

MINUTES

SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Tuesday, March 26, 2013
- TIME:** 2:00 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey
- ABSENT/ EXCUSED:**
- 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.
- CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 2:02 p.m. He thanked everyone for attending at this different hour than the Committee usually meets. He emphasized this meeting only has 'one' hour as the members are due on the floor at 3:00, so he encouraged everyone to be succinct in their presentations.
- MINUTES:** **Senator McKenzie** moved to approve the minutes of March 6, 2013. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.
- PRESENTATION:** **Chairman Siddoway** thanked the Committee Page, Carson Cole, for his service in the Committee during the second half of the session. He said, "We want to thank you. You have done a great job! You stayed awake during taxes!" He asked Mr. Cole about his future plans. **Mr. Cole** said he plans to go on an LDS mission, get into college, perhaps join the armed services to help pay for school and see the world, go to medical school and become an anesthesiologist or oncologist, and he added, "then retire happily, like Senator Hill." **Mr. Cole** thanked everyone for the opportunity.
- HCR 32** **Chairman Siddoway** invited David Langhorst of the Idaho State Tax Commission (Tax Commission) to the podium to explain **HCR 32** relating to the Rule 33 and 2012 instructions for withholding. **Mr. Langhorst** said, "We need this resolution." He said this resolution required the cooperation of several people on both sides of the rotunda and he stands in total agreement with Bill Roden, who presented this bill in the House. **Mr. Langhorst** said the statement of purpose succinctly describes this bill's intent to rescind Tax Commission Rule 33 subsections 3, 4 and 5.
- Mr. Langhorst** offered background information. He said the Tax Commission promulgated rules in 2011 to be effective in tax year 2012 which would have changed the existing practice. Prior to that time, Native Americans working on a reservation were not taxed. He said recent case law showed that Native Americans would be taxed like any other Idaho citizen if they were working on a reservation that was not their 'home' reservation. He said that comes into play a lot in the Coeur d'Alene tribe with the casino. When the case law came up, the Tax Commission put it on their plans for negotiated rule-making. **Mr. Langhorst** said, unfortunately, through unintentional oversight, it did not make it through negotiated rule-making. He said that meant the taxpayers most affected did not know the rule was coming, and to exacerbate the situation further, the Tax Commission issued withholding rules that were different than those printed in the income tax booklet, which said withholding was not required for non-home reservation income. **Mr. Langhorst** said when the discrepancy was brought to the Tax Commission's attention, they

immediately realized they could not rightfully enforce the confusing rule and have fair and equitable administration of tax policy.

He said this resolution, **HCR 32**, was their best method for formalizing that decision so that tax preparers, taxpayers and the audit staff would have consistency to rely upon.

MOTION: **Senator Werk** moved to send **HCR 32** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. Motion carried by **voice vote**.

H 133 **Chairman Siddoway** invited Kerry Ellen Elliott with Idaho Association of Counties to the podium to discuss **H 133** relating to recording fees for mining claims. **Ms. Elliott** said this bill corrects a statutory omission and oversight that occurred when the recording fee schedule was amended in 2010. She said three years ago, legislation amended the schedule which had not been adjusted since the early 1980s. She said the intent was to treat similar documents equally and provide funds to recording offices so they could be self-supporting and fund technology upgrades such as scanners and storage equipment. **Ms. Elliott** said the purpose was to provide efficient administration of documents and to better serve the public. The Idaho Association of Counties collaborated with the title companies on that 2010 legislation.

Ms. Elliott said this bill addresses mining claim documents, which are similar to those that meet the general document recording fee structure. She said current statute provides a separate fee for mining claim documents of \$3 for the first page and \$3 for each subsequent page; however, they should be assessed the same fee of \$10 for the first page and \$3 for each subsequent page that is already assessed for other similar documents. The bill strikes that subsection h and puts mining documents under subsection a. **Ms. Elliott** said the bill does not affect any other documents.

