

MINUTES
HOUSE REVENUE & TAXATION COMMITTEE

DATE: Friday, March 15, 2013

TIME: 8:00 A.M.

PLACE: Room EW42

MEMBERS: Chairman Collins, Vice Chairman Wood(35), Representatives Barrett, Moyle, Raybould, Denney, Anderson(31), Anderst, Dayley, Hartgen, Kauffman, Patterson, Trujillo, Burgoyne, Erpelding (McLean), Meline

**ABSENT/
EXCUSED:** None.

GUESTS: Dale Buwalda, Friedman Foundation; Chris Finch, Genesis Prep; Shelly Matthews, Alex Knoll, Jennifer Locke, LAM Christian; Wayne Hoffman, Erik Makrush, Idaho Freedom Foundation; Phil Homer, IASA & ISBA; Paul Stark, IEA, Jack Lyman, Idaho Mining Association; Jane Wittmeyer, Coalition of Charter School Families.

Chairman Collins called the meeting to order at 8:03 a.m.

MOTION: **Rep. Dayley** made a motion to approve the minutes of March 12, 2013. **Motion carried by voice vote.**

H 286: **Rep. Vander Woude** presented **H 286** which would provide a credit on state income taxes to individuals and corporations, making donations to scholarship granting organizations (SGO), that provide K-12 scholarships to students attending approved schools. Rep. Vander Woude stated this legislation has a \$10 million cap on tax credit availability, with no rollover permitted. However, due to the difference between fiscal years and school years, up to 25% of annual revenue may be carried forward into the next fiscal year. To ensure that scholarship funds are used for intended purposes, scholarship checks are delivered to the school and made payable to both parents and the school. Students attending schools where relatives are employed would be exempt from receiving a scholarship. Scholarships are intended to be portable during the school year and are permitted to follow the student to another school. Qualified students must meet the following criteria: reside in a household with a total annual income of no more than 150% of the income standard used to qualify for a free or reduced cost lunch; be at least five years of age and less than 22 years of age; have attended a public school the preceding semester or be entering kindergarten or first grade, or starting school in Idaho for the first time; reside in Idaho and attending an Idaho school.

Rep. Vander Woude clarified while students currently enrolled in a private school would not be eligible, a parent could place a child in a public school for one semester and reenroll the child back into a private school, in order to take advantage of the scholarship. The logic behind the requirement of not providing scholarships for students already enrolled in a private school is to provide more school choice.

Rep. Vander Woude stated a legal opinion was obtained from the Idaho Attorney General (AG). The language in this legislation meets both Idaho and U.S. constitutionality. A qualified SGO must be a 501(c)(3) and meet other qualifications, but a religious organization would not necessarily be prevented from setting up an SGO. In response to a question, Rep. Vander Woude clarified once a student has received a scholarship, eligibility continues until they graduate from high school or reach 22 years of age. This legislation contains language that would prevent a school from setting up a program to benefit that school only.

A detailed calculation was prepared by the Milton Friedman Foundation for Educational Choice. (See attached handout).

Sen. Nonini went over the calculation process in detail, which projects an estimated net savings of \$5.8 million. Sen. Nonini stated the estimated savings could stay within the State General Fund, but could also be directed to the education budget for discretionary use in other areas. In response to a question, Sen. Nonini stated he did not know the exact number of elementary schools in Idaho, but there were 114 different school districts. He acknowledged the loss of one student may not necessarily impact the Average Daily Attendance (ADA) funding formula. Sen. Nonini also acknowledged if the General Fund is decreased by this tax credit and the school budget is left whole, any shortfall would need to be made up by cuts in other areas of the state budget.

Sen. Nonini stated the Idaho Attorney General's opinion states the language in **H 286** can be defended as consistent with the United States and Idaho Constitutions in the context of a facial challenge. SGO scholarships do not involve any transfer of state funds. Since the scholarship program of SGO's must involve more than one school, both sectarian and nonsectarian schools receive equal treatment. The Attorney General stated their office would defend the law's facial validity with respect to an Establishment Clause challenge, should one arise.

