

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

- DATE:** Wednesday, March 05, 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 3:04 p.m.
- MINUTES:** **Chairman Siddoway** called for the consideration of the Minutes from previous meetings.
- MOTION:** **Senator Lacey** moved, seconded by **Vice Chairman Rice**, to approve the Minutes of February 5, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Bayer** moved, seconded by **Senator Werk**, to approve the Minutes of February 6, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Werk** moved, seconded by **Senator McKenzie**, to approve the Minutes of February 12, 2014. The motion carried by **voice vote**.
- H 547** **Chairman Siddoway** invited Representative Mike Moyle to the podium to present **H 547** relating to the distribution of cigarette tax money.
- Representative Moyle** outlined the provisions of the bill, which in the House they "affectionately" are calling the GARVEE Water Bill. He said the bill redistributes the cigarette tax money. Currently the money pays for the Capitol building bonds comes from the cigarette tax, and those bonds will be paid off in 2015.
- Representative Moyle** said the first thing the bill does is to ensure that the funds that currently get money from the cigarette tax are protected and held whole. He noted the importance of remembering that the cigarette tax has been going down slightly each year and there are many funds that get money from that account, including the Cancer Control Fund, Cancer Registry Fund, Public Schools Income Fund, County Juvenile Probation Fund and the Permanent Building Fund. He said the bill caps all the funds that can be capped so they are protected and won't continue to lose revenue. Only one fund is not capped, and that is the Bond Equalization Fund, which is where the State goes back and helps pay for the bonds passed by districts. There is a formula for that, and the cost goes up and down depending on the number of bonds that are passed by the school districts. He said that is matched with money from the lottery, and there is another bill that takes care of that.
- Representative Moyle** said the bill takes the remaining money that previously paid for the bonds for the Capitol building and distributes them in three ways. 1) \$4.7 million toward the GARVEE payment. The State of Idaho has a yearly payment for GARVEE right at \$60 million. Most of that money comes from federal funds that come to the Highway Department, but there is a State match, which is right at \$4.7 million.

2) \$5 million toward the Secondary Aquifer Planning, Management and Implementation Fund. He said that is an existing fund, which got money this year, in the amount of \$15 million for water projects across the State. The bill specifies that the \$5 million is for aquifer stabilization. Originally, there was discussion of using the word "recharge" but looking across the State, the issues are not always recharge to solve the issue of aquifer declines. He said that's why the phrase aquifer stabilization is used instead. **Representative Moyle** said that fund is controlled by the Idaho Water Resources Board (Board), and they will determine the best place to spend the money, so the state "gets the best bang for the buck." He said this is the first time there has been an ongoing source of funds to start addressing these issues. He said many people think this is only for the Eastern Snake Plain, but it is not. He said there are situations from northern Ada County, southern Canyon County, and other places in eastern Idaho. He said these problems will continue to be problems, and this fund gives an ongoing source of money to address the problems.

3) Whatever funds remain from the tobacco tax will be put in the State Highway Account. He said originally the thought was to put it back toward paying back the GARVEE bonds, but those cannot be paid off early, because there is a ten year stipulation. He said instead, the money will be given to the Transportation Board, which will give them flexibility to determine where the funds go. He said hopefully they will continue to pay that debt down when it becomes available. He said he thinks the first one that becomes available after the ten year stipulation may happen in 2016, but he said he's not sure. He said because that is the last fund that is funded, it will not always have money going into it. He said, for example, in 2015, depending on what the final payment is on this bill, it won't get any money, and in 2016 it could.

**Representative Moyle** stated that is an overview of the bill and that he would stand for questions.

**Senator Hill** said that as an accountant, he likes to see things in two columns, as in where money is now and where it is going with the bill. He asked for clarification on which items are being created and which being moved. **Representative Moyle** answered the bill creates the GARVEE Debt Service Fund, but the other two exist already. He said the aquifer fund already exists and had money put into it this year. He said the difference is with this bill, the \$5 million will be required to go toward aquifer stabilization. The highway account already exists also. He said what is different is they currently do not receive money from cigarette taxes. The money that used to pay for the bonds for the Capitol would now go toward those three funds.

**Senator Hill** asked if the amounts distributed to county juvenile probation and to public schools will change. **Representative Moyle** replied they have been changed. He said the sponsors of the bill tried to keep amounts about the same or give them more, and it is now a captured amount. He said the cigarette tax monies are going down by about \$1 million per year. He said because of the declining revenue, the bill protects the funds that are currently getting money, like the Permanent Building Fund and the School Fund and Juvenile Corrections. He said he wanted to make sure those funds were held whole before going onto the next step, which was the GARVEE Water Bill.

**Senator Hill** asked if this bill does not pass, where would the funds go when the Capitol bonds are paid off. **Representative Moyle** answered the money would go into the Economic Recovery Fund, which is essentially the General Fund. He said they spend like General Fund dollars.

**Senator Werk** commented that Representative Moyle has referred a lot to "we" and he'd like to know who that includes and what the process was for identifying priorities.

**Representative Moyle** replied that the first bill at the start of the session dealt only with GARVEE payments. He said cigarette money has been being used to pay off a bond and long term debt on the Capitol building, and he thought it was important that the GARVEE should be paid off. He said that frees up money for everybody in the State, and everyone knows there is a problem with roads. He said as the bill sponsors began to look at ideas, they realized there is more than just an issue with roads, and the call on the water in Eastern Idaho came up. He said "we" referred to the himself, the Speaker of the House, House Leadership, members of the Transportation and Resource Committees, and other stakeholders. He said they tried to come up with a broad spectrum of people who could agree to what they were trying to do and agree there was a problem, and then try to adjust it.

**Representative Moyle** said the original bill had the \$5 million going to two different accounts, \$2 million to the Idaho Department of Water Resources (Department) and \$3 million to the Board, but "we" decided it would be better to give all \$5 million to the Board and let it decide. He said the stakeholders all worked together as a group, and they tried to come up with a solution that addressed most of the situations and came to a consensus. He said not everyone likes the outcome and some people hate parts of the bill, but overall it addresses most of the concerns that have come up so far.

**Senator Werk** said he is not familiar with Idaho Code § 42-1780 that is referenced in the bill for the direction of the money going towards water. He asked for a better understanding of how the \$5 million will be distributed annually, where it is going and who is controlling it. He asked if this is expected to go on into perpetuity.

**Representative Moyle** said that is a good question. He said part of the bill describes the Cancer Fund efforts and distributions, and how they use that money for camps and such things. He said the other part of the bill gives control of the money to the Board, and it is pretty broad in what they can use it for, from recharge to studies to all sorts of things, which is why they wrote it as aquifer stabilization. He said the idea is to make sure the money is used to stabilize aquifers across the State. **Representative Moyle** said water has been an issue, as was seen several years ago, and then again with the call in eastern Idaho. He said that is why there needs to be an ongoing source of revenue to address those problems as they come up, and to help prevent problems from coming up in the future. This gives the Board an ongoing source and control to do what they need to do, because they know where the problems are and how to address them. **Representative Moyle** said Senator Werk is right in that it is the first ongoing source to address those problems.

**Senator Werk** commented about the \$15 million that has already been distributed for studying water storage issues, and he asked if this bill piles on another \$5 million each year, when it is already getting \$15 million, to complete studies that are different from the studies and issues being dealt with in the first allocation.

**Representative Moyle** answered yes and no. He said they were given \$15 million this year, but we took \$11 million or \$12 million from them during the recent hard times, so this is putting those funds back in. He said those funds go under the Secondary Aquifer Management Fund, with \$4 million for the water right issue at Mountain Home Air Force Base, \$2 million for the Galloway Reservoir Study, \$1.5 million for Arrowrock Reservoir, \$2.5 million for Island Park Reservoir, \$0.5 million to develop computer infrastructure needed for the water supply bank, and \$4 million for recharge. **Representative Moyle** said the Board has been given funds specified for certain projects but never an ongoing source to fix the problems, and that is what this bill does. He said he thinks it should be remembered that the funds can be used anywhere in the State, and the Department knows where the problems are.

**Senator Werk** said it seems the Legislature is now entering a new era of providing an ongoing source of funding, and he asked if there is a mechanism for the people in charge of that money to report to the Legislature what is being done with this money and what the progress is. He said he thinks everyone would want to avoid putting money into a fund where it sits and piles up over time and it is not being appropriately utilized. **Representative Moyle** said the \$15 million the Board was just given was taken back because they had not used it when the State needed it, so if they don't spend it, the Legislature has the ability to go back and recapture it. He said he doubts that is the case with this money. He said this is not just an Eastern Snake Plain problem. He noted northern Ada County has some of the fastest declining ground water tables in the State, which is a problem, but there has not been a study, so it is not known what needs to be done to address the issue. He noted there is an issue in Canyon County south of Lake Lowell with wells declining. He said there are things to be done besides recharge projects, because such needs may be a leaky head gate or changing something in where the water goes. He said it's not just a localized issue and the Board probably won't just let this money sit around, because they have a lot to do, which is why the \$15 million was replaced. **Representative Moyle** said if they do not use these monies, he's sure the Legislature will go recapture it, but with the situations the Board faces, that won't be an issue.

**Senator McKenzie** said he had two questions. One question was that if the cigarette tax revenue is a declining balance fund, what was the thought process in setting out specific dollar amounts instead of percentages, and if there is concern that it will decline to the point those amounts cannot be met. The second question was about the thought process used in allocating funds to specific things in this bill, instead of following the usual procedure of making allocations to specific projects through the General Fund each year. He asked why it was done this way, giving the Board control over the funds, instead of having more oversight.

To the first question, **Representative Moyle** said the idea was to protect those funds which were already receiving revenues from this source. He said they wanted to make sure they weren't doing any harm with the declining revenue source. He said it is not declining fast enough that there won't be money for those on the back end for quite some time. He said they wanted to keep the Public School Fund whole, the Juvenile Corrections Fund whole.

To the second question, **Representative Moyle** answered water continues to be an issue and it is easier for the Board to have those revenues before them when a situation comes up so they can react fast and take care of it, than it would be for them to wait for the Legislature to meet in January and go through the process for appropriations. He said there are those who have thought for years that there needs to be an ongoing revenue source for water. He said the Board has members that are approved on the Senate side, and the Board will make more reasonable decisions than the 105 members of the House who are all looking out for their own districts.

**Representative Moyle** continued that the other issue is GARVEE. He said the money in this discussion is money that was paying off long term debt. He said the way the bill is set up is that everyone who was already getting money from the fund will continue to get it and remain whole. Then, the other three funds are set up such that if one doesn't fill, the bottom one doesn't fill, which is the Highway Transportation Account, so "we work our way back up." He said he assumes that after 2015 it won't be a problem for years, but exactly how many years, he is not sure. He said they wanted to put the money in so that the Board knew there was a source they could rely upon to adjust and take care of problems. He said they wanted to be able to do the funds this way this year.

**Senator Lacey** commented that some of these funds, like the Public School Fund and Juvenile Probation Fund are both subject to appropriation through JFAC. He asked if the funds in this bill are just "given" this money instead of being subject to appropriations. **Representative Moyle** answered that is correct. He said those two funds are subject to appropriation because they go into the general account and then JFAC decides where the money goes. He said the funds allocated to pay the State share of GARVEE in this bill are for this purpose only.

**Senator Werk** asked about the money going to the highway fund and how that came to be. **Representative Moyle** answered that Idaho is one of the few states in the nation that does not use General Fund money to help fund roads. He said the one fund where General Fund money is spent on roads is the STARS bill, in which the developer bonds for the money, then builds the project and then is able to keep 60 percent of the revenues on the new business created to pay back the bond, which then goes back to the General Fund.

**Senator Johnson** said he feels deferred maintenance is another huge need in the State. He said it seems to him that cigarette tax dollars would be ideal to fund some of the backlog on deferred maintenance. He asked whether that has been considered, why or why not. **Representative Moyle** answered that they did not consider deferred maintenance, but the money is going to places, like aquifer stabilization, which is a deferred maintenance issue that will need to be addressed down the road. He said they considered what were the most pressing issues for Idaho's economy.

**Chairman Siddoway** invited Brad Patton of the Department of Water Resources Board (Board), to the podium. **Mr. Patton** said that **H 547** would deposit \$5 million annually into the Board's Secondary Aquifer Planning, Management and Implementation Fund, often referred to as "the secondary fund." He said the intent is that these funds will be used for aquifer stabilization statewide. He said the State is dealing with the impacts of a declining aquifer on the Eastern Snake Plain that has resulted in numerous water calls against junior groundwater users, and all of the economic uncertainty surrounding those calls. He said there are also declining aquifers in other parts of the State, including the Mountain Home Aquifer. He said part of the \$15 million referenced earlier, is \$4 million that Governor Otter recommended go toward helping the Air Force Base find an alternate supply. **Mr. Patton** said there are also declining aquifer issues in the Palouse Basin Aquifer around Moscow, Wood River Valley and in parts of the Treasure Valley Aquifer. He said the Board has been piecing together funds to start addressing the issue, and putting some recharge programs into place, but this bill would, for the first time, provide an ongoing source of revenue available to the Board to stabilize aquifers statewide and maintain that stabilization.