Ms. Elliott said the need for this correction came to the recorders' attention as they entered mining claim documents into the system and realized the system was attaching the correct fee code for that type of document, but it didn't match the statutory fee. That caused them to have to do a manual adjustment to the fee and reset their system so the system and statutory fee matched correctly.

Ms. Elliott said she is not aware of any opposition to this legislation. She said she has spoken with representatives of both the Idaho Mining Association and the Idaho Gold Prospectors Association and neither has any opposition. She said there may be a revenue increase to the recorder's office but that would be dependent on the volume of reporting. She said mining claim documents can be anywhere from one to six pages. The average recording is four pages, which would go from \$12 to \$19, as the first page costs \$7 more.

Ms. Elliott said based on 2012 data from counties, the revenue to the recorder's office could increase \$40,000 to \$50,000 statewide. She said all counties do some sort of recording, noting that in 2012 there were 5,924 mining claim documents recorded. She said that is the figure on which they based the revenue increase projections. She said the counties who have the most claims are Butte, Lemhi, Boise, Custer, Valley, Idaho, Owhyee and Shoshone Counties. **Ms. Elliott** concluded by saying the bill will ensure the appropriate fee is assessed to mining claim documents and that similar documents are administrated equally, uniformly and consistently, as is intended.

Vice Chairman Rice said he would like to declare his potential conflict of interest as he has fractional interest in some mining claims.

Senator Bayer asked for more history on the current practice. He said as they strive to provide uniformity and consistency, why would there be a potential increase of approximately \$50,000. He asked if there was deliberation on a way to account for current practice and facilitate language so that the net effect could be closer to \$0.

Ms. Elliott replied they polled all the counties and heard from nearly everyone. She said 5,924 mining claim documents were recorded in 2012 and assumed a similar number of claims would be recorded in 2013. From there, they extrapolated the figure given the first page cost increased to \$10. **Ms. Elliott** said they cannot know for sure how many claims would be recorded as it is volume driven and depends on what is happening in the mining industry, but every county does some kind of mining recording. She said in 2012, Ada County had six, Gooding County had one, and Lemhi had over 1,000. She said the mining claim documents were falling under subsection a, so this bill is designed to match what is happening in practice, where they all ought to adhere to that first page cost.

MOTION: **Senator Lacey** moved to send **H 133** to the floor with a **do pass** recommendation. **Senator McKenzie** seconded the motion. Motion carried by **voice vote**.

H 286 **Chairman Siddoway** invited Senator Bob Nonini to the podium to present **H 286** relating to education and a tax credit for contributions made to Scholarship Granting Organizations (SGO's). **Senator Nonini** asked the page to distribute two handouts while he gave a brief overview of each section of the bill. (See Attachments 1 & 2.) He described it as a "choice in education" bill. He said a study recently done by the Albertsons Foundation ranks Idaho "considerably lax" in the area of "choice in education."

Senator Nonini said he would address the concerns about this bill being unconstitutional. He directed the Committee's attention to the eight page letter of opinion from the Idaho Attorney General's Office, dated December 28, 2012. (See Attachment 1.) He said the opinion is that the bill 'is' constitutional. He quoted from the first paragraph on the first page where it says, "The analysis below concludes that, while the provision of tax credits with respect to contributions to entities comparable to the scholarship granting organizations has provoked, and likely will continue to provoke, substantial litigation, the draft legislation can be defended as consistent with the United States and Idaho Constitutions in the context of a facial challenge."

Senator Nonini asked the Committee to turn to the second paragraph on page two, where it states, "The draft legislation does not involve any transfer of state funds. It does not restrict scholarships to particular non-public elementary and secondary schools that otherwise satisfy "qualified school" status; i.e., both sectarian and nonsectarian schools receive equal treatment."

Senator Nonini said he believes the bill does not give any special treatment to any special schools. He asked the Committee to go to page seven in the last sentence of the second paragraph where it reads, "this Office would defend the law's facial validity vigorously with respect to an Establishment Clause challenge." He said his reason for showing this to the Committee is the Attorney General believes the bill is constitutional.

