

MINUTES
HOUSE LOCAL GOVERNMENT COMMITTEE

- DATE:** Monday, March 18, 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:** Representatives Perry and Chew
- GUESTS:** Tony Poinelli, Idaho Association of Counties (IAC)
Chairman Barrett called the meeting to order at 1:33 p.m.
- MOTION:** **Rep. Kloc** made a motion to approve the minutes of March 14, 2013. **Motion carried by voice vote.**
- H 150:** **Tony Poinelli**, Idaho Association of Counties, presented **H 150**, which would clarify that the Idaho Administrative Procedures Act must be complied with before any party brings an appeal regarding the decisions of county commissioners. Commissioners may perform certain administrative functions including purchasing of equipment, supervising employees, and budgeting. Boards of commissioners may also perform executive functions, as quasi-judicial bodies under certain circumstances. There have been instances of confusion and problems interpreting current Code and lawsuits have been brought against commissioners based on decisions that were never intended to go through the court system.
- Mr. Poinelli** responded to questions, saying Michael Kane has recently taken this issue to the Supreme Court. Terms of contracts must be clearly spelled out. The Prompt Pay Law allows 60 days for payments of expenditures. There is a clearly defined budgeting process. The appeals process was not intended to allow parties to appeal budget decisions in order to attempt to receive additional funding. A "final action" is a judicial function. Mr. Poinelli provided an example of the problem this bill is attempting to solve, for clarification: In a particular county, a board of commissioners released an individual. That individual appealed the firing decision based on existing statute. In 1993, there was some clarifying recodification. During that same year, a department head sued his board of county commissioners for more dollars in his budget, and an increase in his personal pay. Idaho Association of Counties would like to rectify the problem of these lawsuits by making clarifications in Statute.
- Rep. Luker** said that when there is a Supreme Court decision still pending, he is not comfortable making a change. He would like to allow the Court to make their decision and respond to that decision.
- Michael Kane**, Idaho Association of Counties, said oral arguments have been made in the Supreme Court case and that the Court requested that he "come to the Legislature and fix it". Statutes are driven by legislative intent. Mr. Kane said this bill would make a necessary adjustment for the future. Four district court judges have certified cases to the Supreme Court because they do not know how to apply this Statute. The courts will look at each case individually and rely on legislative intent when making decisions. This section of Code is currently being interpreted by some people to mean that any decision, such as which insurance company to use, can be appealed in court. Currently Statute reads "any act", which can be interpreted to mean that literally any decision that is made can be appealed through a lawsuit. **H 150** would clearly define that individuals need to go through the rules of

the Idaho Administrative Procedures Act before bringing a lawsuit. The addition of the word "final" does provide additional, needed clarification. "Final" is in the Idaho Administrative Procedures Act. Any final act can be appealed.

Mr. Kane cited the case of a prosecuting attorney who believed he was not making enough money. He decided to appeal budget decisions that had been made, in order to attempt to secure a larger salary. If budget decisions are subject to judicial action, the Court becomes a super-commissioner. There are at least some courts, and a lot of litigants, who believe the Idaho Administrative Procedures Act only applies to the appellate process, and order must be brought to the first half of the process. Mr. Kane is a hearing officer with the Idaho Administrative Procedures Act and believes the proposed language is sufficient to clarify the original legislative intent.

MOTION: **Rep. Malek** made a motion to send **H 150** to the floor with a **DO PASS** recommendation.

ROLL CALL VOTE: **Chairman Barrett** requested a roll call vote. **Motion carried by a vote of 11 AYE, 1 NAY, 2 Absent/Excused.** **Voting in favor** of the motion: **Reps. Sims, Barbieri, Luker, Clow, Hancey, Harris, Holtzclaw, Horman, Malek, Kloc and Meline.** **Voting in opposition** to the motion: **Chairman Barrett.** **Reps. Perry and Chew were absent/excused.** **Rep. Malek** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:20 p.m.

Representative Barrett
Chair

Mary Tipps
Secretary