**Senator Vick** asked if the bill puts \$5 million each year, what are the Board's expenditures. **Mr. Patton** answered that on the Eastern Snake Plain, the Board spends about \$1 million each year, and does its best to leverage federal dollars and dollars from the water users. He said stabilization has not yet been achieved. He said the Department's analysis shows that the Eastern Snake Plain is losing about 200,000 acre feet annually from that aquifer. He said maybe the volume of an Arrow Rock Reservoir drains out of that aquifer every year and the Board cannot keep up with that, even with the amount of recharge and efforts over the past several years.

**Senator Vick** clarified that if the Board spends \$1 million per year on the Eastern Snake Plain, but the Board will be getting \$5 million, what will they do with the rest of it.

**Mr. Patton** answered that in order to stabilize the Easter Snake Plain Aquifer, and the other issues with other aquifers, they need to build significant infrastructure to capture and utilize water for available recharge when it's available. He said the Board holds a water right for recharge, which is a late priority water right, but it is on all winter long and during the spring runoff.

**Mr. Patton** said in order to utilize that, additional infrastructure is needed to be able to divert that water out of the river at the times when it is available to the places they need it to go. He said currently they contract with various canal companies and irrigation districts to carry that water, but that only gives them a short window of time to fit that in and around maintenance, repair and construction schedules. He said that is very limiting. **Mr. Patton** said that in order to really make a difference in that aquifer, they need to build dedicated facilities to divert that water and recharge it, so they are not at the mercy of canal companies' schedules. He said other aquifers have other issues and it is too early to tell what the required fixes will be for them.

**Senator Vick** asked if the Board anticipates it will spend a good chunk of this funding on facilities in the East Snake River area. **Mr. Patton** answered yes, the ultimate decision will rest with the Board.

**Senator Werk** asked if there is any mechanism for the Board to report to the Legislature on the expenditures and activities. **Mr. Patton** answered yes, the Board has been doing that the past couple of years in the Resource Committees. He said he thinks the Board would be willing to come do that report for any other committees in the Legislature that are interested in the expenditure of those dollars.

**Chairman Siddoway** invited Norm Samenko, Executive Director of the Idaho Water Users Association, to the podium. **Mr. Samenko** said he has been involved in water legislation for about 20 years, and when he spoke at the Water District annual meeting in Idaho Falls yesterday, he told them this is one of the single most important pieces of legislation for water users that he's seen in decades. He called it a game changer. He said it may not seem like a lot of money to some people, but in 2008 the Legislature approved an aquifer management planning process program, called the CAMP process. He said the idea is that the Board would go to ten different aquifers in the State, look at them, diagnose their health and prescribe solutions. He said the Eastern Snake Plain Aquifer has cancer. He said it is not in a stable position and it needs to be brought to stabilization.

**Mr. Samenko** said the working group for that eastern aquifer includes people from IACI to the Nature Conservancy and everyone in between. He said at the end of the process, they had solutions on which they all agreed. He said in 2009, the group came to the Legislature, hoping they could start funding those measures, but "we know what happened in 2009." He said the funding has now been restored to the "Ten Aquifer Plan" and they are looking at the plan again. He said not every aquifer has cancer, but some have a cold and need to take a pill and come see the doctor in a couple weeks. He said each aquifer is diagnosed and prescribed a solution. He said the implementation for the Eastern Snake River Plain Aquifer will need to be recharged on average 600,000 acre feet per year. He said in a year when there isn't much water, not much recharge can be done, so they have to make it up the next year with 1.2 million acre feet.

**Mr. Samenko** said water users in the State are doing their best to get water out on the desert, but even when water is available and the recharge site can accept the water, there has to be a way to get the water there. He said there are not dedicated recharge facilities, like other states do, including Arizona. He said Idaho is using existing canals, which are also performing other jobs delivering water to farmers, but canals can only do so much.

**Mr. Samenko** said the reason this bill is a game changer is that it will help with the recharge that needs to be done for aquifer stabilization and lead to the sustainability needed to keep the economy growing, including the \$8 billion agricultural economy and all of the cities that need water to grow. He said the Board is a constitutionally created agency formed for the purpose of managing the State's water, and the members are appointed by the Governor and confirmed by the Senate. He said the meetings are all open and public, with agendas and minutes posted on the web.

**Mr. Samenko** asked for support of this bill because it is a good program, defined in statute, controlled by the Board, who knows what the solutions are, and it needs this mechanism to fund them.

**Senator McKenzie** asked if there were specific price tags the Board had considered in regard to what is needed for the aquifers. He asked if the \$5 million per year matches that need; if there will be a build up of excess funds, or, if this amount will not be sufficient. **Mr. Samenko** replied the 2008 legislation was all about developing plans, but it wasn't discussed how to implement those plans at that time. He said they were ready to begin implementing those plans in 2009, and that is when the "Secondary Implementation Fund" was created, but the resources were not available that year. He said since the fund is able to accept money from other sources, water user groups and water districts worked together with matching funds to make those things happen. **Mr. Samenko** said he would have to defer to Mr. Patton on how much the Board would spend, but his understanding is that the cost of doing dedicated recharge facilities is significantly higher than what is being paid to wheel water when capacity is available. He said he's sure there are dollar signs assigned to projects, and while he's not familiar with those figures, he believes the \$5 million per year will be spent for capital projects for recharge facilities.

**Representative Moyle** said he feels they will find as time goes on that \$5 million per year will not be enough to address the problems they find across the State.

**Senator Hill** commented that many agencies and people have been watching for the bonds to be paid off and to have access to this stream of money coming from the cigarette tax, because there are a lot of good projects out there. He said this may not have been exactly the way he'd have divided the money, but it has the GARVEE debt reduction, and water is an economic must for the whole State. He said it has long needed a portion of an ongoing source in order for those people to enter into projects that sometimes take years to complete, and this will give them some source to make those plans and go forward with them. He said the other items here have all been getting money from cigarette funds. He said he is not too excited about the balance going into the state highway system, because he's not a fan of having General Fund money used for highway purposes, but he thinks this bill does go a long way toward doing the right thing.

**MOTION:** **Senator Hill** moved, seconded by **Vice Chairman Rice**, to send **H 547** to the floor with a **do pass** recommendation.

**DISCUSSION:** In discussion, **Senator Werk** offered his thanks to Representative Moyle and those who worked on the bill. He said he wanted to express some wistful disappointment that some of the funding was not used to lower college tuition, in alignment with the goal of getting kids into college, or even more funding for the public education system. He said the State is just approaching 2008 levels of funding and still have several millions to go, with 14,000 more students. He said he won't let the desire for perfection dissuade him from supporting something that has merit, so he will support the motion.

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

## H 530

**Chairman Siddoway** welcomed Roger Batt, representing the Idaho Heartland Coalition (Coalition), to the podium to present **H 530**, relating to use tax and certain donations of food and beverage.

**Mr. Batt** said the Coalition is made up of many agricultural organizations and individual producers across Idaho. He said **H 530** would exempt those who donate food and/or beverages to nonprofit organizations and individuals from the payment of a six percent use tax on those donations. He said that nonprofit organizations are those who have registered with the Secretary of State, pursuant to Idaho Code.

**Mr. Batt** shared the history of the bill, noting that in 2011 the Idaho State Tax Commission (Commission) sent a letter to wineries indicating they needed review the past three years of records and pay use taxes on any samples they may have given to prospective customers. He said H 489 was passed in 2012 to exempt wineries and other beverage providers from that use tax, and in 2013, the legislature approved that same exemption to food and beverage samples in H 187, which benefitted farmers markets and vendor fairs. Then, he said in December 2013, some of the Coalition's members received a letter from the Commission saying if they give away a product to a family member or employee or nonprofit entity, it is subject to the six percent use tax.

**Mr. Batt** shared an example that if he were a farmer and he gave away a bag of potatoes or onions or beans to a neighbor because he wants to be neighborly, he would have to pay use tax on that donation. He said he thinks this rule is an unintended consequence of when the use tax was adopted. He said probably one out of 1,000 people even knows this applies to them. He said **H 530** aims to exempt these donations from the use tax so they aren't breaking the law by giving donations to organizations or individuals.