The SGO is required to work through the Idaho State Tax Commission to ensure the \$10 million cap has not yet been reached. **Sen. Nonini** stating with similar programs found other states, the cap has been increased over time, to accommodate the increased demand for scholarships and students have been able to continue in the program long-term. Sen. Nonini acknowledged more options for SGOs exist in urban areas, due to size of the population. In more rural areas, there may be one or two SGOs that serve a broader geographic area. This legislation contains a retroactivity clause of January 1, 2013, in order to ensure qualified students entering school in September 2013 would be eligible. Sen. Nonini stated this legislation is ultimately about school choice and there are currently no SGO's established in Idaho.

Dale Buwalda, Milton Friedman and the Foundation for Educational Choice, testified in **support of H 286**. Mr. Buwalda stated in looking at the national landscape for school choice, there are 17 existing states with multiple SGO type organizations. The Institute for Justice and Milton Friedman Foundation research finds Idaho has a long standing history of providing public tax credits for endeavors that benefit private foundations. Donations to schools, libraries, and museums, as codified in Idaho law, have specifically included sectarian entities. Studies indicate in tracking the fiscal impact in states with SGOs, the benefit for every \$1 spent is \$1.40 in return. Florida's SGO program, initially started with a cap of \$50 million in 2003/04, grew to \$118 by 2008/09 and recently increased again. With regard to fixed costs, Mr. Buwalda stated a report, conducted by Benjamin Scafidi, Ph.D, using 2008/09 data for all 50 states and published in March 2012, showed 62% of the costs in Idaho are variable. In response to a question, Mr. Buwalda said teacher salaries were included in the analysis as a variable cost and while a specific teacher's salary would not change, the amount of teachers per school very well could change. When asked if the tax credit itself been had analyzed in other states, Mr. Buwalda stated some analysis had been done. He further clarified the difference between a direct individual tax credit, which benefits families who have already made the choice to utilize private schools, with SGO type programs, which would provide scholarships to families who may not be able to otherwise afford private school.

Chris Finch, Principal of Genesis Prep Christian Academy in Post Falls, testified in **support of H 286**. Genesis Prep is one of twenty schools in Idaho with membership in the Association of Christian Schools International. Genesis is accredited through the Northwest Accreditation Commission and serves 140 students, of which 52% receive some sort of assistance to attend. Mr. Finch stated there is a direct correlation between a student's socioeconomic level and access to school choice. Private schools provide a tremendous opportunity to impact student learning and make a lifelong impact. This legislation would narrow the gap between ability to pay and school choice options, providing benefits last a lifetime.

Shelly Matthews, Founder and Principal of LAM Christian Academy, located in Coeur d' Alene, testified in **support of H 286**. LAM serves preschool through 5th grade and has a tuition of \$4,500 per year. Ms. Matthews stated it is ultimately the responsibility of parents to provide the best education for their children. This legislation would give parents the means to have a different choice in how their children are educated. Ms. Matthews stated LAM Academy is a business and the reality is they have to set a budget every year. When the budget goes down, hard decisions have to be made. To a large extent, with some fund raising, enrollment determines the budget. Ms. Matthews stated they have seen an enrollment decline during the economic downturn and it is difficult to be unable to provide options for parents. This legislation would provide options and she encourages passage of **H 286**.

Alex Knoll, who is 8 years old and in the 2nd grade at LAM Christian Academy, testified in **support of H 286**. Mr. Knoll stated he and his classmates are way ahead of others their age; reading at the 7th grade level and solving 5th grade math. He loves his school, especially science, and is taking Spanish and has competed in Spelling Bee events. Mr. Knoll said he feels blessed to go to LAM and realizes it is difficult for his parents to pay his tuition. He values his education and urges the committee to support this legislation.

