

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, March 05, 2014
TIME: 1:30 pm or Upon Adjournment
PLACE: Room EW41
MEMBERS: Chairman Henderson, Vice Chairman Thompson, Representative(s) Collins, Crane, Palmer, Barbieri, Batt, Agidius, Clow, Hixon, Kauffman, Monks, Morse, Stevenson, Youngblood, Smith, Rusche, Gannon
**ABSENT/
EXCUSED:** Rep. Agidius
GUESTS: Larry Benton, Benton Ellis and Associates; Wayne Hammon, Idaho Associated General Contractors; Cindy Ozaki, Idaho Falls Auditorium District; Woody Richards, Insurance Companies; Michael Anderson, BCA; Mark Larson, State Fire Marshall; Mike Kane, PCI; Heather Cunningham; Angela Richards, Insurance Companies; Charlie Woodruff, USGBC Idaho; Dennis Schafferr, Idaho Building Contractors; Tyler Mallard, IBCA; Dawn Justice, Idaho Bankers; Leon Duce, AIC; Steve Martinez, Tradewinds Building; Jon Hastings, Treseidro Homes; John Foster, IDABO/ Kestral West; David Yorgason, Building Contractors; Brad Pfannmuller, Avimor; Carl Trautman, Brighton Homes Idaho; Tracy Dixon, Overhead Door Company; John Watts, Idaho; Aaron Johnson, Bateman Hall, Inc.; Paul Jackson, Farmer's Insurance

Chairman Henderson called the meeting to order at 1:31 p.m.

MOTION: **Rep. Hixon** made a motion to approve the minutes of February 25, 2014. **Motion carried by voice vote.**
MOTION: **Rep. Hixon** made a motion to approve the minutes of February 27, 2014. **Motion carried by voice vote.**

H 545: **Rep. Monks** presented **H 545** relating to the International Residential Building Code and the International Energy Conservation Code. He said this legislation arose from a collaborative, negotiated effort and is an attempt to move toward an Idaho Building Code rather than relying on the International Construction Code which changes every three years. He said it would make revisions to the code easier to accomplish. He said the negotiated process will remain in effect. He said the 2012 International Building Code will remain in force, and, together with the amendments, revisions and modifications will become the Idaho Building Code. He said this does not prohibit adoption of the 2015 International Construction Code in its entirety. He said the International Energy Conservation Code would become the Idaho Energy Conservation Code. He said this legislation pertains to the residential codes at this time, not the commercial codes. He said the building contractor must keep up with the constant changes to the building code and this legislation is an attempt to slow the process so that the state has flexibility in implementation of code changes.

In response to questions from the Committee, **Rep. Monks** said the collaborative group consisted of regulated industries such as construction contractors and regulating entities such as the Division of Building Safety.

Larry Benton, Benton, Ellis and Associates, representing the Idaho Chapter of American Institute of Architects, spoke **in opposition** to the bill. He said while not in opposition to the concept, not all stakeholders were involved in the collaborative effort. He said the Idaho contractors made this decision unilaterally. He asked the Committee to ascertain **H 545** arose from a collaborative effort.

Leon Duce, Association of Idaho Cities, spoke **in support** of **H 545**. He said there was a collaborative effort and supports the provisions of the bill. In response to questions from the Committee he said Idaho Statute determines the International Construction Code as a starting point and allow cities and counties to make local amendments as they see fit.

Steve Martinez, Tradewinds Building Association, spoke **in support** of **H 545**. He said there is a history of collaborative effort in the crafting of this legislation. He said the 2012 International Construction Code contains 250 pages of significant changes, which result in higher costs to the contractor. He said the collaborative wished to control the large overhaul of the Code every three years by the International Code Council. He said the collaborative arrived at a much smaller number of code changes. In response to questions from the Committee he said the Idaho Construction Code will not necessarily eliminate large changes to the code, rather it will allow the collaborative process to refine the end product.

John Foster, Kestral West, IDABO spoke **in support** of **H 545**. He said this legislation is in the best interest of Idaho. In response to questions from the Committee he said this legislation is not expected to affect the way rules are promulgated. He said concerns among architects, contractors and insurance underwriters regarding possible inconsistencies in building codes were addressed during the collaborative process. He said architects oppose the bill but were included in the negotiations.

Rep. Rusche spoke **in opposition** to the **H 545**. He said the process described may result in constant changes to the Idaho Construction Code as the Legislature meets each year and changes ensue, rather than absorbing changes every three years with the publishing of a new International Construction Code. He said contractors may experience difficulty in keeping up with a constantly changing building code.

Rep. Kauffman spoke **in support** of the bill, qualifying his support on continuation of a collaborative process inclusive of all stakeholders.

Rep. Palmer spoke **in support** of **H 545**. He praised the collaborative effort employed in the crafting of this legislation.

MOTION: **Rep. Gannon** made a motion to send **H 545** to the floor with a DO PASS recommendation. **Motion carried by voice vote.** **Rep. Monks** will sponsor the bill on the floor.

S 1282aa: **Sen. Goedde** presented **S 1282aa** relating to the legal rate of interest when there is no express contract in writing fixing a rate of interest. He said the judgement rate of 12% was set in 1981 and is out of context with the current economy. He said stakeholders assembled and agreed upon 7.5% as a fair rate of interest. He said concerns of retroactivity are not valid as this will not affect current cases.

In response to questions from the Committee **Sen. Goedde** said all language concerning prejudgment has been stricken and the only change is to lower the interest rate from 12% to 7.5%. He said much consideration was given to a market based interest rate rather than the fixed rate but the collaborators could not produce any compromise. He said the consensus group consisted of trial lawyers, bankers, and members of the insurance Industry.

Rep. Barbieri spoke **in opposition** to **S 1282aa**. He said the rate of 7.5% seems to be of a penal nature. He recommended consideration of an amending order to create a fair rate based upon current prime interest rate.

Woody Richards, All State, American Family and Farm Bureau, Farmers Insurance, spoke **in support** of **S 1282aa**. He said the insurance companies he represents were collaborating members. He said personal loan rates were at 12-14% when the original statue was written and that justified the 12% interest rate. He said that basis is now invalid as interest rates are extremely low. He said ongoing cases will not be affected should this bill pass during the legislative session. He said businesses are lenders and debtors, and insurance companies don't want interest rates to be so high that businesses are impacted. He said the only purpose of this legislation is to fix an interest rate when no other contract exists. He said a floating interest rate is not a bad idea, however the collaborative could not arrive at one formula. He said current floating interest rates would arrive at approximately 6-8%, therefore 7.5% is reasonable. In response to questions from the Committee he said the fixed rate was chosen as the variable nature of floating rates may be difficult for businesses to work with. He said the rates of surrounding states were taken into consideration, however, 7.5% is a default rate. He said this legislation would not affect the ability of parties to contract interest rates. He said this rate of interest is used in the event of a judgement on eminent domain issues. He said the rate of interest is compensation for the lengthy deprivation of property use.

Rep. Morse spoke **in opposition** to **S 1282a**. He said there are issues of lost opportunities, and other costs associated with loss of property to which this interest rate can apply. He said the issue of deprivation of property and compensation via interest is complicated and can vary with economic factors. He said interest rates and prime rates are continually changing.

Heather Cunningham, condemnation lawyer, Idaho spoke **in opposition** to **S 1282aa**. She said this legislation will have unintended consequences in the case of eminent domain actions. She said these cases may take several years to complete and the only compensation the property owner receives in consideration of the long process other than the fair market value of property is the interest rate. She said properties in condemnation cases cannot be changed, developed or sold by the owner. She said the government or condemnor decides how much money is deposited by the court at start of case and should the condemnor incorrectly value the property, the property owner will only receive the interest rate on the amount deposited. She said the private property owner is innocent of wrongdoing and further deprived of appreciation on property and use of property during case proceedings. She said **S 1282aa** should not include pre-judgement interest rates for condemnation cases. She said the government is aware that if they lose the condemnation case, the government will have to pay the 12% interest rate accrued over time. She said changing this interest rate may drastically change the overall value of eminent domain properties.

John Watts, Idaho Collectors Association, spoke **in opposition** to **S 1282aa**. He said the Idaho Collectors Association (ICA) has many of the same concerns **Ms. Cunningham** raised. He said the ICA members are stakeholders who were not involved in the crafting of this legislation. He listed rates set in surrounding states as Utah - 10%, Washington - 12%, Oregon - 9% and notes a rate of 7.5% gives Idaho the lowest interest rate in the area. He said the lowest interest rate would negatively impact collections businesses. He asked the Committee for the opportunity to amend the bill in General Orders in consideration of a variable rate of interest. In response to questions from the Committee he said collectors come into play after the service has occurred and attempt to recover on contracts where interest rates are already called out and where rates have not been called out.