Senator Nonini said there have been concerns, questions and comments raised about the fiscal note. He said he shows in the statement of purpose his projection of saving the state several million dollars, and he would like to show the Committee how he arrived at that conclusion. He asked the Committee to refer to the handout titled "Friedman Foundation for Educational Choice." (See Attachment 2.) He said this is the group that helped him put together the bill. He said the best available data from other states is from Arizona and what they have experienced since they have had the law in place for several years now. He said the data from Arizona suggests that when a credit like this is available, roughly one percent of the total charitable giving in that state will be given to SGO's.

Senator Nonini said based on the data from the 2009 IRS returns for Idaho citizens, there was more than \$764 million in charitable contributions. He said using the Arizona one-percent figure, that translates into \$7.6 million, as shown in Table 1.

Senator Nonini said Table 2 relates to the corporate side of things using the Arizona data where there were 80 corporations that donated to the Arizona SGO under their corporate tax credit program. He said if the equivalent amount of companies in Idaho were to donate, it would be 24 companies who donated and claimed the credit, and the amount would be \$155,280. He said Table 3 shows the total fiscal impact of \$7,795,450 - which he rounded up to \$8 million.

Senator Nonini described how they try to limit the availability of the scholarships. He said it is not a "wide open scholarship program" in that students must 'qualify' based on family income, which he said is 185 percent of the poverty level or 150 percent of the reduced lunch income level. He then referred to Table 4 and the enrollment information provided by Jason Hancock from the State Department of Education. He said 288,026 children are in public education and 10,167 in private schools in Idaho. Of the children in public education, 171,087 are eligible for scholarship, and 929 private school children would be eligible.

Senator Nonini said to be eligible, students have to be attending a private school for the 'first' time, whether that is attending a public school the prior semester, entering kindergarten or first grade or by moving into the state of Idaho. Therefore, not every child would be eligible. He said some supporters of the bill were not happy about that aspect, but he said they can't just "open the floodgates."

Senator Nonini commented on the "price elasticity of private school demand." He said it means that a one percent decrease in the cost of private school yields a three-quarters of a percent increase in the demand for private school. He said as the tuitions for private schools go down, because a scholarship could be available, the opportunity or the 'demand' to get into private school will go up.

Senator Nonini described Table 5 which shows if there are \$8 million in available scholarships, and the estimated average private school tuition in Idaho is \$7,900, and the average scholarship under the program is \$2,525, cost of private school tuition decreases by nearly 32 percent. He said this demonstrates the price elasticity in which price goes down, and demand goes up, which he said is estimated at 24 percent. If 2,622 students transfer from public to private school, and 465 other students are eligible for the scholarship, that would be 3,087 children receiving scholarships. He said dividing the \$8 million by 3,087 children works out to be the \$2,525 scholarship figure.

Senator Nonini said the Friedman Foundation helped him determine the savings to the state of Idaho. He said last year's Total Idaho Education Formula Spending, as provided by Jason Hancock, was \$1.2 billion, divided by the 288,000 children enrolled in public school, which results in \$4,251 spending per student based on average daily attendance.

Senator Nonini said the overall state fiscal impact is expected to be a net savings to the state equal to \$3,350,000. He said he arrived at that figure by taking the \$8 million in combined individual and corporate donations, then subtracting the public school transfer student number of 2,622 multiplied by the state spending per student of \$4,251 which equals \$11,146,122.

Senator Nonini said Table 8 discusses the local collection of property taxes for supplemental levies. He said there is about a quarter of a billion dollars statewide collected. He said that does not change even if there are 2,622 less children in schools in Idaho, because those levy amounts are not based on student enrollment.

Senator Nonini described how Table 9 combines the state savings of \$3.3 million and local savings of \$2.5 million to result in a total fiscal impact of \$5.8 million. He said he has heard some comments and concerns that people don't believe those numbers, but he said these numbers are all backed up by the IRS, the Tax Commission and the State Department of Education.

Senator Nonini said the Cato Institute has studied scholarship tax credits. He said there are fourteen scholarship tax credit programs operating in eleven states that all grant tax credits to individuals or businesses who donate to nonprofit SGOs to fund low and middle income students. He said the Cato Institute report on the constitutionality of such programs shows voucher programs have a mixed record in the courts around the country, but tax credits have a perfect constitutional record. He said a court has never overturned a tax credit piece of legislation. He said this bill is 'not' a voucher, but a 'credit' and there is a distinct difference.

Senator Nonini made another note from the Cato Institute on its studies of fiscal impacts. He said the report shows tax credit programs in three states have saved those states money. He said the Florida legislature's nonpartisan Office of Program Policy Analysis and Government Accountability found that their state's tax credit program saved \$1.44 in state expenses for every dollar on state taxes. He said the Commonwealth Foundation reported that Pennsylvania saved \$512 million per year and Arizona's tax credit program estimated savings between \$99.8 and \$241.5 million.

Senator Nonini shared some information about the impact on student performance. He said nine of ten randomized control studies in the Gold Study of Social Science Research found the school choice program had a positive impact on participating students' academic performance. He said the tenth state found no statistical impact. He said a study of Florida's program found a small but statistically significant impact on the academic performance of 'public' school students in response to the increased competition among schools.

Senator Nonini said they have tried to write this bill to include: the family has to have a certain income level; how the SGO works in the Department of Education; how it has to be an Idaho-based 501(c)(3); and it also has to return 90 percent of the money donated to scholarships with only ten percent for administrative fees. He said they didn't want one school to be singled out with a situation like, "If I give you a donation, will you help my friend's child get into a school."

Vice Chairman Rice asked if Senator Nonini spoke with the State Department of Education and the Tax Commission about the income that would have to be shared and the cost for both of them to set up and administer this program, including additional website development and staff needed for approval and tracking of the amount used during the year.

Senator Nonini replied yes, he did spend hours with both and actually had a rewrite of the bill. He said Mike Chakarun of the Tax Commission and Jason Hancock of the Department of Education seem to think how the bill is written would not be an issue for staff administration and website development.

Vice Chairman Rice asked if Senator Nonini checked with anyone about the method in which checks are distributed and if that meets the IRS guidelines for a 501(c)(3) policy for handling this situation.

Senator Nonini said he has not spoken with the IRS but in drafting this bill, they used language from other states that has been in compliance. He said he wants the checks to go to the school, not the parents, so that parents could not take the money for other purposes.

Vice Chairman Rice said the bill indicates that prior to accepting a donation, the entity is required to verify that the \$10 million hasn't been used up. He asked how that tracking is supposed to work. **Senator Nonini** said he has been working with the Idaho State Tax Commission on that to make sure the fund has not been exceeded. He said prior to accepting a check, it is the SGO's responsibility to contact the Tax Commission. He said they want to make sure a person can't just hand over a check and take the credit, because it would have to be verified that there was room under the cap.

Senator Hill asked how this tax credit interacts with the education tax credit already on the books. **Senator Nonini** said his understanding is that it compliments what is done in Idaho with education tax credits, because they are open to anybody. He said the people benefitting from the new tax credit would be the low and middle income people.

Senator Johnson said he is curious to know why with this bill the credit would be increased from \$500 to \$1,000, and why that amount was chosen, because under the educational credit that Senator Hill referenced, the amount allowed is limited to 50 percent. **Senator Nonini** said he's not sure he understands the question because he does not have a limit on this other than a corporation's liability. He said for example, an individual who owed \$150,000 in state income tax because of their income level, could donate \$150,000 to an SGO and you would get a dollar for dollar tax credit and be 100 percent relieved of their state tax liability. He said there are some limits on some of the other existing educational tax credits, like Senator Hill mentioned. He said on the corporate side, there is a limit of 50 percent, so if the company owed \$150,000, they could only be eligible to donate \$75,000.