**Vice Chairman Rice** asked if a farmer let people glean the leftovers out of the field, would this rule apply. **Mr. Batt** said his understanding is that if a farmer has a product in inventory and it is not sold for six percent sales tax, then yes, the six percent use tax would apply.

**Senator Hill** referenced a real life example from a constituent of his with the business Great Harvest Bread. He said when people go in to their business, they get a free sample, and that is what the bill took care of last year, such that they would not pay for a state use tax on that free sample. He said sometimes at the end of the day they have leftover loaves of bread and would take them down to a nonprofit organization which is the equivalent of a food bank, but they had a route of some people in town who were in need and the bread company would deliver those leftover loaves to some of them. **Senator Hill** asked if this bill covers this kind of circumstance as well and not just farm products. **Mr. Batt** replied absolutely right, and if someone wanted to give to someone in need, this would apply.

**Chairman Siddoway** invited Russ Hendricks with the Idaho Farm Bureau (Bureau) to the podium. **Mr. Hendricks** stated there are a variety of reasons why a farmer may have excess produce though the season, and almost all farmers would prefer to give it to someone in need rather than let it go to waste or plow it under. He said the Bureau thinks it is poor tax policy to tax an act of charity. He said that doesn't make sense because a farmer has forgone revenue if he can't sell it and then has to pay tax on that unsold product.

## MOTION:

**Senator Bayer** moved, seconded by **Senator Werk**, to send **H 530** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

**H 531**

**Chairman Siddoway** invited Jeremy Chou, representing Camp Rainbow Gold, to the podium to present **H 531**, relating to sales tax exemptions and Camp Rainbow Gold (Camp). **Mr. Chou** said **H 531** provides a sales tax exemption for the Camp and that there is no negative fiscal impact to the General Fund. He said the Camp is in Cathedral Pines that serves children with cancer and their families. He said last year the American Cancer Society (ACS) decided to divest itself from cancer camps across the country and focus more on cancer research. He said ACS has been a health related entity exempt from Idaho sales tax. He said up until January 2014, the Camp was exempt under the ACS umbrella, and this legislation would preserve the status quo so that the Camp can maintain the same exemption that it has held for 30 years. **Mr. Chou** said the impact on the organization's budget is estimated to be \$30,000 to \$40,000.

**Senator Vick** asked if the other cancer camp at Hansen Ranch in the Magic Valley would be subject to the sales tax. **Mr. Chou** replied that it would. **Senator McKenzie** asked if the Hansen Ranch camp was not under the ACS umbrella, and **Mr. Chou** replied that is correct, it was not under the umbrella. **Senator Hill** commented that he would ask that if the other camp qualifies for the exemption that they contact the Legislature in order to ensure they receive it as well.

**MOTION:**

**Senator Hill** moved, seconded by **Senator Werk**, to send **H 531** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

**PASS THE GAVEL:**

**Chairman Siddoway** passed the gavel to Vice Chairman Rice for the consideration of rules. Before passing the gavel, **Chairman Siddoway** refreshed the Committee members' memory on the previous discussion about this docket. He said all of the rules in the docket had been discussed but the whole docket was put on hold pending further discussion of Rule 036.

**DOCKET NO. 35-0102-1302**

**Vice Chairman Rice** welcomed McLean Russell, Tax Policy Specialist with the Idaho State Tax Commission (Commission), to the podium to present pending rules of Docket No 35-0102-1302. **Mr. Russell** shared a handout to help guide the discussion (see attachment 1). He said the code places an obligation on contractors who are improving, altering and constructing real property, and since they are users of the material, they would owe use tax on it. He outlined Rule 012, which addresses the materials provided by the project owner and puts the contractor on notice that if they use goods provided to them by the contract owner, it is their responsibility to make sure the taxes are paid. **Mr. Russell** said Rule 067 is a three-factor test to determine what constitutes real property for sales tax purposes. He said in Rule 036, which relates to road signs, the three-factor test is applied to determine if road signs are considered real property. He said the purpose of the proposed Subsection 4 was to add as much guidance and clarity as possible. He said the other part of Rule 036 in Subsection 3 is a broader purpose that addresses signs generally, and if a contractor builds or improves a sign, he may be improving real property, and this subsection puts them on notice of the potential tax consequences.

