

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, March 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 Senate Local Government and Taxation Committee (Committee) to order at 3:05 p.m.

H 560 **Chairman Siddoway** invited Representative Janet Trujillo, District 33 from Idaho Falls, to the podium to present **H 560**. He apologized that the Committee ran out of time for the consideration of her bill yesterday.

Representative Trujillo said she feels this bill presents a very good solution to a problem that has existed for quite a while. She proceeded to read the Statement of Purpose on the bill, which indicates that a recent report "Special Districts in Idaho" conducted by the Legislative Services Office (LSO) found that only 35.5 percent of taxing districts are in compliance with the auditing requirement that has been in statute since 1971. She said it is important to note that school districts have 100 percent compliance.

Representative Trujillo said Section 1 of the bill establishes a central registry and reporting portal on the LSO website to serve as a unified location for the reporting of and access to administrative and financial information of local governing entities in Idaho. She said this section also sets up notification to the entities by county clerks that they shall report to LSO. She said Section 2 outlines the administrative, financial, bond and debt information that will be required of "all" entities. **Representative Trujillo** said she emphasized "all" because they will all be asked to register, and then pursuant to the requirements of Idaho Code § 67-450B, submit their audit nine months later when they fall within those qualifications.

She said Section 3 outlines the audits, which are explained in the handout (see attachment 1) that shows the details of Idaho Code § 67-450B. **Representative Trujillo** stated that entities with expenditures of less than \$100,000 would not be required to have an audit performed, but only be required to register on the registry. She said Section 4 outlines notifications and penalties, which she called the most important section because in the past, there has been a lack of compliance, which could be due to there being no penalty for noncompliance. She said LSO will notify the entity immediately that their information is not submitted and should submit it in a timely manner, within 30 days, no later than September 1. **Representative Trujillo** said September 1 is an important date so that the Idaho State Tax Commission (Commission) can be compliant with this legislation. After LSO notification is sent, the county commissioners are asked to place public notice or the newspaper that the taxing districts are in noncompliance. She said the costs associated for that can be deducted from any distribution of taxes and fees from the county.

Representative Trujillo went on to explain that if the local governing entity still fails to comply, they shall be prohibited from increasing their budget. The next step if they are still noncompliant, the Commission shall withhold any distributions.

Representative Trujillo said there are certain taxing entities that benefit from collecting of taxes but the government doesn't actually touch that money, which are called non-taxing districts. In these situations, the county commissioners have three options to be able to help them meet the requirements of this legislation: 1) county commissioners have a meeting with the district; 2) county commissioners assess a noncompliance fee; 3) county commissioners have the entity audited at the entity's expense. She said none of these provisions have any impact on the reporting requirements that are due to the Commission.

Representative Trujillo then deferred to April Renfro of the audit division of LSO. **Ms. Renfro** said she has been working on this bill because the LSO is charged as the repository for the local government audits. She explained how Idaho Code § 67-450B works as a tiered approach. She said entities under \$100,000 are not required to get an audit because it is cost prohibitive for smaller entities. Entities with a range between \$100,000 and \$250,000 will be required to report an audit every other year although both years will be audited. Entities over \$250,000 are required to have an annual audit. She said that is all the current statute requires, so there was not a mechanism for notification, identification of districts or a penalty process.

Ms. Renfro repeated that school districts are 100 percent compliant, as they have additional provisions within education statutes which require them to submit their audit or not receive funding, which she said explains why schools have complete compliance. She said they won't get their money from the Department of Education if they don't complete their audits. She said this example also helps explore what could be done to get the reports in, because she gets calls in her office requesting information and she can't always answer them, because she does not have a mechanism to get the information. **Ms. Renfro** said she was working with Representative Trujillo to create a mechanism to address that need.

Ms. Renfro said she felt the first and most important need is communication. She said she thinks a lot of entities that are not compliant are actually having audits done, but they don't realize the need to submit them to LSO. She said there are probably some others that are not having audits completed. She said it is difficult to even identify all of the districts that exist. She said they compiled a list based on the database of audits LSO currently receives and compared it to a list LSO received from the Commission, but that only provides the list of taxing districts. The Commission does not have information on districts that are fee based or otherwise obtain revenues that are not tied to property tax. **Ms. Renfro** said that's why she feels it is important to communicate with the associations of Counties, Cities, and Highway Districts to provide information to pass along about the requirement and information needed for the registry. She said this legislation helps the LSO be able to have a database available so if anyone needs information about an audit or revenues, it will be available.

Ms. Renfro said the other important piece of the registry is that it gives LSO a way to have data to measure how many entities are in which threshold – \$100,000, between \$100,000 and \$250,000, or above \$250,000. She said that could be sorted, reported and placed on the website, which provides access to more information than LSO currently has available for not only legislators, but also for the public.

Senator McKenzie asked about the use of "local governing entity" in this bill, as opposed to "local governmental entity" as written in Idaho Code § 67-450B, which is referenced in this bill. He said he is concerned about creating an issue with a phrase that is specifically defined in this bill that does not appear in the other statute. **Ms. Renfro** said she is not sure why they are different. She thinks it was probably just an oversight. She said they do reference the same definition language, but she's not sure if that would cause a problem with that interpretation. She said they could talk with the bill drafters to see if they think that would create a problem. **Senator McKenzie** said he didn't know if it is a significant issue or not, but he wanted to point it out. **Ms. Renfro** said they are intended to mean the same thing. **Representative Trujillo** said she doesn't think it creates a problem because the definition is not changed. **Senator Werk** commented that if it is considered a possible typographical error that it could be corrected during the passage of the bill.

Senator Werk said he remembered hearing about the "Special Districts in Idaho" report and was concerned about the lack of compliance, and he appreciates that Representative Trujillo took on the issue. He asked about the statement in Section 3 that says audits required will be submitted to the online portal, saying there is not a provision for a date certain or number of days after the audit is completed by which it is to be reported. He said he is concerned that an entity could decide five years later to submit their audit that was five years old. **Ms. Renfro** replied that the timeline is specifically identified in Idaho Code § 67-450B as nine months after the entity's fiscal year in which to submit their report, which ties into the federal requirements. She said this bill provides the mechanism by which to implement the requirements of Idaho Code § 67-450B.

Senator Werk said he noted that whether or not Idaho Code § 67-450B provides a timeline, that does not necessarily apply to this section of code in this portal. He said he doesn't think a timeline can be transmitted from that code to this one. He said he thinks the language in this bill should be changed to reflect the timeline. **Senator Werk** also commented on the section where it provides that with "any failure to comply," the Commission "shall" withhold distribution of sales tax. He asked at what point has the determination been made that there has been a failure to comply. He said the process is outlined, but he cannot see where there is a deadline that says if this threshold is crossed, there is noncompliance. **Representative Trujillo** replied that the noncompliance is outlined in Section 4. She said the legislation reads that a) LSO will notify the entity; then b) if there is still noncompliance LSO will notify the board of county commissioners and the Commission no later than September 1 by placing public notice; then c) entities that fail to comply will be prohibited from increasing their budgets; and d) continued noncompliance will result in them not receiving their annual distribution from the Commission. She said this is all on notification from LSO.

Senator Werk said he is trying to get from the determination that there is a noncomplying entity to a time when there is a determination of "failure to comply" before the next level of sanctions. He asked what is "any" failure to comply. **Representative Trujillo** said they are noncompliant upon notification from LSO. She said LSO would make the determination that they are noncompliant, then they notify the entity. She said once they are compliant with LSO, LSO would contact the Commission, and the Commission would distribute back the entity's money.

Senator Werk said he would like to consult with the Committee about the deadlines. He said he believes the presenters intend to have the deadlines written in Idaho Code § 67-450B apply, but he thinks the only thing that does apply is about the audit that is required. He said the current language does not provide a deadline. He said there also appears to be a deviation in language between the two pieces of legislation that may or may not be an issue. He said his question for the Committee is if it would be wise to place this on the Amending Order to clean those issues up.

Chairman Siddoway shared his understanding of the language in the section to demonstrate where LSO will have the website up by January 1, then the local entities shall submit to the central online registry from March 1 through December 31, depending on the entities' fiscal year. He said he is not sure he shares Senator Werk's concerns, noting that Section 4 stated the appropriate board will be notified no later than September 1 of each year. He said it looks like the issue is covered.

Vice Chairman Rice said his understanding is that the bill merely provides the method of submission by the entities as required by Idaho Code § 67-450B. He said that would automatically make it due by the requirements of that section. He said it does not excuse the entities from submitting the reports in a timely fashion.

Senator Bayer said this Committee has had valid points of discussion. He said he is comfortable with the language because local governing entity as referenced in Idaho Code § 67-450B has clear definitions and even has verbiage speaking to the governing body of a local governmental entity, so it is clear to him. He said he believes the other section speaks to the technological methodology that requirements are all in place, and inherently included in those is a timeline.

Chairman Siddoway asked Representative Trujillo if she has spoken with anyone in the Senate about carrying this bill on the floor. **Representative Trujillo** replied no, she has not.

MOTION: **Senator Johnson** moved, seconded by **Senator Bayer**, to send **H 560** to the floor with a **do pass** recommendation.

DISCUSSION: In discussion, **Senator McKenzie** said that he likes that this issue is being pursued. He said he would need to further consider the penalties applied, especially for non-taxing districts, in which the board of county commissioners can assess a \$5,000 fine and then it is deducted from what might otherwise go to them, but it is not deducted from distribution of taxes, fees or assessments collected by the county on behalf of the local governing entity. He said his concern is if districts have a specific function for a certain group of taxpayers or citizens, and the governing people make a mistake, it feels like the people whom they govern will be the ones to endure the penalty in the loss of the use of those funds. **Senator McKenzie** said another concern is that LSO is the body which determines whether taxing districts get certified to the Commission as to whether they get their sales tax distribution. He said it worries him that the legislative branch is issuing the certification and whether that gives the legislative body oversight of them and impacts their budgets, when they are a separate branch of government. He said the idea in general is a great one, but these issues give him pause.

Senator Werk said he "catches the same drift." He asked Representative Trujillo if she worked with the Director of LSO, Jeff Youtz, on this bill. **Representative Trujillo** said yes, they worked with LSO, the Commission, and the associations of counties and cities, so the stakeholders were all vetted and were fine with the language. She pointed out that the county commissioners do not have to assess a fee, as there are three options, including a meeting to request compliance. She said that is in the legislation because if it got to a point where the entity did not want to comply, there needed to be a mechanism in place. She said her preference would be to have the district audited, but if there is noncompliance, there needed to be a way to get the information.

Representative Trujillo said the more they got into this process, many people came to her and said this is a really good idea. She said some even noted that some people would say "we report to the State Controller and the State Treasurer," so the idea is that at some point, all of these reports go to one place where the different entities can have access to the information.

Ms. Renfro commented on Senator Werk's question about Mr. Youtz's involvement with the legislation, and she said yes, he was kept apprised because the portal will require the use of LSO's Information Technology Department. She said he coordinated the effort with Eric Milstad and Norma Clark and herself.

MOTION: **Chairman Siddoway** repeated the motion. The motion carried by **voice vote**.

ADJOURNED: As there was no further business, **Chairman Siddoway** adjourned the meeting at 3:34 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary