

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Wednesday, February 12, 2014
- TIME:** 3:00 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey
- ABSENT/ EXCUSED:** None
- 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 meeting of the Local Government and Taxation Committee (Committee) to order at 3:05 p.m., noting that the Senate Resources Committee ran late and caused a delay.
- PAGE PRESENTATION** **Chairman Siddoway** invited the Committee Page, Hannah Utley, to the podium, and asked her to report on her experience in the Senate. **Ms. Utley** said she has had a great experience, met great people has deepened her understanding of how local and statewide government works. **Chairman Siddoway** asked about her future plans. **Ms Utley** replied will go home and see her mother and go back to school, and after graduation get her basics at CSI and then transfer to the Boise State radiology department. **Senator Werk** asked for more specifics on her radiology plans, and **Ms. Utley** replied, "Doctor!" **Chairman Siddoway** expressed his thanks and that of the Committee Secretary for all of Ms. Utley's help during the session, and presented her with letters of recommendation and a Senate watch.
- MINUTES:** **Chairman Siddoway** called for the consideration of the Minutes from previous meetings, noting that the Minutes of January 21, 2014 were not listed on the agenda but are ready for consideration, as well.
- MOTION:** **Senator Bayer** moved, seconded by **Senator Werk**, to approve the Minutes of January 14, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Johnson** moved, seconded by **Senator McKenzie**, to approve the Minutes of January 15, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Werk** moved, seconded by **Senator McKenzie**, to approve the Minutes of January 21, 2014. The motion carried by **voice vote**.
- S 1300** **Chairman Siddoway** invited Senator Sheryl Nuxoll to the podium to present **S 1300**, relating to counties, to revise a provision relating to the lease of a hospital by the Board of County Commissioners. **Senator Nuxoll** said the bill requests an amendment to Idaho Code § 31-836, to increase the cap on a county's ability to lease a hospital or hospital facility without public auction from 20 years to 35 years.
- Senator Nuxoll** shared why the amendment is necessary. She said Clearwater County is seeking to retain their hospital without a public auction. She said in 1996, an Idaho nonprofit organization called Clearwater Valley Hospital and Clinics, Inc. (CVH&C) was formed, operating under the Benedictine umbrella for direct management and operation of the hospital in Clearwater County in Orofino.

Senator Nuxoll said this agreement essentially saved the hospital from failure. She shared that the hospital has since been operated successfully, has grown to meet expanding needs, and has established clinics to serve outlying areas including the cities of Pierce/Weippe and the Kamiah/Kooskia area, all without taxpayer financial support.

Senator Nuxoll said the hospital has been designated as a critical access hospital, as it serves the entire Clearwater River corridor, as the only hospital and the only emergency room on U.S. Highway 21 between Lewiston, Idaho and Lolo, Montana. She said it serves all of Clearwater county, and parts of Nez Perce, Idaho, and Lewis counties. She said the hospital's importance to the health and welfare of the citizens of these areas cannot be overstated.

Senator Nuxoll said the immediate problem is that the lease between CVH&C and the Benedictine Health System is due to expire in two years. She said CVH&C and the Essentia Health System have approached Clearwater County with a proposal which provides that if the county can provide a long enough lease, CVH&C will construct a separate stand alone clinic, and over time, make substantial building and infrastructure improvements which are necessary for the aging facility to continue to operate long term. She said this would all be done at CVH&C's expense, without taxpayer contribution, an investment which is conservatively estimated to be several millions of dollars.

Senator Nuxoll said all improvements to the hospital will revert to County ownership at the conclusion of the lease, but the financing agencies require CVH&C to have a long enough lease that it will be able to pay back the investment and will be able to realize at least the accountant established depreciated value of the investment. She said, alternatively, the county could invest the millions of dollars required and lease the facility to CVH&C, but Clearwater County has neither the tax base nor the income stream to support that kind of investment.

Senator Nuxoll said to accomplish the necessary investment without having to resort to taxpayers footing the bill, there will need to be a lease in excess of 30 years, estimated at 35 years. She said Clearwater County cannot run the risk of putting its only hospital up for public auction, at which some other entity could outbid CVH&C for the structure and deprive the community of its primary health care provider. She said, "It is simply too great a risk." **Senator Nuxoll** said Clearwater County cannot under any circumstance justify risking such a critical public health facility by exposing it to public auction.

Senator Nuxoll said it is requested that the 30 year limitation on leases as well as the 20 year limitation on leases to a hospital without a public auction, as outlined in Idaho Code § Section 31-836, be increased to 35 years. She said this will open options to Clearwater County and other similarly situated counties to use long term leases as a mechanism to provide health care and infrastructure improvements and upgrades at private expense, rather than public expense, and thereby avoid further burdening Idaho taxpayers.