**Mr. Russell** explained another part of the handout that was a document prepared in April 2013 by a now-retired tax policy specialist with the Commission. **Mr. Russell** said he had reviewed the document then, though he didn't write it. He said a contractor came to the Commission and asked about a project that he was bidding, in which he was advised by the Idaho Transportation Department (ITD) that as he would be putting in signs, it would be real property and that he would owe use tax. The contractor wanted to know if that was correct. **Mr. Russell** said yes, that is how those have been treated, but it would be good to have an explanation of how this policy was decided. He said Rule 036 is the other half of this document that further clarifies the responsibilities of parties involved.

**Senator Lacey** asked about "improvements or fixtures" and if a sign in front of his house would not be considered an improvement, as he had difficulty considering it real property because he was of the opinion that it did not add real value to the property and could actually detract from the value. **Mr. Russell** replied that "fixtures" language covered the signs that did not necessarily add value but performed a vital function and had passed the three-factor test already in code.

**Senator Hill** asked if they were following the three-factor test that was already in rule and simply codifying in rule what was already in practice. **Mr. Russell** replied that is correct. **Senator Hill** asked if they were to reject this rule, would they still refer to the three-factor test and continue to apply the law the way they have been, unless the Committee provided statutory guidance. **Mr. Russell** replied that is also correct.

**Senator Werk** said the advantage of the rule is the clarification it provides and that if they wanted to change the practice, they'd have to have another hearing.

**Chairman Siddoway** asked how the House treated the rule. **Mr. Russell** replied that the House Revenue and Taxation Committee and the full House had passed a concurrent resolution to reject Rule 036 and it has accepted all other sales tax rules.

**Vice Chairman Rice** asked about the procedure for when speed limit signs are changed and when stop signs are changed to street lights and other signs that can vary over time, and how that relates to the wording in the bill. **Mr. Russell** replied that the replacement factor would be true of many things considered real property, such as roofs, walls, and other aspects of real property subject to removal or replacement. **Vice Chairman Rice** asked, if the House and Senate both rejected the rule, would it be prudent for the Commission to reconsider their interpretation of the three-factor test. **Mr. Russell** replied it was difficult to make that determination as real property is a complex and confusing area of tax code, but he said the Commission could take a second look at it if so instructed by the Legislature.

**Senator Lacey** asked if the Commission would treat a road sign the same way as a fence around a yard. **Mr. Russell** replied that yes, it would. **Senator Lacey** said that if he had a fence that he did not like, he would change it, but if he had a road sign in front of his house, he would not be able to change it and consequently, it should not be considered real property. **Mr. Russell** replied that the three-factor test does not address who controls the item that is being constructed, only the performance and adaptation to the land.

**MOTION:** **Senator Vick** moved, seconded by **Senator Bayer**, to accept **Docket No. 35-0102-1302**, with the exception to reject Rule 036.

**DISCUSSION:** **Chairman Siddoway** stated that if the Committee wanted to address the issue next year, they could, but if the rule is rejected, he is concerned that it would be the same outcome. **Senator Hill** stated that the Commission would not even have to return with a separate rule, since they have been operating without it for many years, and the rule simply provides clarification. **Senator Werk** said he agrees with Senator Hill, and the public is better off with a rule that provides the best guidance, even if the Committee did not like that guidance. He stated there was logic to use the airplane use tax, and if there needs to be changes, it should be done in legislation.

**ROLL CALL VOTE:** **Chairman Siddoway** called for a roll call vote on the motion to accept the docket but reject Rule 036. **Vice Chairman Rice** and **Senators Vick** and **Bayer** voted aye. **Chairman Siddoway** and **Senators Hill, Johnson, Werk** and **Lacey** voted nay. The motion failed.

**MOTION:** **Senator Hill** moved, seconded by **Senator Werk**, to approve **Docket No. 35-0102-1302** in its entirety. The motion carried by **voice vote**.

**PASS THE  
GAVEL**

Vice Chairman Rice returned the gavel to Chairman Siddoway.

**ADJOURNED:**

There being no further business, **Chairman Siddoway** adjourned the meeting at 4:43.

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Senator Siddoway  
Chair

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Christy Stansell  
Secretary