Senator Johnson asked if donation and contribution are one in the same and what is the definition of those words in this context. **Senator Nonini** replied the words are used interchangeably. **Senator Johnson** asked for some examples. **Senator Nonini** said there are no SGO's existing right now, and if this legislation passed, he could see five or six opening around the state in different regions. He said if there were an SGO, he could make a \$1,000 contribution and they would get a dollar for dollar credit against their taxes. That could be a donation 'or' a contribution. **Senator Johnson** asked if he could donate goods and services. **Senator Nonini** said the way it is written, it would need to be cash.

TESTIMONY:

Chairman Siddoway reminded the audience that this is the last Committee meeting of the session and the members have to return to the floor at 3:00. He apologized saying because that is only ten minutes from now, and the eight people signed up to testify would be timed to each get one minute.

Chairman Siddoway invited Dale Buwalda of the Friedman Foundation (Foundation) in Indiana to the podium. **Mr. Buwalda** said the Foundation believes that quality education should be right for 'all' children, and parents should be empowered to select the school that best works for their child and meets their child's needs. He said there are currently fifteen programs in eleven different states that are similar to the program proposed in this bill, as well as several other different tax credit programs, for a total of twenty-one different programs in fourteen different states. He said Alabama just passed one last week. He said there is growing support across the country for this type of program.

Mr. Buwalda said one thing specific to Idaho came out of an analysis the Foundation performed. He said Idaho has a current tax credit program in which an individual or corporation can make a contribution directly to the schools, libraries and museums, even if they have a specific religious affiliation.

He said as far as legal precedent, the state of Idaho has been using 'tax credits' that can go to private institutions even if they are religious.

Chairman Siddoway invited Tom LeClaire of the Idaho State Republican Party to the podium. **Mr. LeClaire** said he has written testimony as well as a proclamation from the Republican Party supporting this concept. (See Attachment 3.) He said the most important thing about this legislation is that parents who need financial help to choose a private school for their kids will have a choice. He said this is what the Idaho Republican Party supports and they believe this is good education policy for Idaho.

Chairman Siddoway invited Chris Finch, Principle at Genesis Prep Academy in Post Falls, Idaho, to the podium. **Mr. Finch** said they serve 140 students in the Post Falls, Kootenai County, Coeur d'Alene area. He said the impact of this legislation would be tremendous because he continually has to turn away parents who aren't able to pay the full price of tuition. He said he has tuition assistance applications in his office right now and he's not sure he'll be able to help those students. If they're not able to get tuition assistance, they will have to go to public school, and that will in turn cost the state more money and not be able to give those families the choice they would like in private education.

Senator Werk asked if Mr. Finch's school is a 501(c)(3) and if there are 'owners' of the school. **Mr. Finch** answered yes, the school is accredited in Idaho and is a 501(c)(3) and no, they do not have owners. Rather, they have a board of representatives that legislate for the school.

Senator Johnson asked if it is possible that some students who currently attend Mr. Finch's school have parents who are donating to the school and receiving a tax credit on their Idaho tax returns. **Mr. Finch** said they currently supplement their school budget with many fundraisers to be able to pay for the tuition assistance requests. He said yes, families can donate to their school, and because it is a 501(c)(3), they can receive some form of tax credit.

Chairman Siddoway invited Phil Homer to the podium. **Mr. Homer** said he represents the School Administrators Association and the Idaho School Board Association. **Mr. Homer** read from the Idaho Constitution, "It shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public schools." **Mr. Homer** said he said, "You have done your very best and we really appreciate that." He said however, every dollar that is diverted from that revenue stream hurts the opportunity to take a portion of that dollar and apply it to the education of the students in public schools. **Mr. Homer** said, therefore, he and the organizations he represents cannot support this bill.

Chairman Siddoway invited Shelly Matthews, Principle at LAM Christian Academy in Coeur d'Alene, Idaho, to the podium. **Ms. Matthews** said she assumes everyone is here to help every child get the best education they can get. She said she'd like to ask the rhetorical question, "Who's responsibility is it to educate the children of Idaho? Is it the legislators' or public school administrators'? No, it is the parents' responsibility." She said the part of the constitution states legislation is to establish a system of free schools, but nowhere does it say it is the legislature's responsibility to take over the entire burden of educating 'all the children' in Idaho. She said that burden ultimately falls to the parents. **Ms. Matthews** said if their responsibility can be acknowledged by giving them back some of the means for them to carry out their duty, then every child can be given the best education they can get. She said she has parents of children with special needs, like autism and ADHD, who find her school could be the best fit for their children, but they don't have the financial means to do that. **Ms. Matthews** encouraged the Committee to look at this bill.

Chairman Siddoway invited Monica Hopkins of the ACLU of Idaho to the podium. **Ms. Hopkins** said she urges the Committee to oppose this bill, saying tax credit vouchers will cost taxpayers money. She said proponents claim the state will save money, but she said that is usually speculative. She said tax credit vouchers enable potential discrimination with public funds because unlike public schools, scholarship foundations and private schools receive taxpayer funded vouchers that are not subject to the full compliment of civil rights laws. She said the tax credit vouchers may violate the state's constitution, and with all due respect to the Attorney General's Office, the ACLU sometimes disagrees with their analysis. **Ms. Hopkins** said in this case, this bill may violate the state's no-aid provision in article 9, section 5 because **H 286** grants tax credits to those who donate to a 501(c)(3) and the 501(c)(3) gives the vouchers to the parents. She said a court could find that is too attenuated to run afoul of the no-aid clause. She said the ACLU in New Hampshire filed claims and won that claim in state court.

Chairman Siddoway apologized that the Committee is out of time and he invited anyone else who would like have their testimony recorded to give a written statement to the Committee Secretary. He acknowledged Wayne Hoffman, who supports the bill, and Bert Marley, who opposes the bill, for their attendance. He invited Senator Nonini to the podium for a quick closing statement before the vote.

Senator Nonini thanked the Chairman for the hearing. He said he wanted to reiterate that this is 'not' a "voucher" but it is a "credit," and there is a distinct difference, which is addressed in the Attorney General's opinion and the information from the Cato Institute. He said it is constitutional and it's about school choice. He said he hopes he has provided enough data and information on the fiscal impact, along with the accompanied evidence, to show the bill will 'save' the state money. He said he would like the Joint Finance and Appropriations Committee to take that savings and appropriate it to the public education budget. It is not costing the state money. He said the state should not always worry about the income in public schools, it should sometimes worry about the 'outcome.' **Senator Nonini** said parents need a choice and he thinks Idaho should step up.

Senator Vick said he thinks this is good legislation as it helps low income people to have an opportunity for a choice that others have.

MOTION:

Senator Vick moved to send **H 286** to the floor with a **do pass** recommendation. **Senator Vick** requested a roll call vote. **Senator Bayer** seconded the motion.

DISCUSSION: In discussion, **Senator Hill** said he wanted to explain why he cannot support the motion. He said there are a lot of reasons, but one is this is a 501(c)(3) organization. The donor is going to get a charitable contribution deduction both for federal and state income taxes, in addition to the credit for the full amount they contributed. The donor is going to 'profit' off of making this donation at the cost of the public, and he does not think that is what fiscal conservatives or the state republican party wants to have happen. He said he cannot support something that is just not fair from the standpoint that it will cost the public money to administer the program. **Senator Hill** said it will cost the public at least \$107 for every \$100 donated, not counting what the federal government is going to pay. He said for a \$100 contribution, ten percent goes to administrative costs, so it will cost the public \$107 for every \$90 that goes to the students. He said the state would be a lot better off making the appropriation of \$8 million to these schools; he said, "however, our constitution won't let us."

ROLL CALL VOTE: In the **roll call vote**, **Senators Bayer** and **Vick** voted **aye**. **Senators McKenzie, Hill, Johnson, Werk,** and **Lacey**, **Vice Chairman Rice** and **Chairman Siddoway** voted **nay**. The motion failed on a 2 to 7 vote. **H 286** failed in Committee.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:03 p.m.

Senator Siddoway
Chairman

Christy Stansell
Secretary