

Senator Werk asked if the one mile requirement actually includes a two-mile radius. **Mr. McClure** said that it does.

MOTION:

Senator Hammond made a motion to send H 691 to the floor with a Do Pass recommendation. **Senator Rice** seconded. **Senator Hammond** said this is a way to respond to a court ruling and not roll back all of the actions taken in the past. **Senator Werk** said Section 1 is bothersome because it appears to provide a back door way to try to provide difficulties with utility development. **Senator Werk** made a substitute motion to send H 691 to the 14th order. The substitute motion failed for lack of a second. The original motion carried by Voice Vote.

ADJOURNMENT: **Chairman Corder** adjourned the meeting at 3:40 pm.

Senator Corder
Chairman

Jo Ann Bujarski
Secretary