

MINUTES  
**HOUSE LOCAL GOVERNMENT COMMITTEE**

- DATE:** Wednesday, March 06, 2013
- TIME:** 1:30 p.m. or Upon Adjournment of the House
- PLACE:** Room EW05
- MEMBERS:** Chairman Barrett, Vice Chairman Sims, Representatives Barbieri, Luker, Perry, Clow, Hancey, Harris, Holtzclaw, Horman, Malek, Chew, Kloc, Meline
- ABSENT/  
EXCUSED:** Representative Horman
- GUESTS:** Roger Seiber and Steve Price, Ada County Highway District (ACHD); Gary Allen, Givens Pursley; Miguel Legarreta and John Eaton, Realtors; Erik Brubaker, City of Ponderay; Alex LeBeau, Idaho Association of Commerce and Industry (IACI); Ray Stark, Boise Metro Chamber of Commerce; Bill Nichols, City of Nampa; Jerry Mason and Leon Duce, Association of Idaho Cities (AIC); Elizabeth Criner, J.R. Simplot Company; Brad Wills, Idaho Builders and Contractors Association (IBCA)
- Chairman Barrett** called the meeting to order at 2:49 p.m.
- MOTION:** **Rep. Kloc** made a motion to approve the minutes of February 14, 2013. **Motion carried by voice vote.**
- H 136:** **Rep. Barbieri** presented **H 136**, which was previously before the Committee on February 14, 2013, and was held at the request of the sponsor. He requested that the committee reconsider the bill.
- MOTION:** **Rep. Sims** made a motion to reconsider **H 136**. **Chairman Barrett** stated she was in doubt regarding the voice vote and asked for a show of hands. **By a show of hands, the motion failed.**
- H 138:** **Rep. Malek** presented **H 138**, saying that Idaho Statute requires a copy of every plat filing to be filed along with the original. Idaho Code Section 50-1310 requires that silver image emulsion be used to create the copies, however, silver image emulsion is expensive, rare, and currently unavailable. Suitable alternatives do exist, and **H 138** would allow substitutions.
- MOTION:** **Rep. Hancey** made a motion to send **H 138** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.
- H 246:** **Larry Spencer**, DH Consulting, presented **H 246**. He said this legislation would amend Idaho Code Section 67-8212, to clarify the appeals process related to the Development Impact Fee Act. It would require governmental entities to prove by a preponderance of the evidence that ordinances or amounts of impact fees meet the requirements of this chapter. He explained this would bar abuse of impact fees, which has been a problem in other states including Florida; this bill is modeled after legislation that was recently enacted in Florida. Impact fees are only allowed to be used for public facilities that are made necessary by new growth.

Responding to questions, **Mr. Spencer** stated he anticipates there could be nuanced issues. This proposed change is designed to prevent problems and to maintain conservative fees. Recently in Post Falls, the owner of a mini storage facility added a new building to his existing business and had to pay an impact fee of \$14,000, in an area where existing residents were using the business. A number of impact fee studies have been done around the State. One study found that a \$45 per square foot impact fee had been considered justified in a commercial area. That fee could have totaled six figures. Plans and ordinances should, by law, already address any potential issues. If someone did bring a lawsuit related to impact fees, attorney fees would be paid for by those being represented.

**Bill Nichols**, City of Nampa, spoke **in opposition to H 246**. He said he was involved with the development of Nampa's development impact fees, which are designed to assist communities during times of growth and to provide relief from the need to increase property tax rates. Nampa has a citizen impact fee advisory committee that includes developers, residential and commercial contractors and taxpaying community members. Plans can be and have been revised to lower fees if growth does not occur at a predicted rate. He said in his experience, cities, counties and highway districts undertake a rigorous process to ensure that the fees being charged are correct.

In response to questions, **Mr. Nichols** said a number of fees are collected and used in development, and each is different depending on changes that are made due to that development. **H 246** would allow new developers to file lawsuits requiring governmental entities to prove that the fees they charged were correct. Currently, a developer can ask for an individualized assessment and reconsideration if (s)he believes an impact fee is inappropriate. Appeals procedures and mediation currently exist. There is currently a presumption of validity of impact fees. His impression is that evidence not previously submitted to original deciding bodies could be submitted later during an appeal. Idaho does not have a time limit related to impact fees. He said that impact fees could certainly be abused, but he does not think that Idaho communities are abusing the fees. **H 246** addresses the burden of proof.

**Roger Seiber**, Ada County Highway District (ACHD), spoke **in opposition to H 246**, saying that impact fees are important and are carefully used. He asked the committee to reject changing the burden of proof.

**Mr. Spencer** agreed that impact fees are important for Idaho communities. He said, however, more meaningful review through the courts is also important. In the Post Falls case, the business owner was denied a review and was advised by his attorney that the courts would not be able to assist him due to the way current law is written. He cited the case of impact fees being charged on fire trucks, because they were considered by their community to be "rolling buildings". He said that the cities and counties in Florida did not want any additional scrutiny, and this change was initially rejected by the Florida legislature. Two years later, it was unanimously passed through their legislature.

**ORIGINAL  
MOTION:**

**Rep. Barbieri** made a motion to **HOLD H 246**. He spoke to his motion, saying that he sees some problems with the draft legislation.

**SUBSTITUTE  
MOTION:**

**Rep. Luker** made a substitute motion to **HOLD H 246** at the discretion of the Chairman. He spoke to his motion, indicating that he did see some problems with the draft legislation, however, he would like the sponsor to have an opportunity to work on the bill and return to the committee.

**ROLL CALL  
VOTE ON  
SUBSTITUTE  
MOTION:**

A roll call vote was requested on the substitute motion to **HOLD H 246** at the discretion of the Chairman. **Motion failed by a vote of 6 AYE, 7 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Sims, Barbieri, Luker, Harris, Malek, and Chairman Barrett. Voting in opposition** to the motion: **Reps. Perry, Clow, Hancey, Holtzclaw, Chew, Kloc, and Meline. Rep. Horman** was absent/excused.

**ROLL CALL  
VOTE ON  
ORIGINAL  
MOTION:**

A roll call vote was requested on the original motion to **HOLD H 246** in committee. **Motion carried by a vote of 12 AYE, 1 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Sims, Barbieri, Luker, Perry, Clow, Hancey, Harris, Holtzclaw, Malek, Chew, Kloc, and Meline. Voting in opposition** to the motion: **Chairman Barrett. Rep. Horman** was absent/excused.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 3:54 p.m.

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Representative Barrett  
Chair

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Mary Tipps  
Secretary