Jennifer Lock, who has children in LAM, testified in **support of H 286**. As a student, Ms. Lock had a learning disability and was able to benefit and excel through her enrollment in private school. Her parents could afford the tuition and she was able to go on to college. She stated it is important that children who cannot afford the cost of private school, particularly those with learning disabilities, have this opportunity.

Wayne Hoffman, Executive Director, Idaho Freedom Foundation testified in **support of H 286**, stating this is good public, tax and education policy. **H 286** opens up the market and allows parents to have a choice in the education of their children.

Phil Homer, School Administrators Association and the Idaho School Boards Association, spoke in **opposition to H 286**, stating a philosophical difference. This legislation would divert much needed revenue from public education, which is already hurting. Mr. Homer stated there is nothing in it would be diverted from public education. Each year a new cohort of students would start in the system and potentially \$48 million would be lost, over the 12 years a student would be in school, K - 12.

Paul Stark, General Counsel, Idaho Education Association (IEA) , testified in **opposition to H 286**. Mr. Stark stated the IEA supports school choice, but this legislation is about who pays for it. Mr. Stark said at its core, **H 286** is about secular school funding and a dollar for dollar tax credit. SGOs will simply funnel dollars through parents to schools, and the net effect is state funds for education would be reduced. Mr. Stark stated for a public school, this legislation will not save money since fixed costs will remain, and he believes it is shortsighted to think it will save money.

Mr. Stark acknowledged, while it might save money on ADA, it will just shift the burden to local school districts, causing increased reliance on levy support. He also stated this legislation would take money away from Charter School funding. Mr. Stark believes **H 286** may violate the Idaho constitution, which contains clauses stronger than the U.S. Constitution, and expressly prohibits using public funds to support any secular education. He further states, the issue here is not about a choice. This is a voucher program and will reduce funding of state education to secular purposes. In response to a question, Mr. Stark clarified that while he is not a tax attorney, it is his belief that tax donations to eligible organizations are deductions, which lower the tax obligation. What is proposed in **H 286** is a tax credit, or a dollar for dollar benefit. Mr. Stark said while the opinion of the AG is there is no direct transfer of state funds and the language of the legislation is constitutional, the term "facial" basically looks at the language, whereas "as applied" would consider how the law is practiced, and he believes there will be challenges.

Jane Wittmeyer, representing the Coalition of Idaho Charter School families, testified in **support H 286** stating it expands choice in education. Ms. Wittmeyer stated almost every single charter school in Idaho has a waiting list. **H 286** provides more choice through another means and anything the state can do that creates a broader base where parents have a choice is positive.

MOTION: **Rep. Wood(35)** made a motion to send **H 286** to the floor with a **DO PASS** recommendation.

Rep. Vander Woude stated seventeen states have this program, have had challenges, and successfully withstood those challenges. He cited current practice of providing Idaho scholarships for those unable to afford colleges and universities. Rep. Vander Woude stated in current tax code, there are many K-12 schools, secular and nonsecular, already eligible for a direct tax credit write off, for qualified donations.

Sen. Nonini spoke to the possibility of declining enrollment from public to private schools this legislation might cause, stating there is 97% protection already in place within Idaho Code. Sen. Nonini said the Blaine Amendment in the Idaho Constitution prohibits vouchers, but does not prohibit tax credits. Personal income is not Idaho controlled funding and a tax liability does not represent government property. In response to a question, Sen. Nonini stated parents and grandparents can make deposits to Coverdale and 509 programs, tax exempt, for their children or grandchildren but **H 286** is a different program.

VOTE ON THE MOTION: A roll call vote was requested. **Motion carried by a vote of 12 AYE, 4 NAY. Voting in favor** of the motion: **Reps: Collins, Wood(35), Barrett, Moyle, Raybould, Denney, Anderst, Dayley, Hartgen, Kauffman, Patterson, and Trujillo. Voting in opposition** to the motion: **Reps. Anderson(31), Burgoyne, Meline, Erpelding(McLean).** **Rep. Vander Woude** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 10:23 a.m.

Representative Collins
Chair

Kathleen A. Simko
Secretary