Senator Nuxoll said there will be no cost to the State or to any county for this amendment. She said rather it would have the effect of saving taxpayers the burden of financing infrastructure improvements. She said all counties in Idaho who continue to own the structure in which a hospital is housed either have or will have the same problem as that structure ages and requires upgrades, repairs and improvements. She said this amendment provides additional options to those counties, in addition to existing options provided by Idaho law.

Senator Nuxoll said the Clearwater County Prosecuting Attorney's office asked the 44 counties in Idaho whether or not each county owned and operated a hospital, or owned and leased the hospital, or owned and contracted management of the hospital to another entity. She said of the 19 counties who responded, eight could benefit from this legislation, including Idaho, Madison, Bingham, Gem, Butte, Lemhi, Power, and Teton counties. Senator Nuxoll asked the Committee to send the bill to the floor with a do pass recommendation.

MOTION: **Senator Johnson** moved, seconded by **Senator Werk**, to send **S 1300** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1301 **Chairman Siddoway** invited Senator Bock to the podium to present **S 1301**, relating to income taxation, to provide relief from joint and several liability on a joint return if certain conditions occur. **Senator Bock** explained how the innocent spouse dilemma arises. He said it happens after a separation or divorce where one of the two has earned income but has more or less hidden it from the other spouse, and that other spouse has not received any benefit from that income. He said the innocent spouse signs a federal joint return, and even though they were essentially defrauded, they are still potentially liable for the tax.

Senator Bock said the Internal Revenue Code § 6015 contains a provision for these circumstances, the content of which has been provided to the Committee (see attachment 1). He said he wanted to emphasize that it is a lengthy and complex statute, and what he has done with the Idaho State Tax Commission (Commission) is conform how Idaho treats an innocent spouse with how the federal government does. **Senator Bock** said the Internal Revenue Code statute could be reiterated in Idaho law, but the Commission suggested the brief bill instead.

Vice Chairman Rice asked if people are being left out by limiting this provision only to income tax and not including sales tax, for example. **Senator Bock** said there is nothing comparable in the Internal Revenue Code, so this legislation is confined to this tax. He said situations of unreported income like that would be a subject for another day.

Senator Bock then addressed a question that arose with Senator Hill previously, with his inquiry about why the conformance bill wouldn't satisfy this issue.

Senator Bock said in discussion with the Commission, the innocent spouse provision addresses an enforcement issue, and therefore would not fall under the conformance.

TESTIMONY: **Chairman Siddoway** invited David Langhorst of the Idaho State Tax Commission (Commission) to the podium. **Mr. Langhorst** said he is the Commissioner with oversight in the collections area, and he is in favor of the bill. He said he has seen several cases like this over the years, and it's not that the Commission cannot deal with them, but this legislation creates more certainty for taxpayers. He said he appreciated Senator Bock working with them on this issue. **Mr. Langhorst** referenced the question Vice Chairman Rice had asked regarding the application of the innocent spouse provision to other types of taxes, and he said that when sales tax is involved the first liability is the business and then a responsible party. He said those liabilities are assigned to individuals, not couples, so if they were divorced this provision wouldn't apply. **Mr. Langhorst** said the Commission also has the settlement process for other issues that may not be covered by this bill.

Chairman Siddoway said he had a question about the fiscal impact. He described a situation in which a man and wife get divorced, the husband takes money and leaves, and the State tries to go after him because there is still liability, but the wife has assets that could cover the liability. He asked if this bill prohibits the State from going after the wife, where there could have been a potential collection, if that now creates a loss that could be a negative fiscal impact.

Mr. Langhorst said he believes that to be correct, but it would be miniscule. He said he agrees with the fiscal note as written, because what the State is saying is that it wouldn't be able to collect on that liability in the first place.

Chairman Siddoway asked how many times per year does a case like this happen. **Mr. Langhorst** replied that answer will become more clear if this bill passes, because it will be applied more broadly. He said in his experience, there are handfuls, but that doesn't mean there aren't cases out there that they don't hear about, but now they will with the passage of this law.

Chairman Siddoway welcomed Bob Aldridge of Trust and Estate Professionals of Idaho (TEPI) to the podium. **Mr. Aldridge** said he has worked with the Commission on many different subjects and he has reviewed the language of this bill and believes it will be very helpful. He said the Internal Revenue Code is complex and lengthy and he likes clarity, which this bill provides, and he urged the Committee to approve it.

Senator Bock returned to the podium and said he thinks it is worth emphasizing that the fiscal impact is unknowable. He said as an attorney, one might be tempted to go after the low hanging fruit, because one spouse may not have had the income but does have assets that are readily seize-able, but doing so would be wrong. He said that is why this is a fairness issue. He said anyone who has dealt with the Commission knows that if there's a liability, it does not disappear easily, and if the Commission is determined to collect it from an income producing spouse, it will. He said, therefore, the fiscal impact is miniscule, as it may exist in theory, but not in practice.