MOTION:

Rep. Morse made a motion to send **S 1282aa** to General Orders for amendments considering pre-judgement, post judgements and floating rates of interest based upon prime lending rates. He said appropriate interest rates provide incentives to all parties to end litigation rather than extend it.

Rep. Batt spoke in support of the motion. She said private property owners should be protected.

SUBSTITUTE MOTION:

Rep. Gannon made a substitute motion to send **S 1282aa** to the floor with DO PASS recommendation.

Rep. Clow spoke in support of the substitute motion. He said it would be problematic to track changing interest rates. He said the issues of condemnation law brought to the Committee by **Ms. Cunningham** should be addressed by separate legislation.

Senator Goedde returned to the podium to summarize **S 1282a**. He said this bill was amended at the Senate Committee level and the bill before this Committee can stand as is. He concurred that the issues of condemnation law can be addressed through separate legislation. He said a variable interest rate is an understandable alternative, however, the consensus agreement did not arrive at that solution.

Rep. Barbieri spoke in support of the substitute motion.

ROLL CALL VOTE:

Chairman Henderson requested a roll call vote on the substitute motion. Substitute motion passed by a vote of 9 AYE and 7 NAY, 2 ABSENT/ABSTAINED. Voting in favor of the substitute motion: **Reps. Thompson, Collins, Barbieri, Clow, Hixon, Kauffman, Stevenson, Smith, Gannon**. Voting in opposition to the substitute motion: **Reps. Crane, Palmer, Batt, Monks, Morse, Youngblood, Henderson**. **Reps. Agidius and Rusche** were Absent/Abstained. **Rep. Gannon** will sponsor the bill on the floor.

S 1311aa:

Wayne Hammon, Associated General Contractors, presented **S 1311aa** relating to Construction Manager/General Contractor construction project delivery system. He said this system is new to Idaho Public Works but not new to the construction industry. He said Utah, Nevada, Washington and Wyoming public owners successfully utilize the Construction Manager/General Contractor (CM/GC) project delivery method. He said this legislation shifts risk from owner to contractor who becomes a partner in the project. He said the CM/GC fulfills the same duties, is obligated to follow the same rules, and is compensated in accordance with public works contracting code. He said the CM/GC must meet state bonding processes and must participate in the open bidding process for subcontracting, and purchase of goods and materials. He said the CM/GC project delivery method is new for public works, but often used for commercial projects. He noted the Statehouse renovation was undertaken using this method in collaboration with the Division of Public Works.

In response to questions from the Committee, **Mr. Hammon** said this project delivery method does not cause problems for subcontractors. He said the CM/GC could bid on subcontracted items and the possibility exists that he could then manipulate the schedule or budget so that he could be in a position to take over that subcontracting job, although he has not seen this occur. He said the CM/GC contracts a guaranteed price therefore it is to his benefit to take competitive subcontractor bids.

Cindy Ozaki, Chairman, Auditorium District ID Falls, spoke in support of **S 1311aa**. She said this delivery method could be employed successfully in Idaho Falls for construction of an event center. She said this project delivery method will assist the Auditorium District in accomplishing their goals with 2-10% financial savings. She said \$100 million of school bonding projects is anticipated in Eastern Idaho and this process will save money. She cited the use of the CM/GC project delivery method used for a \$20 million Colorado Mesa University project which broke ground in 3 months, and completed under budget and ahead of schedule.

Aaron Johnson, Bateman Hall Construction, spoke in support of **S 1311aa**. He said he has used the CM/GC method and that it works well for large projects. He said this method offers a big advantage for public entities which do not have a construction manager on staff. He said architects are not the best estimators of project costs, so having a CM/GC on board during the design phase produces savings and avoids change order costs.

MOTION: **Rep. Thompson** made a motion to send **S 1311aa** to the floor with a DO PASS recommendation. **Motion carried by voice vote.** **Rep. Thompson** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:29 p.m.

Representative Henderson
Chair

Catherine Costner
Secretary