Senator Werk commended Senator Bock and the Commission for working together. He said as he considers the the fiscal impact, the Commission would be collecting from a spouse who had no idea this money had been earned by the other divorced spouse, so he understands why the fiscal impact is a fairness issue.

MOTION: **Senator Werk** moved, seconded by **Senator Lacey**, to send **S 1301** to the floor with a **do pass** recommendation.

DISCUSSION: In discussion, **Senator Hill** said he and Senator Bock discussed this issue a year ago and he commended Senator Bock for his follow through in getting this legislation done. He said it is not an easy process to get innocent spouse relief, and it is seldom done. He said he thinks this is good legislation.

MOTION: The motion carried by **voice vote**.

H 377 **Chairman Siddoway** welcomed Michael Chakarun, Tax Policy Manager with the Idaho State Tax Commission (Commission), to the podium to present **H 377**, relating to income taxation to provide a reference to the definition of "individual" and to provide taxation for a pass-through entity.

Mr. Chakarun said Idaho Code § 63-3022(I) allows a pass-through entity, like a partnership or S Corporation, to pay the Idaho income tax on behalf of its nonresident owners instead of those owners having to file an Idaho nonresident income tax return. He said this is called a composite return, but current law only allows a natural person to be included on the composite return, as described in Idaho Code § 63-3008.

Mr. Chakarun said the Commission has received numerous requests from tax preparers to allow certain entities, like grantor trusts, qualified sub-chapter S trusts, and single member LLCs treated as a disregarded entity for tax purposes, to be able to participate in a composite return filing, even though these entities are not a "natural person."

Mr. Chakarun said this proposal modifies Section 63-3022(l) to accommodate these requests by expanding the definition of "individual" to include those entity types on a composite return. He said the bill also adds a cross-reference to Section 63-3026(a), which is the underlying Idaho statute that identifies Idaho source income and deductions to be reported to Idaho by a nonresident. There is also a change to Section 63-3036(b) relating to backup withholding from pass through entities being made to make sure that the definition of individual is the same between those sections.

Mr. Chakarun said there is also a change being made to Section 63-3082 to clarify that the Idaho Permanent Building Fund (PBF) tax is due on any nonresident owner that is included within the composite return. He said the fiscal note is zero, because these entities already have a filing requirement with Idaho and would file a part year or nonresident Idaho income tax return and pay the PBF on that return.

Vice Chairman Rice asked for clarification on the payment of the PBF, because it seemed to him that it was getting paid twice. **Mr. Chakarun** answered that the individual would have paid that \$10 to the PBF when they remitted their taxes, but since they are not going to do that, the Commission wants the pass through who is paying the composite return to pay it. He said that way, if they paid it before, they are still going to pay it, and it only gets paid once.

MOTION:

Senator Hill moved, seconded by **Senator Bayer**, to send **H 377** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 383

Chairman Siddoway invited Alan Dornfest of the Idaho State Tax Commission (Commission) to the podium to present **H 383**, relating to certification of property tax budgets. **Mr. Dornfest** said this is an agency bill that reflects changes to the way property tax levies are computed. He said the methodology is similar to what is done when farm equipment is exempted. He said the bill eliminates the inclusion of exempt value in the levy calculation formula.

Mr. Dornfest shared some background, noting that the mechanism began with H 599 in 2008. He said in addition to setting up the personal property exemption, the bill provided for it to be recomputed annually, but that meant one wouldn't know the amount until the end of the year. He said it would all work out after the money came in from the State, but the principle needed to be modified, because it didn't work well under the fixed dollar approach. **Mr. Dornfest** said if the statute is unchanged, the levy in the fall would understate the amount. That replacement money has to be subtracted, because it's not right to leave that in before the levy is set.

Chairman Siddoway, Vice Chairman Rice, Senator Hill and Senator Vick all requested further explanation. **Mr. Dornfest** directed the Committee to the second page of the provided handout (see attachment 3) and walked them through a scenario. He provided the following explanation: "**H 383** corrects the calculation of property tax levies by permitting the value of property exempt as personal property under Idaho Code § 63-602(kk) to be subtracted from taxable value before levies are computed. This is consistent with the way levies are computed with regard to all other exemptions that include fixed dollar amounts of replacement money. The replacement money is subtracted from the budget before computing the levy and the value of the exempt property must therefore be subtracted from the taxable value. Previous language was a hold over from a different replacement money procedure found originally in H 599 in 2008, but never implemented. That procedure does not reflect the way replacement money is calculated under H 315 in 2013 that has been implemented. Failure to make the correction provided in **H 383** would result in taxing districts not receiving their approved and certified property tax amounts, as the levies would be too low."

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Hill**, to send **H 383** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Chairman Siddoway asked the Committee to make note of a handout provided by the Commission on the cloud computing issue and he recommended the members review it.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:55 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary