

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, January 08, 2014

SUBJECT	DESCRIPTION	PRESENTER
	Welcome and Introduction	Chairman Siddoway
	Distribution of Pending Rules for Review	Vice Chairman Rice

COMMITTEE MEMBERS

Chairman Siddoway
Vice Chairman Rice
Sen Hill
Sen McKenzie
Sen Johnson

Sen Vick
Sen Bayer
Sen Werk
Sen Lacey

COMMITTEE SECRETARY

Marchelle Fias
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 08, 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:**

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 Senate Local Government and Taxation Committee (Committee) to order at 3:02 p.m.

Chairman Siddoway welcomed the Committee members to the 2014 Session. He introduced the secretary for the Committee, Marchelle Fias, and he shared a short biography of her background and education. He then introduced the page for this Committee, Hannah Utley, and he shared a short biography of her education and experience in leadership. Chairman Siddoway thanked Marchelle and Hannah for their participation in this session.

Chairman Siddoway asked Vice Chairman Rice to manage the rules assignment. He then brought the Committee's attention to the binders on their desks. He stated that each Senator was assigned a rule to oversee, however he urged the Senators to look at all of the rules.

Chairman Siddoway stated that the Tax Commission wanted legal representation for the Personal Property Tax presentation, and that the Personal Property Tax rules would be moved forward to the January 21st meeting.

Chairman Siddoway asked each of the Senators to explain why they wanted to sit on the Committee.

Chairman Siddoway explained his interest in the Personal Property Tax and in the Internet Sales Tax.

Vice Chairman Rice echoed the Chairman on the Personal Property Tax, and shared an interest in the Internet Tax.

Senator Hill shared an interest in the Personal Property Tax, but said tax relief was secondary to education.

Senator McKenzie stated an interest in the Personal Property Tax and acknowledged the burden it places on businesses.

Senator Johnson is looking for ways to put money where it is most effective.

Senator Vick has an interest in simplifying the tax structure while keeping taxes low and compliance simple.

Senator Bayer looks forward to seeing where the dust settles from the last legislative session, and looks for practical application and structural soundness of the tax code.

Senator Werk stated an interest in urban renewals. His long term goal is to benefit the people of the State while protecting a useful tool for our government.

Senator Lacey stated an interest in the creation of jobs and a desire to make it easier for companies to come into the state of Idaho and rebuild our communities.

Senator Siddoway stated that he believes the Committee would collectively set tax policies for the good of the citizens of Idaho.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:27 p.m. until Wednesday, January 15 at 3:00 p.m.

Senator Siddoway
Chairman

Marchelle Fias
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, January 14, 2014

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Office of Performance Evaluations: Idaho Legislature Assessing the need for Taxpayer Advocacy	Amy Lorenzo & Rakesh Mohan

COMMITTEE MEMBERS

Chairman Siddoway
Vice Chairman Rice
Sen Hill
Sen McKenzie
Sen Johnson

Sen Vick
Sen Bayer
Sen Werk
Sen Lacey

COMMITTEE SECRETARY

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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 14, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, Johnson, Vick, Bayer, Werk, and Lacey

ABSENT/ EXCUSED: Senator McKenzie

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) to order at 3:07 p.m.

PRESENTATION: **Chairman Siddoway** introduced Amy Lorenzo and Rakesh Mohan of the Office of Performance Evaluations (OPE) to share a presentation. The full report, "Assessing the Need for Taxpayer Advocacy," is available online at this link: <http://www.legislature.idaho.gov/ope/publications/reports/r1311.html> A summary of the report is attached with these minutes. (see attachment 1.)

Rakesh Mohan said OPE had performed an assessment to determine if a Taxpayer Advocacy Office was needed in the state of Idaho. He said their office encountered some problems during the research process because data was unavailable as it is usually kept in individual tax files, and therefore data was not consistent because documents could not be analyzed. **Mr. Mohan** said they also looked into state laws, as well as interviewed tax commissioners, tax professionals and workers at a federal taxpayer advocate office.

Chairman Siddoway introduced Idaho State Tax Commission (Commission) commissioners, Chairman Rich Jackson, Commissioner Tom Katsilometes, Commissioner David Langhorst, Commissioner Ken Roberts, and Michael Chakarun, who is the liaison between the Commission and the Committee.

Amy Lorenzo gave a brief summary of the report findings and recommendations. She stated a taxpayer advocate is not an indication of a problem or deficiency within the Commission. There is a taxpayer advocate at the national level that is independent from the Internal Revenue Service (IRS). The national taxpayer advocate guidelines state that the advocates must send their annual report directly to Congress and operate under eight guiding principles. The guidelines also require that the taxpayer meet certain eligibility requirements in order to receive services. **Ms. Lorenzo** said 29 states have some sort of taxpayer advocate office, and all states were found to function differently. She stated that a taxpayer advocate is more than a problem solver. It is a state function within the Commission that ensures that all taxpayers are treated fairly throughout the tax collection process. She said a taxpayer advocate also offers systemic advocacy and acknowledges system wide problems while making recommendations to the Commission and the Legislature, for process improvements. She said the Commission does not keep statewide data that would help with this.

Ms. Lorenzo said part of the evaluation was the relationship between the Commission's compliance initiative and the increase in staff to fulfill that goal. She said the Commission is limited in protective management decisions because it does not have a statewide framework. She said at the same time the Commission was leading its compliance initiative, it was also undertaking significant outreach efforts. She said ultimately, the data limitations prevented OPE from definitively assessing whether Idaho needs a taxpayer advocacy office.

Ms. Lorenzo said of the 2012 individual tax returns examined, their office found that 69 percent of individual tax returns reported a taxable income of \$25,000 or less, and 50 percent of filed returns were prepared without the assistance of a paid preparer.

Ms. Lorenzo shared that one of the other mechanisms that Idaho uses to help define the working relationship between the taxpayers and the Commission is its Taxpayer Bill of Rights. She said Idaho is one of 45 states that do have a Taxpayer Bill of Rights, but it is more of a directive on how Commission staff should interact with taxpayers than identifying individual rights. **Ms. Lorenzo** said when the documents were examined, they were not found to be comprehensive, and did not provide the entire list of taxpayer rights. She said when their office reviewed the Commission's newly launched website, they were not able to locate the Taxpayer Bill of Rights or any relevant publications on the website.

Ms. Lorenzo said as part of the evaluation, tax professionals and Commission staff were consulted for a number of interviews. She said tax professionals supported the idea of a taxpayer advocacy office, especially in situations when the tax professional or the taxpayer is unable to come to a resolution with Commission staff. Commission staff often questioned the need for a taxpayer advocate, and the staff is committed to working with taxpayers to resolve any problems they may have.

Ms. Lorenzo said in addition to interviews, surveys were completed with tax professionals and Commission staff in order to gain a sense of those working relationships and how those groups were working together. The survey found that tax professionals rated the Commission less favorably on the Commission's ability to balance its collection responsibilities with the livelihood of Idaho taxpayers. The Commission staff rated themselves higher at both case advocacy and systemic advocacy.

Ms. Lorenzo said their office recommended the Commission update the Taxpayer Bill of Rights publications and make them more accessible and also take steps to improve data management. She said the policy considerations for legislators include asking the questions: Should an advocacy office be created as a formal office or division? Should the office be housed within the Commission? Should the office be established in statute? Should a taxpayer advocate track case loads and/or outcomes? Should a taxpayer advocate be required to meet eligibility criteria?

Senator Johnson asked about the number of respondents to the survey. **Ms. Lorenzo** said 417 responses were received. She said the question asked on the survey was whether the Commission had a level of independence to make decisions in order to serve the taxpayer.

Senator Hill asked if the states that have adopted an advocacy office have seen any difference in the public's perception of their tax commissions before and after establishing an advocacy group. **Ms. Lorenzo** said that the states are not consistent in how case loads are tracked, and not every state was interested in that perception piece.

Senator Werk asked where the proposal for the study came from. **Mr. Mohan** answered that the request came from Senator Brent Hill, Senator Bert Brackett and Senator Les Bock, and the proposal was also signed by the Chairman of the Commission, Rich Jackson.

Chairman Siddoway asked how many states have circumstances similar to Idaho's, if Idaho were to do an advocacy group, how large of a staff would be needed to implement it and what kind of financial backing would be needed. **Ms. Lorenzo** answered that there is no correlation between the size of the state and the number of staff needed. She said the smallest staff is one and the largest staff is 28. **Ms. Lorenzo** said their research examined median income in the state to determine if that played a role, but it was not a factor.

Chairman Siddoway invited Rich Jackson, Chairman of the Idaho State Tax Commission, to share his evaluation of the audit. **Mr. Jackson** said in most cases, the problem resolution officer tries to find a spot that allows taxpayers equal footing, whether they can afford professional help or not. He said most processes were good and in some cases some weaknesses were found. **Mr. Jackson** said with regard to tax law, there needs to be awareness of the changing times and the need to be responsive to the individual rights of the taxpayer.

Senator Hill stated that Idaho's population has recourse options that other states do not, including the State Board of Tax Appeals. **Mr. Jackson** said there are different options in different states.

Vice Chairman Rice said there has been discussion about statistical information that might be useful to collect. **Mr. Jackson** said a statistician has been hired and will examine the processes that will help manage decisions.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:40 p.m.

SECRETARY'S NOTE: These minutes were originally recorded by Committee Secretary Marchelle Fias. Upon her departure, Majority Staff Assistant David Ayotte assisted with them.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #2
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, January 15, 2014

SUBJECT	DESCRIPTION	PRESENTER
MINUTES:	Minutes of January 8, 2014	Senator Siddoway
RULES REVIEW		
35-0101-1301	Income Tax Administration & Enforcement Rules	Cynthia Adrian , Idaho State Tax Commission
35-0101-1302		Cynthia Adrian, Idaho State Tax Commission
35-0101-1303		Cynthia Adrian, Idaho State Tax Commission
35-0201-1301	Administration & Enforcement Rules	Cynthia Adrian , Idaho State Tax Commission
35-0201-1302		Cynthia Adrian Idaho State Tax Commission
35-0201-1303		Cynthia Adrian Idaho State Tax Commission

COMMITTEE MEMBERS

Chairman Siddoway
Vice Chairman Rice
Sen Hill
Sen McKenzie
Sen Johnson

Sen Vick
Sen Bayer
Sen Werk
Sen Lacey

COMMITTEE SECRETARY

Marchelle Fias
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 15, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, Johnson, Vick, Bayer, Werk, and Lacey

ABSENT/ EXCUSED: Senator McKenzie

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CONVENED: **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) to order at 3:08 p.m.

MINUTES: **Vice Chairman Rice** moved, seconded by **Senator Hill**, to approve the Minutes of January 8, 2014. The motion carried by **voice vote**.

Chairman Siddoway introduced Cynthia Adrian, Tax Policy Specialist with the Idaho State Tax Commission (Commission) to introduce the first set of rules relating to income tax administration and enforcement.

DOCKET NO. 35-0101-1301 **Ms. Adrian** presented Rule 195 in accordance with H 2, which allows a deduction for recovery of amounts from a "Ponzi scheme." She explained that originally, an individual did not receive a Net Operating Loss (NOL) deduction for certain Ponzi-type losses, but the taxpayer was asked to include a recovery from those losses on their income tax, which did not seem fair. H 2 was written to correct that.

Ms. Adrian stated that Rule 201 was being amended in accordance with H 201, which modified Idaho Code § 63-3022, stating that an individual must file an amended return to have it carry back. **Ms. Adrian** stated that Rule 263 pertained to guaranteed payments which are now treated as compensation for services in the state in which they are performed up to \$250,000 and that payments over that amount are apportioned back to Idaho, concurrent with the partnerships apportionment factor. **Ms. Adrian** explained that Rule 872 pertained to the change in split monthly filings for individuals that have withheld revenue from their paychecks. She stated that if the withholding occurs on the first day of the month and ends on the fifteenth, then the payment would be due by the twentieth. She said if the withholding occurs from the sixteenth to the end of the month, the payment is due by the fifth of the following month.

Senator Vick inquired about the adjustment of \$250,000. **Ms. Adrian** responded that the adjustment was in statute and made in accordance with the Consumer Price Index.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Hill**, to approve **Docket No. 35-0101-1301**. The motion carried by **voice vote**.

Ms. Adrian presented Rule 40, which pertains to part-time residence. She stated that the change addressed the "place of abode" in order to avoid confusion with the federal foreign income exclusion. She said the "place of abode" in the rule only applied for Idaho purposes. **Ms. Adrian** stated that Rule 45 was a change in the heading of the rule, in which a code reference was added. She said the other change addressed pension income and certain guaranteed payments amended for consistency with H 139.

Senator Hill stated his concern for the pension income and guaranteed payments rule and asked if the Idaho statute was in accordance with the procedures of other states. **Senator Hill** also stated his concern that an individual, living in Idaho and receiving a pension from California, which may have a different rule stating that the pension is taxable, might come into conflict with Idaho's rule that the pension is only taxable in Idaho. **Ms. Adrian** responded that, as the rule related to other states, they were presenting the federal guidelines. She said in response to Senator Hill's concern about the differing pension tax rules among states, that even if the individual paid tax on the same income in California and Idaho, they could take a credit for taxes paid in California. **Senator Hill** requested that information be included in the minutes.

Ms. Adrian presented Rule 75, relating to tax brackets. She stated that "oldest year" was struck and includes the new 2013 tax bracket, adjusted as per statute. **Ms. Adrian** presented Rule 105, to be amended in accordance with a House bill stating that taxes, paid to another state on which a credit for taxes paid is allowed, are to be added back to income. **Ms. Adrian** presented Rule 120 which addresses several different issues, including income from lost recoveries being listed as a subtraction available to taxpayers and a technological equipment donation change, which now states it is the lesser cost or fair market value.

Chairman Siddoway asked about the carry back and why it only covered two years. **Senator Hill** responded that it was in accordance with federal law.

Ms. Adrian presented Rule 121 which states that Net Operating Losses for estates and trusts must be on an amended return in order to carry back. **Ms. Adrian** presented Rule 125, which states that the word "or" is changed to "and." She then presented Rule 140, which was amended consistent with H 4, which clarified that to qualify for the energy efficiency upgrade, primary residence must be in Idaho. **Ms. Adrian** continued with Rule 180, which states that it is the lower of cost or fair market value for tax subtractions. She presented Rule 194, which is consistent with an Internal Revenue Code change and states a change to the limitation of deductions for medical expenses that are not compensated for by insurance.

Ms. Adrian presented Rule 251 concerning the addition of the word "federal" in front of "income." She continued with Rule 252 which states that an individual with a part year residence in Idaho can include certain deductions for Idaho purposes, which is computed with a ratio of Idaho income to total federal income. **Ms. Adrian** presented Rule 254, concerning loss recoveries and technological equipment donation. She then presented Rule 270, which adds the word "partner" in subsection one. **Ms. Adrian** stated that Rule 280 added a code reference to the heading. Rule 291 removed paragraph "a" from the rule. She then presented Rule 710, which is consistent with the amendment to a House bill that states there is no investment tax credit on an amount that was claimed under bonus. Rule 714 clarifies that for investment tax credit purposes, the qualifying property must remain in Idaho during the recapture period and not during the carry over period.

Ms. Adrian presented Rule 771, the grocery credit dictated by statute and increased by \$10 until each credit equals \$100. Rule 801 clarifies the election for pass-through entities. She then presented Rule 855, which is the permanent building fund tax and clarifies when the change takes place. **Ms. Adrian** stated the last rule in the docket is Rule 880, regarding credits and refunds that pertain to H 4, which states that an overpayment would be any excess amount that a pass-through entity withholds.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Werk**, to approve **Docket No. 35-0101-1302**. The motion carried by **voice vote**.

DOCKET NO. 35-0101-1303 **Ms. Adrian** presented Rule 10 pertaining to definitions, which defines marriage according to Idaho Code. Rule 805 pertains to a joint return and references married couples as defined in Idaho Code § 32-201. **Chairman Siddoway** invited testimony from the audience.

First to the podium was Idaho resident **Steven Martin**, who married Jim Smith in Seattle, Washington. **Mr. Martin** said they chose this time to get married because the United States Supreme Court rulings regarding same-sex marriage demonstrated the country was changing in favor of marriage equality. He stated the Internal Revenue Service (IRS) decided that all same-sex marriages would be recognized and treated equally, regardless of place of residence. He said the proposed rule changes by the Commission not only put an undue burden on same sex marriages, but implies that their legal union is not due the same level of respect that all married couples in Idaho deserve.

Tim Walsh approached the podium and stated that the rule is "blatant discrimination" and that hiding behind the fact that it is Idaho law ignores Idaho's history. He cited that Mormons were barred from voting until the Constitution was amended in the 1980s. He said that voters approved term limits which the legislature overturned. He said that in August, they will take their friends, family and money to Washington where they will marry in a state that does not discriminate against same-sex couples. He said that if same-sex couples are required to file jointly for a federal return, why should they not be able to file jointly for the State. He asked that if the Committee believed discrimination is wrong and an issue of fairness under the law, then they should allow all legally married people to choose their own filing status.

Next to the podium was Idaho resident and law student, **John McCrostie**. **Mr. McCrostie** stated the Committee was being asked to approve a rule that fails to permit same-sex married couples to file their taxes jointly. He stated the rule has numerous disadvantages. For example, same-sex married couples that file federal taxes jointly have to file a separate federal tax return with the Commission when filing their state taxes. He said this creates the burden of having to file taxes three times instead of once. He said this rule also places an unnecessary burden upon the resources of the Commission. He said he implores the Committee that the rule stands on the wrong side of history, and that if it is approved, another generation of lawmakers will have to return to this room and correct that mistake.

Senator Johnson asked Mr. McCrostie about the costs incurred by the Commission and if there was a study on the issue. **Mr. McCrostie** answered that he did not have a study, but the costs of processing more returns seemed self-evident.

Monica Hopkins, Executive Director of the American Civil Liberties Union (ACLU) of Idaho, approached the podium. **Ms. Hopkins** said she urges the Committee to reject this rule. She asked that all legally married, same-sex couples in Idaho be treated equally, for tax purposes, by mirroring the IRS income tax rules. She said it was an undue hardship and that, in reference to Senator Johnson's question about the cost of the rule change, the separate forms would have to be on paper to the Commission.

Vice Chairman Rice asked if it was the position of the ACLU that the Committee ignore the restrictions of the State Constitution. **Ms. Hopkins** responded that there is another option, in which other states have said, due to the burden, for the purposes of taxes, they have allowed same-sex couples to file the same way the federal government files. **Senator Werk** said there was a constitutional amendment that disallows same-sex marriage and that is not a de facto recognition of marriage. He asked if that is what Ms. Hopkins was trying to convey and she answered that it was.

Idaho Resident and business owner, **Kim Baswick**, approached the podium. **Ms. Baswick** said she and her partner will have to file five different tax returns: a joint federal return, two joint mock federal returns, and two separate state returns. She said this is an incredible amount of work and represents considerable cost. She said that since her partner's income fluctuates and hers does not, they have an opportunity to "game" the system. **Chairman Siddoway** asked about her company, and she answered that she runs Memjet, a printing technology company, and her gross income is larger than the average Idaho income.

Next to testify was Idaho resident **Ben Wilson**, who said it is incumbent upon the Committee to act in accordance with the equal protection laws of the Fourteenth Amendment. He said the rule change is a burden on the taxpayer and the higher cost for state employees to review and process additional returns.

Senator Johnson asked Ms. Adrian if paid tax preparers would need to collect anything else from taxpayers in order to file for the State. **Ms. Adrian** replied that the federal tax return originally filed would not be recognized by Idaho and that same-sex couples would have to split it and file two separate returns.

MOTION:

Senator Vick moved, seconded by **Senator Hill**, to approve **Docket No. 3501-0101-1303**.

In discussion, **Senator Werk** thanked the Commission for their work while being put in a difficult situation and he said he regretted the difficult situation the Committee was in as well. He stated there was no good to be found anywhere and he would vote against the motion. He stated that he held the same line of thought regarding Ms. Adrian's testimony, that a rule regarding how the Committee handled the filing of taxes does not define marriage and that state legislators conform with federal law on issues with which they sometimes disagree. **Senator Werk** said he stands with the people he believed were being treated unfairly and he would vote to reject the rule.

Vice Chairman Rice said he does not have any ill will and according to his understanding of the law, State law prohibits the recognition of same-sex marriage. He said his understanding of the rulings of the Supreme Court is that federal law states that marriage is defined within each state by that state. He said the Commission had no choice and the rules must conform with the Constitution and laws, and for that reason he is going to support the motion.

Senator Bayer asked about the cause and effect of some of the situations that were proposed before the Committee regarding income tax returns, and if the rule reflects current Idaho practices. **Ms. Adrian** replied that this has not been enacted yet, so there is not a current practice to reference.

Senator Lacey said he agrees the rule change is burdensome and verges on discrimination and he is torn both ways. He said he asked the Attorney General for a position, and the response was that the Commission must change the rule in order to comply with state law. **Senator Lacey** stated it is a bad situation, but the statute should be changed.

Senator Hill clarified that there is a difference between married filing separately and two people each filing a single return. He said if both people have a higher income, it is better to file as single due to various tax rates. He said if you are married, there is no option to file as a single person, only married filing separately, which generally is not beneficial. He said that same-sex couples must file separate, single tax returns, which could be an advantage or a disadvantage, depending on the situation.

Chairman Siddoway said this is a difficult issue and he tries to be fair to everyone. He said he disagrees with the verbiage used by the Vice Chairman when he said the Constitution prohibits same-sex marriage. **Chairman Siddoway** said he would prefer to use the term that the Constitution does not allow the Committee to recognize same-sex marriage. He said he would support the rule.

MOTION: **Chairman Siddoway** said the motion to approve **Docket No. 3501-0101-1303** is before the Committee. The motion carried by **voice vote**. **Senator Werk** asked to be recorded as voting no.

DOCKET NO. 35-0201-1301 **Ms. Adrian** said Rule 705 is presented to be consistent with H 3, which allows the Commission to release information to an individual whose identity has been stolen.

MOTION: **Senator Werk** moved, seconded by **Vice Chairman Rice**, to approve **Docket No. 35-0201-1302**. The motion carried by **voice vote**.

DOCKET NO. 35-0201-1302 **Ms. Adrian** presented Rule 310. She stated the interest rate is changed yearly according to statute, and for 2014 will be set at four percent. **Senator Johnson** asked how the interest rate is determined. **Ms. Adrian** replied the calculation is two percent plus the rate determined under the Internal Revenue Code by the Secretary of the Treasury.

MOTION: **Senator Werk** moved, seconded by **Vice Chairman Rice**, to approve **Docket No. 35-0201-1302**. The motion carried by **voice vote**.

DOCKET NO. 35-0201-1303 **Ms. Adrian** presented the final docket concerning Rule 10 and definitions. She stated this rule defines marriage in the state of Idaho.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Johnson**, to approve **Docket No. 35-0201-1303**. The motion carried by voice vote. **Senator Werk** asked to be recorded as voting no.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:35 p.m.

SECRETARY'S NOTE: These minutes were originally recorded by Committee Secretary Marchelle Fias. Upon her departure, Majority Staff Assistant David Ayotte assisted with them.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #2
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, January 16, 2014

SUBJECT	DESCRIPTION	PRESENTER
RS22491	Relating to Property Exempt from Taxation	Senator Rice
RULES REVIEW		
IDAPA 35		
35-0102-1302	Idaho State Tax Commission: Sales Tax Administrative Rules	McLean Russell, Idaho State Tax Commission
35-0109-1301	Wine Tax Administrative Rules	McLean Russell, Idaho State Tax Commission
35-0110-1301	Idaho Cigarette and Tobacco Products Tax Administrative Rules	McLean, Russell, Idaho State Tax Commission
35-0114-1301	Prepaid Wireless E911 Fee	McLean, Russell, Idaho State Tax Commission

COMMITTEE MEMBERS

Chairman Siddoway
Vice Chairman Rice
Sen Hill
Sen McKenzie
Sen Johnson

Sen Vick
Sen Bayer
Sen Werk
Sen Lacey

COMMITTEE SECRETARY

Marchelle Fias
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, January 16, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, Johnson, McKenzie, 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 Local Government and Taxation Committee (Committee) meeting to order at 3:04 p.m.

Chairman Siddoway stated there was an error on yesterday's agenda and the property tax bills would not be considered until February.

RS 22491 **Chairman Siddoway** invited Vice Chairman Rice to introduce **RS 22491**, relating to property exempt from taxation. **Senator Rice** said this bill adds oil and gas wells to the list of exemptions that do not require an application or processing by the county commissioner. He said the purpose is to save paper and time.

MOTION: **Senator Hill** moved, seconded by **Senator Vick**, to send **RS 22491** to print. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Siddoway passed the gavel to Vice Chairman Rice for the consideration of pending rules.

DOCKET NO. 35-0102-1302 **Vice Chairman Rice** invited to the podium McLean Russell of the Idaho State Tax Commission (Commission).

McLean Russell thanked the Committee for the opportunity to present the rules. He stated that the proposed changes to Rule 36 address the nature of signs as real property or tangible personal property and in some cases both. He said a sign includes the component that advertises the business, as well as any of the specific pieces of it, all the way down to the foundation.

Mr. Russell said if it was determined that any portion of the sign is real property then subsequently the individual installing the sign would have a use tax obligation. He stated that the purpose of the changes to Section 3 was to make sure that a contractor installing a sign understands that it may consist of a "mixed transaction" and that it may include both the sale of tangible personal property and a sale of real property. He stated that Section 3A explains that both the materials and the labor that go into the creation of a sign are part of the taxable sales price. He said Section 3B explains that in some cases, part of the sign structure may be a fixture to real property, and subsequently, the installer was acting as a contractor improving real property and so was responsible for sales and use taxes on the purchases installed on that part of the sign.

Mr. Russell said Subsection 4 is more specific and concerns road signs or informational signs relating to roadway information: traffic signs, stop signs, speed limit signs, etc. He said that road signs become real property upon installation and that an installer of a road sign is acting as a contractor improving real property and is the consumer of the material that is being used.

Senator Lacey asked why road signs are included when they do not add to the value of the property and belong to the city, county or State. **Mr. Russell** replied that this rule is only applicable in the sales tax realm. He stated this is how the tax is currently being administered and that adding it to the rule was to ensure the contractor was aware of the tax responsibility incurred on the installation of that property.

Chairman Siddoway inquired on the history of road signs in a right-of-way owned by the state, and asked if they have been previously taxed. He said if that has been the case, it seemed that under the current sales tax law, there is a loss of six percent to those highway projects that are in an area that are being shifted from the Idaho Department of Transportation to the general fund.

Mr. Russell said he found a district court case from 1981 in which the Commission had imposed a use tax liability upon a contractor who had received materials from a government entity and installed them into real property and was consequently held subject to tax on the value of those materials. He said the district court upheld the imposition of that tax.

Chairman Siddoway asked about the amount of money collected by the cities, counties and state from this tax. **Mr. Russell** responded that he did not know and it would take a significant amount of analysis to produce a figure.

Senator Werk asked if there would be sales tax on the asphalt that a contractor purchases to build a road for a state agency. **Mr. Russell** replied yes, there would be sales tax. **Senator Werk** asked if the post and the sign are also taxable items. **Mr. Russell** clarified that sales tax is not a property tax and that once sales tax is imposed, it is done. Property taxes are recurring. The post and sign that are used are subject to the use tax.

Senator Lacey noted Sections 3 and 4 indicate labor is taxed and said if he employed a mechanic, he would pay sales tax on the parts, but not the labor. He asked if that was a change. **Mr. Russell** replied that the only tax on labor would be the labor required to fabricate the sign and that any labor to improve real property is not taxable.

Senator Siddoway asked for an explanation of the difference between the use tax and the sales tax and their relative amount. **Mr. Russell** explained that the sales tax and use tax "go hand in hand" and that if one applies, the other does not and that six percent was the rate for both. He said that the same exemptions apply to both and that the purpose of the use tax was to catch the things that the sales tax misses.

Vice Chairman Rice inquired if the Idaho Department of Transportation or the state of Idaho was party in the 1981 court case referenced by Mr. Russell. **Mr. Russell** responded that neither agency participated and that the case was between the Commission and the contractors. **Vice Chairman Rice** then asked if the state of Idaho bought a case of paper from an office supply retailer, would that retailer pay sales tax on that product prior to selling it to the state of Idaho. **Mr. Russell** replied that the retailer would not, because the state of Idaho has an exemption on all of its purchases according to the sales tax code.

Vice Chairman Rice then asked how a sign would be taxed if the State produced the sign and then merely hired a contractor to install it. **Mr. Russell** replied that the contractor would owe use tax on the value of the fabricated sign.

Senator McKenzie asked about Section 3A in which both the material and the labor required to fabricate the sign are taxable and therefore the tangible price of the personal property is taxable, resulting in the entire price being taxable to the customer, regardless of the value of the materials, labor, profit and overhead. **Mr. Russell** responded that the parts of the sign that remain tangible personal property after they are installed, and the labor that went into fabricating them, are subject to tax.

Chairman Siddoway asked about the disposition of the rule in the House of Representatives and what the ramifications would be if they held the rule in committee and then ultimately passed the concurrent resolutions required to nullify the bill as far as the Commission is concerned.

Mr. Russell deferred to Commissioner Ken Roberts. **Mr. Roberts** stated the House Committee took an action to not approve this portion of the rule and also made a decision to approve the entire docket. Subsequently, it was unclear what direction the House would take on the rule. He said the purpose of the rule was to provide clarity to the industry who installs signs and that it was the prerogative of the Legislature to grant an exemption, but without the rule, there is still some ambiguity.

Senator Vick asked why they put labor in the section of rules. **Mr. Russell** responded that it is common in the production of custom tangible personal property to break out labor and materials in order to make it clear what they are charging for, and the rule clarifies that if you are producing tangible personal property, they must be charged sales tax on the whole amount.

Senator Hill stated the Committee needed to know that the rule was in accordance with the current statute and asked Mr. Russell to clarify the statute.

Reading over the statute, **Mr. Russell** stated that since 1965, there has been a Subsection A appended to it that states if "you" are constructing real property, "you" are the consumer of the material and all sales and "used by" are taxable. In Section 63-3615 the definition of "use" includes the exercise of any right or power over tangible personal property by any person in the performance of a contract.

Mr. Russell explained that, regardless of who the contractor is working for or who owns the property, the contractor is using the materials.

Vice Chairman Rice stated that Section 63-3609 specifically excludes from that definition any property that is for resale. **Mr. Russell** responded by pointing out Subsection A, in the same paragraph, where it states that all sales, or use, are taxable, whether or not such persons intend resale. **Vice Chairman Rice** then stated that Section 63-3615 indicates that's the case unless such property would be exempt to the title holder and he requested clarification. **Mr. Russell** responded that it was a reference to the production exemption which stems from a court case in which a contractor was installing equipment and it was found that the equipment used to install the production equipment was exempt.

Mr. Russell said the rule has been in place for at least 20 years and was re-coded in 1993. He stated that in Rule 12, a contractor who is improving real property and buys tangible goods cannot avoid tax because the goods will be built into a structure which will belong to, or be used by, an exempt entity. Also, he explained, contractors and subcontractors may not avoid paying sales or use tax due to a contract which allows invoices to be made out in the name of the exempt entity and designate the contractor as an agent of the exempt entity.

Mr. Russell summed up the statute by stating that the contractor is the entity that is subject to the tax and not the exempt entity that is having the real property improvements performed on their behalf.

MOTION: **Senator Lacey** moved to reject **Docket No. 35-0102-1302**. **Vice Chairman Rice** asked for a second, and there was not one.

DISCUSSION: When there was no second, **Chairman Siddoway** stated that he considered most of the hesitation from the Committee to be the belief that "we are taxing ourselves" meaning the State is taxing itself. **Chairman Siddoway** said since the Committee is unsure of the fiscal impact to the various entities and the ability of the Commission to separate the private basis versus county basis, the motion to reject is probably in order and proper; however, he said he does not want the Committee to get into the situation where it ends up with a parliamentary procedure problem where what is intended is not the outcome.

Mr. Roberts of the Commission stated that if the Committee finished the docket and if the members had an affirmative vote on the current motion, they would need a motion to approve the docket and then they could reject or save that particular rule.

Senator McKenzie stated that he is conflicted because there is already the statute that taxed improvements to real property, which includes fixtures, and that in general, road signs become real property upon installation. But, he said, what does not seem logical to him is where it was stated that, because material and labor are taxable, therefore the entire price was taxable. He said, because whenever you tax any good, everything that went into the price of that good is taxed. He said it was not necessarily corollary that if you tax material and labor, you tax the whole price.

Mr. Roberts stated if it was the Committee's desire to compile fiscal impacts of making the change to Rule 36, the Commission would do everything in its power to get the answers the Committee needs to make a decision.

Senator Werk stated that it would be beneficial for the Committee to have a little more time to make a decision and make a substitute motion to hold the rule at the call of the chair to allow the Committee to consider other information before making a decision.

Senator Bayer clarified that the motion would be specific to **Docket No. 35-0102-1302**, to which **Vice Chairman Rice** responded that it was Rule 36 of **Docket No. 35-0102-1302**. **Senator Bayer** commented on the language of rules and that the process of amending the rules should be given due prudence, as he has seen rules enacted where a committee did not take formal action and where subsequent resolution was not followed up on. He stated that he would like to know the action that has been taken by the other committee on this rule.

Senator Hill asked the Commission to return in order to help the Committee understand the issue better with some examples, because the rejecting of the rule might have further implications than road signs. **Senator Vick** stated his understanding is that a rejection would only result in reverting to existing rules.

SUBSTITUTE MOTION: **Senator Lacey** moved, seconded by **Chairman Siddoway**, to table discussions of Rule 36 of **Docket No. 35-0102-1302**, subject to the call of the Chair. The motion carried by **voice vote**.

Vice Chairman Rice then requested that **Mr. Russell** continue through the docket, now with Rule 37. **Mr. Russell** said last year H 15 added a sales tax definition for "primary" and "primarily" for tangible personal property. He said that for many sales and use tax exemptions, one of the determining factors of whether or not an exemption will apply is the primary ongoing use of the tangible personal property.

Mr. Russell explained that the new definition of "primarily" takes into consideration the combined taxable uses of a piece of personal property and the combined nontaxable uses of that property, and whichever combination is greater determines whether or not the exemption applies. He gave an example from Section 2a in which the two taxable uses of an aircraft, one being the owner's personal use and the other being flight instruction, when combined exceed the nontaxable use of the aircraft, which is providing charter flights for hire. He said this resulted in the use of that plane becoming subject to tax.

Mr. Russell moved on to Rule 41. He explained that the only change is in Subsection 10. He said during the last two legislative sessions, two bills were passed, one of which exempted free beverage samples, and the other exempted free food samples. He said the Commission audit staff expressed concern that there would be confusion when there was paid tasting. He said, therefore, Section 10 clarifies that sales tax must still be collected on the charges to participate in a paid tasting, and the provider of the samples can purchase what is being given away for resale and exempt. **Senator Vick** asked if sales tax is to be charged on the price of the attendance. **Mr. Russell** responded that is correct.

Senator Johnson asked about the example Mr. Russell gave for Rule 37. He asked if the tax was in relation to the use of the aircraft for the three services he described or the initial sale of the aircraft. **Mr. Russell** responded that it was referencing the ongoing exemption from use tax.

Mr. Russell also stated that charges to transport passengers and freight for hire are not subject to sales tax due to a federal preemption on those sales. He said that sale, lease, purchase or use could be subject to sales or use tax, and to maintain an exemption that was claimed originally, it would need to be resale inventory. If it is taken out of resale inventory, it becomes subject to use tax.

Vice Chairman Rice then said in the first example, one of the uses was a "common carrier" and that it was stated that federal law prohibits taxation of that use and he asked that if it was less than 50, were they going to tax it despite federal law. **Mr. Russell** replied what federal law preempts is the charges to the passengers or to the owners of the freight that are hiring the transportation.

Vice Chairman Rice then asked if they were taxing them for selling it to the common carry passenger as a use, despite the fact that taxing that sale to the customer is prohibited by federal law. **Mr. Russell** responded that the tax is imposed on the owner of the aircraft. **Vice Chairman Rice** then clarified that if they paid the sales tax when they purchased the aircraft, they would not incur a use tax when they conducted their flights. **Mr. Russell** responded that is correct.

Vice Chairman Rice asked if the first five years of an aircraft use were exclusively exempt use and their collective value was substantially greater than the taxable use in the sixth year, would the whole airplane still be taxed. **Mr. Russell** replied the new law does not look at the value, rather, how it is used and how much it is used. **Chairman Rice** asked if the statute used the 12 month period. **Mr. Russell** replied that, in general, the statute does not address the audit period for review, which are mostly addressed by rule, and by the Commission's practice and procedure.

Vice Chairman Rice stated they were now considering Rule 46, relating to coatings on tangible personal property. **Mr. Russell** explained that this is a significant change and there had been much confusion and the rule was the result of numerous requests for clarification. He said it is intended to apply to coatings across the board.

He stated that Section 1 addresses the general overview of spray-on bed liners. Section 2 clarifies that the coating itself is tangible personal property. Section 3 states the charge for the coating materials is subject to tax. Section 4 gives examples of when labor charges are nontaxable the majority of the time, including when a previous coating is removed and replaced, or when a previous coating on used tangible personal property is covered with a new coating.

Mr. Russell continued with Section 5, which gives examples of when labor is taxable. He said when tangible personal property is sold, many types of labor are taxable. Section 6 states the material and the labor charges must be separately stated, or the whole charge is always going to be taxable. Section 7 further explains that tangible personal property is considered to be used if it is put to the use for which it is intended. Section 8 clarifies that coatings held in inventory by a retailer are taxable. Section 9 states that an applicable exemption can be claimed.

Senator Lacey asked what the difference is between Subsections 4 and 5. **Mr. Russell** answered that the difference is repair labor as opposed to brand new personal property.

Senator Bayer asked about the revenue impact of the new rule. **Mr. Russell** responded that there would be both a positive and negative revenue flow. The positive revenue flow would be the sales tax and the negative revenue flow would be under the Commission's current approach, which states that labor to apply a re-coating is often taxable and would no longer be under the new rule. **Senator Bayer** asked about the impact to business in the State. **Mr. Russell** responded that business owners are happy to have the consistency and clarity.

Senator Lacey asked about the history of the rulemaking. **Mr. Russell** responded that there was a lot of confusion and inconsistency among businesses and that he had no recollection of opposition to the rule.

Vice Chairman Rice then asked Mr. Russell to proceed with Rule 79. **Mr. Russell** said there was an Idaho Supreme Court decision from 1991 that excluded property primarily used to install real property from the production exemption. He said that was the guidance the Commission had used and they were of the opinion that it should be included in the rule.

Chairman Siddoway requested examples pertaining to Section 6. **Mr. Russell** responded that a posthole digger would be subject to tax. **Senator Lacey** asked if there is an exemption on farm equipment. **Mr. Russell** responded that yes, there is.

Mr. Russell then moved on to Rule 114, relating to sales under the Federal Supplemental Nutrition Assistance Program (SNAP) and Federal Special Supplemental Food Program for Women, Infants and Children (WIC). **Mr. Russell** stated that in making the changes, they met with representatives from the retail grocery industry who pointed out that most of the language was out-of-date and no longer applied.

Mr. Russell then explained Rule 130, relating to promoter sponsored events. **Mr. Russell** stated that Sections 1 and 2 outline the promoter's responsibility regarding the distribution of Form ST-124. He said that under the old system the form only had to be filled out once every 12 month period, but it was unclear when that period began or ended, so now the form is to be filled out at every event. He said Section 3 explains that it is the promoter's responsibility to notify the Commission if a participant fails to complete the form. **Mr. Russell** said Section 4 clarifies the documentation the promoter must submit to obtain their one dollar income tax credit for every participant who submits Form ST-124.

MOTION:

Senator Bayer moved, seconded by **Senator Lacey**, to hold **Docket No. 35-0102-1302** subject to the call of the Chair. The motion carried by **voice vote**.

DOCKET NO. 35-0109-1301 Vice Chairman Rice invited Mr. Russell to review **Docket No. 35-0109-1301**, relating to wine tax administrative rules.

Mr. Russell explained there was one change to Rule 12 that affects wine direct-shippers. Some wineries have a special license to ship wine directly to individuals in greater quantities than they otherwise could in a single shipment. The rule clarifies that shipments into other states will not incur Idaho state sales tax.

MOTION: **Chairman Siddoway** moved, seconded by **Senator Johnson**, to approve **Docket 35-0109-130**. The motion carried by **voice vote**.

DOCKET NO. 35-0110-1301 **Mr. Russell** then presented **Docket No. 35-0110-1301** relating to cigarette and tobacco products. **Mr. Russell** stated the rule was updated to address confusion pertaining to the tobacco products tax, which is based on wholesale prices as the taxable price. **Mr. Russell** said Section 3 reflects a change from H 7, which clarified the tobacco products tax, and the calculation of that taxable price applies to sales of tobacco products by anyone, not just manufacturers. He stated that Section 3a has been added to clarify that certain nontaxable charges cannot be unreasonably inflated. Section 3b states that a distributor based outside of Idaho, who is either required to hold one of these permits to collect the tax or voluntarily registers for the permit, must calculate the wholesale price like any other Idaho tobacco products distributor.

MOTION: **Chairman Siddoway** moved, seconded by **Senator Hill**, to approve **Docket No. 35-0110-1301**. The motion carried by **voice vote**.

DOCKET NO. 35-0114-1301 **Mr. Russell** then presented **Docket No. 35-0114-1301**. He stated the first six rules are the standard rules advised by the administrative coordinators office. Rule 100 clarifies that the fee does not apply to the sale of any wireless device, only the service, with the exception that the device and the service are sold together, then the entire item is subject to tax. Rule 200 establishes which retailers are required to collect the fee. Rule 300 establishes when an out-of-state sale is not subject to the fee and explains the seller must retain the documentation to support the sale.

Chairman Siddoway moved, seconded by **Senator Hill**, to approve **Docket No. 35-0114-1301**. The motion carried by **voice vote**.

RETURNED THE GAVEL: Vice Chairman Rice returned the gavel to Chairman Siddoway.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:35 p.m.

SECRETARY'S NOTE: These minutes were originally recorded by Committee Secretary Marchelle Fias. Upon her departure, Majority Staff Assistant David Ayotte assisted with them.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, January 21, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>RS22484</u>	Relating to public airports and zoning proposals	Senator Lee Heider
<u>RS22573</u>	Relating to existing statutes regarding the vacation of plats	Senator Todd Lakey
<u>RS22501</u>	Relating to allowing the county treasurer to transmit property tax notices electronically at the taxpayer's request	Seth Grigg , Idaho Association of Counties
<u>RS22502</u>	Relating to property ownership that has fourteen months to redeem the property	Seth Grigg
<u>RS22503</u>	Relating to the requirements of the county auditor to annually publish a statement of financial condition	Seth Grigg
<u>RS22504</u>	Relating to the public administrator's ability to pay the debts of a decedent in priority order	Seth Grigg
<u>S 1213</u>	Relating to oil and gas wells and application for exemptions	Senator Jim Rice

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Marchelle Fias
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 21, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators McKenzie, Johnson, Vick, Bayer, Werk and Lacey

ABSENT/ EXCUSED: Senator Hill

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.

RS 22484 **Chairman Siddoway** welcomed Senator Lee Heider to the podium to present **RS 22484**, relating to public airports and zoning proposals. **Senator Heider** shared a brief history of the proposal. He said that over the last four years, there has been conflict between the public and legislation in the planning and zoning of airports. He said this proposal was designed differently. **Senator Heider** said it amends Section 21-503, which provides for political subdivisions having zoning ordinance authority. He said the proposal has been approved by the Association of Idaho Cities and the Idaho Association of Counties. He said the purpose was to discuss how airports fit into the planning scheme of a community and he gave examples of different cities that had issues with their airports when they did not take into account the activities that occur there. **Senator Heider** said to protect public airports and community facilities that provide for transportation alternatives, they would like to adjust Section 67-6508 to have airport facilities be included like any other political subdivision. He said the wording was not a dictate but a recommendation to take into account that airports have special needs. **Senator Heider** then recommended that the Committee send **RS 22484** to print.

Vice Chairman Rice asked if the Idaho Transportation Department (ITD) was consulted. **Senator Heider** replied yes, noting that the Department of Aeronautics is under ITD, and the proposal does not change the relationship between the two departments.

Senator Werk said it looks like the zoning responsibilities were cut out of ITD and placed in city and county government, and he asked why would they not want both agencies involved in that decision making process. **Senator Heider** replied the airports would be a political subdivision but they would still be governed by ITD.

MOTION: **Senator McKenzie** moved, seconded by **Senator Vick**, to send **RS 22485** to print. The motion carried by **voice vote**.

- RS 22573** **Chairman Siddoway** welcomed Senator Todd Lakey to the podium to present **RS 22573** relating to the vacation of plats. **Senator Lakey** said this proposal is a straight forward jurisdictional issue currently under existing code. He said if an individual wanted to vacate a plat that is within one mile of a city, they must have a hearing with the city council. He said this was an older section of the code put in place before impact areas were fully understood. **Senator Lakey** said there was an Idaho Supreme Court case that clarified the jurisdictional issues between cities and counties and the proposal is in line with that ruling. He stated that if someone comes forward to vacate a plat, which is a map of how a piece of property is subdivided, and the property was in the county, they would go before the county commissioners for a decision, and if they were in the city, they would go before the city council for a decision. **Senator Lakey** said the proposal was formed with input from representatives from both the cities and the counties and both were supportive. He said the cities requested notification if the plat was within one mile of the city.
- MOTION:** **Senator Werk** moved, seconded by **Senator Mckenzie**, to send **RS 22573** to print. The motion carried by **voice vote**.
- RS 22501** **Chairman Siddoway** introduced Seth Grigg of the Idaho Association of Counties to present **RS 22501**, relating to electronic transmission of property tax notices. **Mr. Grigg** said this proposal was brought forth by county treasurers in their capacity as tax collectors. He stated that last year, the Committee passed a similar proposal from assessors, which allowed them an electronic assessment notice if the taxpayer requested it. He said the assessors thought it was a good practice and recommended that legislation be introduced to allow county tax collectors to send out an electronic tax notice at the taxpayer's request. **Mr. Grigg** said the proposal would amend Idaho Code Section § 63-902 and insert language that would allow the taxpayer to ask the county tax collector to have their tax notice be submitted electronically, and the county would provide the form for the purpose of uniformity.
- Chairman Siddoway** asked about the number of individuals who filed electronically. **Mr. Grigg** responded that due to timing issues, no requests came in.
- MOTION:** **Senator Werk** moved, seconded by **Vice Chairman Rice**, to send **RS 22501** to print. The motion carried by **voice vote**.
- RS 22502** **Mr. Grigg** then presented **RS 22502**, relating to property ownership that has 14 months to redeem the property. He said this proposal is from the county treasurers who discovered inconsistent language in two code sections. He said that if a taxpayer fails to pay their property tax over a three year period, a tax deed is issued for that property. However, before a county can auction that property, they must give adequate time for the property owner to redeem the tax deeded property. He outlined the code in Section 31-808 which within county title grants the owner 14 months to redeem the property and Section 63-1007 which only allows for 12 months. **Mr. Grigg** said the proposal would allow 14 months across both statutes, creating consistency in code.
- MOTION:** **Senator Johnson** moved, seconded by **Senator Bayer**, to send **RS 22502** to print. The motion carried by **voice vote**.
- RS 22503** **Mr. Grigg** then presented **RS 22503**, relating to the requirements of the county auditor to annually publish a statement of financial condition to the Board of County Commissioners (Board). **Mr. Grigg** stated the proposal came from the Clerks Association. He said the statement must be provided by the second Monday in January each year; however, the outside audit has often not been completed by that time. Additionally, there are other provisions in Idaho law that require the county clerk to provide similar statements to the county on a quarterly basis. He stated that, at the request of the clerks, this legislation would repeal the requirement that they make this statement of financial condition to the Board.

Senator Werk asked about the annual "publishing" of the statement of financial condition. **Mr. Grigg** replied they are not required to publish it, but rather file it with the Board. **Vice Chairman Rice** said the proposal might need some clarification.

MOTION: **Senator Johnson** moved, seconded by **Senator Lacey**, to send **RS 22503** to print. The motion carried by **voice vote**.

RS 22504 **Mr. Grigg** then presented **RS 22504**, relating to the public administrator's ability to pay the debts of a decedent in priority order. He said as a public administrator, the county treasurers are responsible for the estate, possessions and auction of the property of an individual that passes away in the county without heirs. he stated that if the auction yields more than \$1,000, they are required to give notice to any creditors that might have claims against the estate. The county is allowed to take from the profits any debts incurred in the cleaning or auctioning of the estate, as well as the disposal of the remains. **Mr. Grigg** stated that frequently, these costs far exceed the \$1,000 threshold. He said the proposal is a request that the public administrator be able to create in their inventory a list of items from the property and then reduce any debts and projected costs of administration and that the threshold be raised from \$1,000 to \$5,000. He said there is no financial benefit to the county because after debts and creditors have been repaid, all remaining funds go into the State's unclaimed property pool.

MOTION: **Senator Lacey** moved, seconded by **Senator Bayer**, to send **RS 22504** to print. The motion carried by **voice vote**.

S 1213 **Chairman Siddoway** invited Vice Chairman Rice to move to the podium to introduce **S 1213** relating to oil and gas wells and applications for exemptions. **Senator Rice** explained this bill is a paperwork and time reduction bill. He said that last year, they passed an exemption for oil and gas wells and this current bill states it is no longer required to apply for an exemption each year, so the county commissioners will not have to process exemption applications.

MOTION: **Senator Werk** moved, seconded by **Senator Bayer**, to send **S 1213** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:37 p.m.

SECRETARY'S NOTE: These minutes were originally recorded by Committee Secretary Marchelle Fias. Upon her departure, Majority Staff Assistant David Ayotte assisted with them.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, January 22, 2014

SUBJECT	DESCRIPTION	PRESENTER
RS22566	Relating to the posting of signs where public roads enter private lands	Senator Guthrie
Presentation	Review of Sales Tax Exemption for Western Air	Russell Westerberg Jeff Mihalic

COMMITTEE MEMBERS

Chairman Siddoway
Vice Chairman Rice
Sen Hill
Sen McKenzie
Sen Johnson

Sen Vick
Sen Bayer
Sen Werk
Sen Lacey

COMMITTEE SECRETARY

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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Wednesday, January 22, 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** convened the meeting of the Local Government and Taxation Committee (Committee) at 3:04 p.m.
- RS 22566** **Chairman Siddoway** invited Senator Jim Guthrie to the podium to introduce **RS 22566**, relating to the posting of signs where public roads enter private lands. **Senator Guthrie** said the proposal seeks to amend Sections 18-7008, 18-7011 and 36-1603 of Idaho Code. He stated that where public roads traverse through large and unfenced tracks of private property, **RS 22566** would allow for placement of a sign upon entrance into that private land. He said the sign would depict that trespassing off the road would not be allowed upon entering the private property, and the sign would also specify how far the private property extended.
- Senator McKenzie** asked about the history of the proposal. **Senator Guthrie** said he has been an advocate of private property rights for many years, and that agricultural interests and private property rights advocate groups have worked with him on this proposal. **Senator Lacey** said he has seen these types of signs used, and he felt they were effective.
- MOTION:** **Senator Bayer** moved, seconded by **Vice Chairman Rice**, to send **RS 22566** to print. The motion carried by **voice vote**.
- PRESENTATION:** **Chairman Siddoway** invited Russell Westerberg of Westerberg & Associates and Jeff Mihalic of Western Aircraft, Inc. to the podium for a presentation. **Mr. Westerberg** said two years ago, he appeared before this Committee in support of a House bill that provided a sales tax exemption on parts installed on nonresident aircraft, which is what the company Western Aircraft, Inc. does. **Mr. Westerberg** said he believed then that the change would be good for Idaho's economy and would not injure the general fund. He then invited Mr. Mihalic to share his experience.
- Mr. Mihalic** shared a presentation of the financial details of the company (see attachment 1). **Mr. Mihalic** said Western Aircraft has been certified for more than 60 years by the Federal Aviation Administration (FAA) to repair foreign aircraft. He shared a history of the company, which now has 192 employees, including 185 full time employees and 7 contractors. He said that number of employees has grown considerably since the last time he was before this Committee. He noted that other states would not charge sales tax on installation of parts, so other businesses in other states were getting more business, which put Idaho aircraft companies at a disadvantage. **Mr. Mihalic** said the Legislature's decision to level the playing field has had many positive impacts for the state of Idaho.

Mr. Mihalic outlined the company's costs over the next five years and showed some slides on the company's new buildings. He shared that the company is on track to deliver a net positive economic impact for the state of Idaho. He said several publications and news media had stated in the past that Western Aircraft would not be able to attract new business; however, **Mr. Mihalic** said, he had a list of evidence to prove them wrong, including an increase in their sales force and growth in avionics. He noted the average salary is \$57,000 plus benefits and a company-matched 401k plan. He said they have an excellent safety record and are diligent in complying with environmental regulations. Another example is their partnership with Idaho State University, to which they donated an \$80,000 cockpit trainer as well as sent technicians to conduct classes, and they offer jobs to graduates. **Mr. Mihalic** said they have been certified by the Occupational Safety and Health Administration (OSHA) and received a Sharp Award seven years in a row, and they are one of only 13 companies in Idaho to receive that designation. **Mr. Mihalic** said in conclusion, he thanked the Committee for its help and support, and he said he felt everyone involved at the state level worked to make it a win-win situation.

Senator Vick asked if the company had had any input into the aviation training program being developed at North Idaho College. **Mr. Mihalic** answered the college was focused more on manufacturing, rather than the type of degree that Western Aircraft requires.

Senator Hill thanked Mr. Mihalic for the update, as did **Senator Werk**, who then asked about the impact of the sales tax exemption and what the financial benefit of it has been. **Mr. Mihalic** answered that the loss in sales tax was estimated to be \$164,000, but that is made up for by the increased revenue from economic growth and more customers.

Senator Johnson asked Mr. Mihalic to please provide the Committee with a copy of the presentation for the official record.

Chairman Siddoway thanked Mr. Mihalic and asked him to return next session with an updated report.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:42 p.m.

SECRETARY'S NOTE: These minutes were originally recorded by Committee Secretary Marchelle Fias. Upon her departure, Majority Staff Assistant David Ayotte assisted with them.

Senator Siddoway
Chair

Christy Stansell
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, January 29, 2014

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Confirmation Hearing for the appointment of Ken Roberts to the Idaho State Tax Commission	Ken Roberts , Idaho State Tax Commission
S 1236	Relating to Property Tax Notices	Seth Grigg , Idaho Association of Counties
S 1237	Relating to Tax Deeds and the Right of Redemption	Seth Grigg , Idaho Association of Counties
S 1238	Relating to the Annual Statement of the Financial Condition of a County	Seth Grigg , Idaho Association of Counties
S 1235	Relating to Plats and Vacation of Plats by cities and counties	Senator Todd Lakey
RS22647	Relating to Airport Zoning	Senator Lee Heider

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 29, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators McKenzie, Johnson, Vick, Bayer, Werk and Lacey

ABSENT/ EXCUSED: Senator Hill

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) to order at 3:03 p.m.

GUBERNATORIAL APPOINTMENT **Chairman Siddoway** welcomed Ken Roberts to the podium for the consideration of his appointment for commissioner of the Idaho State Tax Commission (Commission). He asked Mr. Roberts to introduce himself to the Committee.

Mr. Roberts said it is an honor to stand before the Committee for the confirmation of his appointment to the Commission. He shared that he spent 12 years serving in the Legislature and represented many districts and counties during that time, including time in leadership positions. He said he was originally appointed to the Commission on July 16, 2012 by Governor Otter and stood before this body for confirmation during the session last year. He was appointed at that time to fill the balance of a term. This year, he is before the Committee for confirmation of his reappointment by Governor Otter. **Mr. Roberts** said he would stand for questions.

Senator Werk asked "how the retraining of the Commission is going." **Mr. Roberts** replied, "It's fun and going well, and in seriousness, there are things I've learned since serving in the Commission that I wish I'd known when serving in the Legislature." **Mr. Roberts** said there is a lot of difference in promoting tax policy from the Legislature and being able to administer that policy and what it means to counties and taxpayers. He said it is complex and there are dynamics that need to be understood.

Vice Chairman Rice asked Mr. Roberts to comment on how there are some rules being considered this year that seem to read differently from what statute says. **Mr. Roberts** asked for clarification on what Vice Chairman Rice was referencing. **Vice Chairman Rice** gave an example of the personal property tax rule as it relates to power lines on publicly owned real estate. **Mr. Roberts** stated he believed the Vice Chairman was referring to some of the rules relating to H 315 that was passed last year, and noted that it has been a controversial subject. **Mr. Roberts** said he would like to address a couple of issues and then answer the Vice Chairman's question.

Mr. Roberts said that prior to the passage of H 315, it didn't matter where the line was drawn between real and personal property because there was no exemption enjoyed by the taxpayers. However, once the exemption was passed and centrally assessed property enjoyed the exemption, the line needed to be defined. He said H 315 left in place a couple of conflicts, in which certain properties would be defined as personal property, even if they were contrary to the three part test used to determine real and personal property.

Mr. Roberts stated there is a conflict within the law that needs to be decided upon by policy makers to define what is real and what is personal. He said the Commission was handed H 315 last year not knowing what direction to follow. He said the Commission attended a legislative council meeting where there was discussion about the struggles the Commission had been having implementing the law with the differences between real and personal property.

Mr. Roberts said the Commission was informally directed to come up with rules to create a definition. He said it is not something agencies like to do but someone needed to do it so that county assessors could implement the law. **Mr. Roberts** said that is the background about why there was a rule presented that relied on the three factor test. He said there is discussion on how to deal with issues such as cabins on state leased land and cell towers on state leased land and whether they would be treated as personal property or as real property. He said 309 says improvements on state leased land, such as cell towers, shall be treated as personal property. However, when looking at the code, the definition is reversed when considering the three factor test. He said there is work to be done on this issue during this session.

Vice Chairman Rice asked if it would be reasonable to say that both statutes should be followed and that the interpretation of the three factor test would apply except for state leased lands where there is a more specific statute. **Mr. Roberts** replied that is certainly an option that could be considered; however, it would create a conflict when it comes to homes. He said it may make sense when discussing cell towers on publicly leased land, but it would not make sense when there is a property on real land, a house that is privately held with clear title, and right next door there is the same exact house built on state leased land, and one is considered personal property, which would enjoy an exemption, and the other would not. There is not uniformity in that.

Vice Chairman Rice said he noticed that there are not rules submitted for the cloud computing bill that passed last year. He said he thought the Commission had worked with the sponsor of that bill last year and asked what kinds of problems and solutions have been discussed for that measure. **Mr. Roberts** replied that yes, the Vice Chairman is correct, a bill passed last year relating to cloud computing and the definition of what is tangible personal property when it is subject to sales and use tax in Idaho Code.

Mr. Roberts stated that he needed to be careful to not comment on current cases that are under appeal in the Commission. He said the Commission understood that piece of legislation to deal with some specific industries that raised concern about the type of remotely accessed software. He said after the Legislature adjourned sine die, the rules committee worked on the issue with industry present and there were many comments and concerns. He said as they delved into what is cloud software and what is remote access software, it suddenly became apparent that the definition was broadened way beyond the impact that was suggested with the fiscal note, which gives guidance to the agency on what was meant by the legislation.

Mr. Roberts said "I'm not apologizing for what I'll say," but he thinks the Commission would caution the legislative body that as technology changes in the country and the world, and as methods of financial transactions change over time – noting that people can transact on an iPad across the world in the twinkling of an eye – that the way tax laws were written in 1931 for income tax and in 1896 for property tax and in 1965 for sales tax, and financial transactions look differently today than they did then.

Mr. Roberts said traditional transactions still take place, but as the age of technology advances faster than the government can keep up with it, he cautions that if lawmakers create broad exemptions, it may have and will likely have significantly more impact on financial transactions in the future than what was intended.

Mr. Roberts said, having said all that, he thinks the legislation on cloud computing passed last year needed more clarity and the Commission needed clear direction about what types of transactions were actually going to be exempted, and whether that would be full wide exemption of all types, whether storage data, something bought from an online source, remote software used on another third-party server, or a combination of access codes on a computer that was downloaded to create access to that third-party location. He said they did not have clarity on these questions. **Mr. Roberts** said he believes there will be legislation this year that may provide more clarity, and he urged the Committee to think about the future when evaluating it.

Vice Chairman Rice asked Mr. Roberts if it is the position of the Commission that questions pertaining to the fiscal note on a bill be sufficient to delay doing what the Legislature said to do in the bill itself, or to send it back to the Legislature because the fiscal note may have been guessed wrong. **Mr. Roberts** answered that the fiscal note is one of the indicators they consider, but the primary reason for delay is the lack of clarity on the types of definitions, and he apologized if he let the fiscal note enter that discussion.

Senator Werk asked Mr. Roberts to comment on a recent report from a taxpayer advocacy group that indicated a discrepancy between the opinions of the Commission employees and the public on how the agency is performing. **Mr. Roberts** replied that there is a tendency in any organization to think it is doing the best job it possibly can. He said the report he thinks Senator Werk is referencing was a survey of 275 of the 426 staff members, and he said he thinks there is probably an ingrained impression that they're doing their job the best they can based on their perspective. He said the other group was several hundred certified public accountants (CPAs) who were interviewed about how they were treated and how their questions were answered, and their grade was not as high as the "self-grade." **Mr. Roberts** said, "We are dealing with taxes here," and that is the background that needs to be considered. **Mr. Roberts** said, "I personally don't like to pay more taxes than I have to."

Mr. Roberts said there are times when audit staff has to deal with CPAs and taxpayers and remind that something wasn't done correctly or something was missed and by the nature of that, the staff may not find it offensive, but the CPA will, and consequently may not feel they were treated well. **Mr. Roberts** said the Commission has been actively pursuing improvements over the past several years for employee morale, as well as training with staff on how to handle taxpayers. He said auditors know they will be evaluated by the taxpayer after the completion of their audit. **Mr. Roberts** said that taxpayers get frustrated with the complexity of tax code and don't understand all that taxes do, and that is why the Commission strives for a fair, uniform and simple tax code.

Chairman Siddoway asked Mr. Roberts to explain his understanding of how negotiated rulemaking works, and if negotiated rulemaking is different for different types of rules; as in, would personal property tax negotiated rulemaking be different than sales tax negotiated rulemaking. **Mr. Roberts** answered that negotiated rulemaking is probably not labeled correctly. He said it sounds like everyone comes together, has a difference of opinion, but all leave happy. He said rather, the way the statute reads is to allow for input from different interested parties, associations and groups, about the impact they feel they would experience on a particular rule.

Mr. Roberts said one of the struggles is when a statute that is passed isn't clear enough to write the rule to follow the intent of the law. He said there are times when they decide not to have negotiated rulemaking for simple rules, as is the case with adjusting income tax brackets because that is a simple calculation. He said other issues that are more controversial have the open process, and they are fortunate to have that open process. He said Alan Dornfest has been the Commission's property tax rule negotiator for many years, and he's very good about bringing in the counties, which involves the assessors, different industry groups and letting people speak about their concerns about legislation and rules that are promulgated around it. **Mr. Roberts** said the bottom line is the Commission tries to be as open with the process as possible and tries to follow the intent of the law. **Mr. Roberts** said he personally is not "the" expert in sales and use tax, rather, the staff are the experts on the issues, as that is what they live and drink and breathe every day. **Mr. Roberts** said the Commission relies on them and asks them about what a change in words in statute would mean, and they offer insight into what impact it would have in other areas of the code, and their input is quite significant at times.

Chairman Siddoway asked who ultimately gets to decide on a rule. He asked if it is the Commission or if the staff brings issues to the Commission on what the staff thinks should be a proposed rule. **Mr. Roberts** answered the Commission has subcommittees who make recommendations to the Commission, and it is the Commission that ultimately decides what rules will go forward and those items are voted on at open public meetings in the September/October/November time-frame.

Chairman Siddoway asked Mr. Roberts to explain the Commission's position and understanding of signs, whether temporary or permanent, and why they cannot all be called personal property. He also asked about road right of ways and the difference when the property is state or federally owned. **Mr. Roberts** noted the Chairman was referring to Rule 36 in sales and use tax, which deals with improvements to real property. He said that Idaho Code is clear that improvements to property are subject to taxation, as has been the practice since the sales tax statute was passed in 1965. He said signage is considered improvement to real property. **Mr. Roberts** said he would encourage good discussion on this issue, and if the Committee desires there to be a meeting on the issue, the Commission will attend.

Chairman Siddoway asked if sales and use tax is Mr. Roberts' assigned responsibility in the Commission. **Mr. Roberts** confirmed yes, he is the commissioner in that area. **Chairman Siddoway** related the story of an informal meeting they had with a local business last year. Some of the business's assets had been frozen and the entity realized it was in trouble and didn't have the ability to satisfy its tax obligation.

Chairman Siddoway said the business was told it needed "x-amount" and when they gathered the dollars to satisfy that obligation, they found out the amount had changed because of penalties and the time frame, and it was now "x-amount plus y-amount", and then they got together the "x-plus-y amount" only to be told it was now "x-plus-y-plus-a amount." **Chairman Siddoway** asked if there is a way to go into such negotiations to allow a time frame which fulfills the integrity of the Commission and the interests of the state of Idaho, and also gives the business a drop-dead date of when x would have been due or when x-plus-y would have been due.

Mr. Roberts said he had two answers to give. First, he said, sales and use taxes are charged to a customer and the business collects and holds that sales and use tax. At the time they collect it, it is considered a trust fund for the state of Idaho. This money is to be held and passed on to the State, as it wasn't the business's money to begin with. He said the business has an obligation to pass that on to the State, and those funds are highly protected because it is the State's property. Next, **Mr. Roberts** said, two things happen on cases that are appealed. He said where there is doubt of collectability, as when a business has gone out of business or the responsible parties are not in the State or are deceased, those types can be written off with Commissioner approval under certain thresholds. There are other procedures for higher amounts. He said another provision allows for economic hardship. He said if a family or someone is trying to survive and they have a large liability to the State in sales and use tax, or even income tax, there are provisions that can be made, which would include statutorily required interest, but the Commission can make some exceptions.

Chairman Siddoway asked about the time frame that a person has if the person determines they cannot satisfy the obligation immediately but maybe could in a few weeks. He asked how quickly a situation like this gets before the Commission.

Mr. Roberts answered that there is an appeal window in which it is escalated to tax policy review and the Commission has an informal hearing to make a decision on the case, which is where many of these situations wind up. He said outside of that, there is a 60 day window, and he'd have to get back to the Committee on the particulars of that. He said it can go quickly, but there has been a backlog of cases for years. **Mr. Roberts** said the backlog is something the Commission has been evaluating to expedite, noting he didn't want to give the Committee a false impression, that for example, if it was due last July, they'll deal with it now. He said the statute of limitation allows the Commission to go back three years, and if it's a non-filer case, there is no statute of limitation.

Mr. Roberts said one last note is the Commission has a process it has used for payment plans, wherein if someone had a liability and did not have the funds but planned to get a job in the summer, they could explain the situation to the Commission's collections division and say "this is what I owe and this is my plan," and the Commission would accommodate that. He said the Commission has recently started allowing six months, not quite interest free, but they would hold off on collections for a period of time.

Senator Vick said the Commission has made news for shutting down a raspberry seller and a pumpkin stand. He asked if Mr. Roberts thinks that is appropriate or if there needs to be legislation to prevent that from happening again. **Mr. Roberts** replied there are dynamics of those cases that cannot be discussed because it is private taxpayer information, but it would be important to discuss at what age does a taxpayer reach the age of accountability to start paying taxes, like 12, 16, 18, 26. **Mr. Roberts** said the raspberry seller's permit was issued in the father's name.

Senator Vick asked Mr. Robert for his personal opinion as to if it is appropriate for the Commission to shut down a 12 year old's pumpkin stand. **Mr. Roberts** replied, "I would tend to say there is a spirit of the law versus the letter of the law, and I would certainly hope that any auditor who made contact with a young individual selling something along roadside to take it as an opportunity to educate the young person about what it is they're doing, and that a normal business would have to make payment." He said. "It is a really tough question to answer, but at some point in time, when that young person is trying to make an extra buck at school, and we probably all did that when we were young, and did we do it knowingly? Probably not. I would take it as a teaching moment of how a fair and equitable system is supposed to work."

Senator Bayer said, going back to the negotiated rules process, he'd like to know Mr. Roberts' thoughts regarding submission of minutes or notes from the meetings to the lawmakers for use as part of their rules review. **Mr. Roberts** asked for clarification, saying is it appropriate for the Commission to submit the minutes of the rules process and meetings that happen during the summer so legislators can understand the background. **Senator Bayer** replied yes, it would be nice to have background to consider and for it to include all the insight, whether it be from local and county officials or industry or another affected sector. He said the Committee gets background in bills but not for dockets. **Mr. Roberts** said it is certainly open as public record, and if the Committee would like to see it, the Commission would have no problem providing that information. He said in fact, that might be a good process to follow, especially if there have been known disagreements to find out what the discussion is between sessions.

Vice Chairman Rice stated, going back to raspberry and koolaid stands, it makes him wonder if there are so many auditors that they have some available to track down kids selling items. **Mr. Roberts** answered there are sales and use tax auditors throughout the state of Idaho, including regional offices in Pocatello, Idaho Falls, Twin Falls, Lewiston and Coeur d'Alene. He said as to the question if the State has enough auditors, that is a call this legislative body has to make. He said the Commission processes 780,000 income tax returns each year, and audits roughly 22,000 of them per year. He said most of those cases are settled and a fraction go on appeal. He said in the one case, the stand was in the parking lot across the street from the Commission. He said it is a standard practice for sales and use tax auditors to work street and seasonal vendor events to make sure there are permits.

Vice Chairman Rice said the raspberry stand was across from the Commission, but the pumpkin stand was in the child's yard, and it raises in his mind that there is some guy who has time on his hands driving around looking for kids selling stuff. **Mr. Roberts** replied he was serving in the House of Representatives at the time so he doesn't know the background of that case.

Chairman Siddoway said there has been discussion about how to handle operating property within personal property tax exemptions. He said there are different ways to handle that operating property and he admits his bias is just to exempt it out of the exemption, but it seems the Commission has a different thought on how to handle that, by looking at different percentages of different types of operating property. **Chairman Siddoway** asked Mr. Roberts to comment on this issue.

Mr. Roberts replied that he wanted to be exceedingly clear that this is ultimately a decision that this legislative body makes, not a decision that the Commission makes. **Chairman Siddoway** said, right. **Mr. Roberts** said when it comes to operating properties, centrally assessed properties, and personal property tax exemption, it is clean if they don't qualify, they don't qualify. If indeed a percentage is used, or the taxpayer qualifies for part of it, it's much easier to use a percentage of the entire value of a company whose assets are considered personal property, depending on what the definition reads. If the definition reads a clean three factor test, it will mean one percentage. If it's the three factor test plus the fixtures exception, it means a different percentage. **Mr. Roberts** said the key is to come up with a definition that works.

Mr. Roberts said for centrally assessed property, the Commission would encourage it to be on a percentage basis instead of the Commission having to itemize every item, and he said he thinks industry would be in favor of that as well. He said if they just had a percentage, it would be easier to administer, but it is the Legislature's decision to make. He said there are 105 sharp minds that will come up with a solution that would be best for the people of Idaho.

Chairman Siddoway thanked Mr. Roberts for his time and let him know the Committee will vote on his confirmation next Wednesday, February 5. **Mr. Roberts** replied he doesn't mind the tough questions at all.

S 1236

Chairman Siddoway invited Seth Grigg, Policy Analyst with the Idaho Association of Counties, to the podium to introduce **S 1236** relating to property tax notices. **Mr. Grigg** said this proposal would allow the county treasurers to send out a tax notice electronically at the request of the taxpayer. The form would be prescribed by the county treasurer. **Mr. Grigg** stated Ada County Treasurer Vicky McIntyre is available to answer technical questions if necessary.

MOTION:

Senator Werk moved, seconded by **Senator McKenzie**, to send **S 1236** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1237

Chairman Siddoway invited Mr. Grigg to present **S 1237**, relating to tax deeds. **Mr. Grigg** said this bill is a simple technical correction. He said in Title 31, the Board of County Commissioners has 14 months to sell a property that has been deeded, but Title 63 indicates there are only 12 months in which to redeem the property, so the county has two months to hold onto the property. This change would allow the taxpayer to have the full 14 months to redeem it.

Vice Chairman Rice asked for clarification that the county has to auction it "within" 14 months or "after" 14 months. **Mr. Grigg** replied that it is "within" 14 months. **Vice Chairman Rice** described what he saw as a potential timing conflict in which a taxpayer could redeem the property at the last hour, and if that would create extra work with the need to reverse the sale. **Mr. Grigg** deferred to Payette County Treasurer Donna Peterson. **Ms. Peterson** said the commissioners have up to 14 months to put the property up for auction. She said current legislation indicates it can be redeemed up until the time the commissioners sell it, and she hopes the county would sell it before then. **Vice Chairman Rice** commented that he sees the language of the right of redemption shall expire in 14 months potentially creating a problem in court.

MOTIN:

Senator McKenzie moved, seconded by **Vice Chairman Rice** to send **S 1237** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Chairman Siddoway invited Mr. Grigg to present **S 1238**, relating to the annual statement of the financial condition of a county. **Mr. Grigg** provided a handout to help with the explanation of this bill (see attachment 1). He said the proposal seeks to repeal code which requires the county auditor to annually provide a statement of financial condition to the Board of County Commissioners. He said the handout outlines the code sections. He read from Section 31-2307 to demonstrate which language would be repealed. He pointed out that Section 31-809 indicates the statements are to be published in the paper of local circulation monthly, as well as an annual full financial report. **Mr. Grigg** said this is a duplication of statements in Sections 31-1611, 31-1701, and 31-2307. This proposal requests Section 31-2307 be repealed. He said the audit is needed to present the statement and often, the audit is not able to be completed by the second Monday in January. **Mr. Grigg** also provided some samples of financial reports and indicate Payette County Clerk Betty Dressen was here to represent the Idaho Association of County Recorders and Clerks and answer questions if necessary.

Chairman Siddoway commented that special and/or smaller districts might not get any reports in at all, because they are so small that volunteers sit on those districts and have a hard time completing the book requirements. He asked if there is a concern there, and if there is a way to influence the county commissioners to encourage those volunteers to get reports in. **Mr. Grigg** replied that roughly only a third of local taxing districts comply with this rule, as with cemetery districts, for example, where no one will even run for those positions. He said there is not an enforcement mechanism, so counties do not have anything in place, and neither does the State. He added, there is no penalty for violating reporting requirements, so short of an enforcement mechanism, there is no way to require it, unless teeth are put into it.

Chairman Siddoway asked if there are funds misappropriated by the commissioners of any districts, directors or boards, and if there are ramifications for misappropriations in smaller taxing districts. **Mr. Grigg** replied there are criminal enforcement proceedings and the prosecutors would need to bring those forth.

Senator Bayer asked if there is a dollar or budget threshold for the requirement of the reports. **Mr. Grigg** said off the top of his head, he would say \$25,000, but he is not certain. He said he believes all counties are required to comply because their budgets would be above that. He said there are in excess of 100 taxing districts that would fall below that threshold, like library or cemetery districts, but he didn't see a breakdown of compliance levels. **Mr. Grigg** said he thinks the larger the district, the greater the compliance.

Vice Chairman Rice asked if there is a date set by which the annual audit must be published, and does the report contain the same information that is already put forth on the form. **Mr. Grigg** deferred to Ms. Dressen. **Ms. Dressen** said yes, after an outside auditor has audited the books, a summary must be published within 30 days. **Vice Chairman Rice** asked if there was a date by which that must be done. **Ms. Dressen** said no, there is no specific date. **Vice Chairman Rice** asked if a better way to handle this concern would be to set a date by which the auditors must complete their audit. **Ms. Dressen** replied the clerks are operating under the rules of Section 31-819. **Vice Chairman Rice** said that section does not provide a date of when a full financial report would be done, and if the rule could be addressed by applying a date. **Ms. Dressen** said she believes the date to be 30 days after the annual audit is prepared.

Chairman Siddoway commented how that does not mean a date certain, as in the audit having to be completed by January 15 of every single year. **Ms. Dressen** replied there is not a specific date by which it has to be done, and that is a problem because the auditors are not getting it done. **Chairman Siddoway** asked if this legislation fixes that problem. **Ms. Dressen** answered yes. She said the rest of the clerks in the State are going along with the concept of within 30 days of their outside audit report. **Chairman Siddoway** asked what would happen if the Legislature or rules put a specific date on the audit due date, and if every county would have to have a different date by which their audit needed to be done. **Ms. Dressen** replied this code has been in place for a long time, and some clerks just are not making it by that date.

Senator Lacey commented that as he comes from the non-profit world, non-profits are required to publish a report. He said at the end of the year, they give the auditors the information, and it would take 30 to 90 days for them to complete the audit. He said it is difficult to put a date certain on it because the report is at the auditor's whim, and it could take longer.

Mr. Grigg said one of the challenges being faced in the State is the availability of auditors in smaller districts. He read Section 31-1701 aloud, noting there is a requirement to have a report made within the year, but there is not a date in code for when that audit is to be completed. He said in smaller districts, it is an availability issue.

MOTION: **Senator Johnson** moved, seconded by **Senator Lacey**, to send **S 1238** to the floor with a **do pass** recommendation.

In discussion, **Vice Chairman Rice** said he is uncomfortable making the date be next September for the audit for the year, so it could happen a year later. He said he'd be more comfortable extending the date rather than deleting the provision. He said he would be voting no.

Senator Johnson said he thinks in today's world, counties have access to software and other data communication that they can use to write reports in a timely basis. He said when they go back to when the code was written, that was probably the only communication they had. He said he will vote in favor of the bill.

The motion carried by **voice vote**. **Vice Chairman Rice** and **Senator Vick** asked to be recorded as voting no.

S 1235 **Chairman Siddoway** invited **Senator Lakey** to the podium to present **S 1235**, relating to plats and vacation of plats by cities and counties. **Senator Lakey** said this bill amends two sections of Idaho Code. He said plats are recorded maps or drawings representing division of land. He said plats are approved by the local entity, city lands in the city and county lands in the county. He said if someone is vacating a plat in the city, it should be heard in the city. If vacating land in the county, it should be heard in the county. **Senator Lakey** said, however, that is not the case in these statutes.

Senator Lakey said current sections of code are leftover prior to the impact area concept. He said code states that if a plat is within one mile of the city, the vacation must be heard in the city. He said this causes confusion in both cities and counties as to why the city would be holding a hearing on a county plat. **Senator Lakey** said both cities and counties are in approval of this bill, and he asks for the Committee to send it to the floor with a do pass recommendation.

Senator Werk said he assumed Senator Lakey checked with the associations of cities and counties, and while they're not here, they support the bill. **Senator Lakey** replied that yes, he has worked with them, and they are on board.

MOTION: **Senator Werk** moved, seconded by **Senator Vick**, to send **S 1235** to the floor with a **do pass** recommendation.

In discussion, **Vice Chairman Rice** asked about the fiscal impact to cities and counties. **Senator Lakey** replied that plats are not vacated very often, so the impact is negligible. He said there is a fee to cover the costs.

The motion carried by **voice vote**.

RS 22647 **Chairman Siddoway** welcomed **Senator Heider** to the podium to present **RS 22647**, relating to airport zoning. **Senator Heider** said this proposal replaces RS 22484, because the Department of Aeronautics had a change. He said they thought it would be more appropriate to approach the airport manager if a variance is requested, and that change is noted in the proposal. **Senator McKenzie** said he liked the previous version and likes this version even better.

MOTION: **Senator McKenzie** moved, seconded by **Senator Werk**, to send **RS 22647** to print. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:33 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, January 30, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1239</u>	Relating to Duties of Public Administrators	Seth Grigg , Idaho Association of Counties
<u>H 369</u>	Relating to Income Taxation Criteria for Determining Residency of an Estate or Trust	Michael Chakarun , Idaho State Tax Commission
<u>H 370</u>	Relating to Cigarette Taxes	Michael Chakarun , Idaho State Tax Commission
<u>H 374</u>	Relating to Income Taxation and Net Operating Loss Carryback	Michael Chakarun , Idaho State Tax Commission
<u>H 375</u>	Relating to Income Taxation and Internal Revenue Code Clarifications	Michael Chakarun , Idaho State Tax Commission

COMMITTEE MEMBERS

Chairman Siddoway
Vice Chairman Rice
Sen Hill
Sen McKenzie
Sen Johnson

Sen Vick
Sen Bayer
Sen Werk
Sen Lacey

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
Phone: 332-1315
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Thursday, January 30, 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** convened the meeting of the Local Government and Taxation Committee (Committee) at 3:01 p.m.
- Chairman Siddoway** informed the Committee that the pending rules that were not acted upon earlier in the session are still pending. A date for consideration has not yet been set, but he would tell the Committee when it is set.
- S 1239** **Chairman Siddoway** welcomed Seth Grigg of the Idaho Association of Counties to the podium to present **S 1239**, relating to the duties of public administrators. **Mr. Grigg** said the bill proposes two changes in the handling of a situation whereby the treasurer comes into possession of property from a deceased individual with no heirs to claim the property. In those cases, the treasurer is required to create an inventory of items and auction them off. The first change allows the treasurer to deduct any debts of a decedent, as well as the projected costs of the proceedings. He said the second change is to increase the minimum estate amount required for publishing and notifying creditors from \$1,000 to \$5,000.
- Mr. Grigg** noted that when the bill was originally printed, there were some inconsistencies with the Statement of Purpose (SOP). The Committee has been given a copy of the corrected wording and can include the amended version with the bill when it is processed. That is the recommendation consistent with procedure approved by Secretary of the Senate, Jennifer Novak. **Chairman Siddoway** asked **Mr. Grigg** to give the Committee a moment to review the corrected SOP.
- Senator Hill** asked about the meaning of "inventory" and if it was referring to gross inventory or net inventory. **Mr. Grigg** said his understanding is it refers to gross inventory. **Senator Hill** thanked him for the clarification.
- MOTION:** **Senator Lacey** moved, seconded by **Senator Hill**, to send **S 1239** with the corrected SOP to the floor with a **do pass** recommendation. The motion carried by **voice vote**.
- H 369** **Chairman Siddoway** invited Michael Chakarun, Tax Policy Analyst with the Idaho State Tax Commission (Commission) to present **H 369**, relating to income taxation criteria for determining residency of an estate or trust. **Mr. Chakarun** said in Idaho code, there is no definition of what a resident trust or estate is. He said the definitions are in rules, and the Commission would like them to be codified by moving the rule into a statute, because they belong in statute instead of rules. He said there is no change to the existing rule.

Vice Chairman Rice asked if this is the same test that is used by the Internal Revenue Service in the Internal Revenue Code. **Mr. Chakarun** answered he is not entirely sure.

Senator Bayer asked Mr. Chakarun to share the history of the rule, as he would like to know more about when the rule was put in place and under the premise of correlation to what code, because he thinks it sounds like the Commission is trying to rectify that there was not a code authorization on which to hang the rule. **Mr. Chakarun** said looking back through the rules, the last time it was noted was in 1997, but he believes it was there earlier than that. **Mr. Chakarun** said the underlying issue is that the definitions addressed in H 369 belong in statute, not just in a rule.

Senator Bayer asked if there are any issues of controversy for having this in the rule. **Mr. Chakarun** replied no, he is not aware of any controversies.

Senator Hill asked Mr. Chakarun to explain why this rule is important to residency, as there is not an estate tax or inheritance tax in Idaho. He asked if what is being dealt with here is the income tax of these estates. **Mr. Chakarun** replied yes, it is. He said residency is important because if it is an Idaho trust and not distributed out, all the income will be taxable to Idaho. If it is a nonresident trust, then only the Idaho source income would be taxed by Idaho.

Vice Chairman Rice asked about the section where it reads, "The estate is treated as a resident estate if the decedent was domiciled in Idaho on the date of death. Then it says if the estate is the estate of a decedent, it is treated as a resident estate if the person for whom the estate was created is a resident of Idaho." **Vice Chairman Rice** asked if there was a reason for it to be stated two different ways. **Mr. Chakarun** answered it is to distinguish between other types of estates, like bankruptcy estates, versus someone's demise. **Mr. Chakarun** said it does sound a little confusing.

Vice Chairman Rice commented that Mr. Chakarun's comment makes it more confusing to him, because both sentences deal with decedents, so he's really not sure now why both sentences are included. **Mr. Chakarun** said that may be something that can be changed in a technical correction next session.

Senator Vick asked why there is a retroactive date back to January 2013. **Mr. Chakarun** said it is probably because it is a mistake. He said he doesn't feel it will have any effect on the bill, because the bill does not affect any current process.

Senator Hill asked if there are any ongoing audits that will be settled in favor of either party because of this bill. **Mr. Chakarun** replied that no, he is not aware of any and this is existing rule, so it would be settled the same way anyway.

Senator McKenzie commented that there is no fiscal impact because what is in the bill is current practice. **Senator Bayer** asked if the language in the bill is identical to existing rule. **Mr. Chakarun** answered, yes, it is.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Lacey**, to send **H 369** to the Amending Order.

DISCUSSION: In discussion, **Senator McKenzie** asked Vice Chairman Rice to speak to the specific language or position he has for taking this bill to the Amending Order.

Vice Chairman Rice said the paragraph should be clear from the beginning rather than write a whole new bill to remove redundant language, as well as fix the date in Section 2, as he doesn't see a reason to go back two years on an emergency clause.

Senator McKenzie asked Mr. Chakarun to clarify if Section 1 is trying to identify two different situations where an estate is treated as a resident estate, or are Section 1 and Section 2 addressing the same issue. **Mr. Chakarun** said there are cases where an estate is domiciled in Idaho but the decedent could have died outside of Idaho. He said he is not certain of the effectiveness of this because he is not an estate attorney. As for domicile, one could have a domicile in Idaho, but be a resident of Nevada or elsewhere. Domicile and residency are related but are not quite the same. Someone could be a domicile of Idaho but a resident of another state, or someone could be a domiciled in another state, but be considered a resident of Idaho and pay taxes in Idaho.

Senator McKenzie asked if those two sentences are relating two different situations where an estate would be treated as a resident estate. **Chairman Siddoway** said that is the way he initially read the wording, but he said he doesn't know if he has the in depth experience to distinguish between the first and second sentences and the different situations that may arise from that. **Senator McKenzie** commented that the language is clear to him if it is intended to address two different situations where there could be an estate treated as a resident estate. If it's trying to address the same thing, then it is confusing, and it should be sent to the Amending Order.

Mr. Chakarun said the Commission would be happy to work with the Committee on clarifying the language, because they can bring in the people who know the details of this information better. **Chairman Siddoway** commented that if this goes to the Amending Order, it could be a while before it's addressed.

Senator Hill commented that he will support the motion, and then, if the bill is in the Amending Order, and the body decides no amendments are needed, it will be easy enough to get it back to the 13th Order.

MOTION:

Chairman Siddoway repeated that the motion before the Committee is to send **H 369** to the 14th Order for amendment. The motion carried by **voice vote**.

H 370

Chairman Siddoway invited Mr. Chakarun to continue with **H 370**, relating to cigarette and tobacco tax statutes. **Mr. Chakarun** said the bill amends Section 63-2511 to remove references to vending machine operators. Cigarettes may no longer be sold using vending machines, so the Commission wants to strike that language from the statute. The second change relates to the collection enforcement provisions of Sections 63-2516 and 63-2563, to clarify language. He said when product tax statutes were written, they were modeled according to collection statutes used in the Income Tax Act. He said in the Income Tax Act, the reference is always to annual periods, because that's when tax returns are filed. He said the product taxes are collected on a monthly basis. **Mr. Chakarun** said this change would reflect simply a "filing period" for the tobacco and cigarette tax. There is no change to the code other than making the language sound better.

Vice Chairman Rice asked if there will be times, with this amendment, when taxable year would actually mean taxable month. **Mr. Chakarun** said, for the cigarette and tobacco tax, yes, rather than having to duplicate that lengthier language in the cigarette and tobacco statute. **Vice Chairman Rice** asked if it was considered doing this another way, instead of having the term "taxable year" mean "taxable month." He asked if there was another way to do it so year doesn't mean month in one place and year in another. **Mr. Chakarun** replied that the excise tax specialist probably thought this was the most efficient way of doing it without extra wording in the statutes.

Senator Hill said he'd like to further understand why the wording is created this way. He said even though it is a little bit confusing, what he understands is there are many references in the code that deal with many different types of taxes, including the cigarette tax, that talk about the taxable year. For purposes of the cigarette tax, it is not a full year, so it is being defined here as a different period, but if it were to be made more clear, the code would have go back through each one of those other items and write, "except for cigarette tax, which would be a shorter period," every time the term "taxable year" was used. **Mr. Chakarun** said yes, otherwise all of that language would need to be incorporated into the tobacco and cigarette tax statutes. This is a way to say the underlying income tax statutes will be used, but where an annual period is stated, it's meant as a taxable period in relation to cigarettes.

Senator Hill asked Mr. Chakarun to explain further. **Mr. Chakarun** said when the statues were originally drafted, the writers thought why doesn't this just refer back to the enforcement and collection statutes under the income tax code. However, if that is done literally, it doesn't make a lot of sense, so this is a shorter way to clarify that annual means annual under income tax, but when it's written under product tax, including tobacco and cigarettes, it means taxable period.

Senator Hill said if this language isn't accepted, the statutes for cigarette and tobacco would have to include a whole bunch of other laws that are identical for every other entity and tax, but they'd have to be restated in the cigarette and tobacco sections, when the only difference between the two is the taxable period.

Mr. Chakarun said, yes, that is correct.

Vice Chairman Rice asked if someone has made sure this bill doesn't multiply the penalties so that the penalty is per month. **Mr. Chakarun** said the penalty would be on that particular return, so there is no compounding. If there was a situation of an underpayment or non-filing, the penalty would be whatever the penalty is within the tobacco and cigarette tax statute.

Senator Hill said he doesn't like the way it sounds either, because it sounds like a chicken is a dog if we define it that way, but he can't think of a better way to accomplish the effect without a lot of other verbiage, which he feels would be even more confusing.

MOTION: **Senator Hill** moved, seconded by **Senator Vick**, to send **H 370** to the floor with a **do pass** recommendation.

DISCUSSION: In discussion, **Vice Chairman Rice** said he thinks it is confusing and he doesn't like confusion so he will not support sending this to the floor. He said he thinks it could be done easier by something that says for penalties, instead of using annual periods of income tax, the periods for which returns are filed on cigarette taxes will be used. He thinks doing an exception for that piece would be fairly easy.

Chairman Siddoway asked if it would solve the problem to send this bill went to the Amending Order and change the reference to a taxable period instead of taxable year. **Mr. Chakarun** answered possibly, but he'd have to check and make sure there were not other impacts. **Senator Hill** said he sees what is trying to be done, and maybe there is another way to do it, so perhaps it ought to be held in Committee.

MOTION: **Senator Hill** moved, seconded by **Senator Vick**, to **hold H 370** in Committee subject to the call of the Chair. The motion carried by **voice vote**.

H 374

Chairman Siddoway invited Mr. Chakarun to present **H 374**, relating to income taxation and net operating loss carryback. **Mr. Chakarun** said this is a technical corrections package with four changes. The first change clarifies that the net operating loss (NOL) deduction is limited to \$50,000 in the case of an individual filing as married filing separate in the year of the loss. This keeps the amount consistent with those who file married filing jointly. The second change is cosmetic, in which there is a reference to the Internal Revenue Code (IRC), but the lead in phrase says passive losses, so it is changed to capital losses, not passive losses.

Mr. Chakarun said the third change adds a reference to IRC Section 6033(j) so that if a non-profit organization loses its tax exempt status because it failed to file the required information returns for three years, it will lose its Idaho exempt status, as well. **Mr. Chakarun** said the question arose during the hearing in the House Revenue and Taxation Committee about the reinstatement of a nonprofit's status, and the Internal Revenue Service does have a mechanism in place through an application process, and can be reinstated back to the date of revocation in certain cases. **Mr. Chakarun** said the fourth change simply repairs a cross-reference error.

Senator Hill stated as clarification on the first change about the NOL, that this is nothing new, because for many years, Idaho has limited NOL carryback to \$100,000 per year. That means a single taxpayer can carryback \$100,000, and married filing jointly can carryback \$100,000, but for all purposes, for federal and state purposes, when there is a return of married filing separately, that NOL must be split in half, as with any other standard deduction. This is especially true in a community property state like Idaho. **Senator Hill** said all this change does is make clear that a married couple cannot file married filing separately and double the NOL.

Vice Chairman Rice asked to understand further, that if a couple files separately, they each claim half of each others income or take only theirs, so a situation could arise where the married couple filing separately is limited to \$100,000. **Mr. Chakarun** said the couple would split their income because Idaho is a community property state, but the point is to prevent a couple from each taking \$100,000 NOL. **Vice Chairman Rice** asked if this bill applies only to carrying it back, but going forward they'd be able to use whatever they have. **Mr. Chakarun** answered, yes.

MOTION:

Vice Chairman Rice moved, seconded by **Senator Werk**, to send **H 374** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 375

Chairman Siddoway invited Mr. Chakarun to present **H 375**, relating to income taxation and internal revenue code clarifications. **Mr. Chakarun** said this is the annual conformity bill, in which Idaho conforms state tax statutes with the Internal Revenue Code statutes effective January 1, 2014. Performing this process relieves the Legislature from having to duplicate the entire law. This bill has no fiscal effect because Congress did not change the tax code this year. One small change is the Commission was asked to include a statement to make clear that Idaho is not conforming to same sex marriage couples. There is also a severability clause because there will be lawsuits filed, and if those prevail, that clause could be removed and the bulk of the bill will stand.

Senator Werk asked who asked the Commission to place subsection c in the bill. **Mr. Chakarun** replied it was entered with guidance from the Governor's office. **Senator Werk** then stated Mr. Chakarun said he's anticipating lawsuits associated with the rule or bill or both, and asked if the fiscal note should reflect what those potential costs could be. **Mr. Chakarun** said the idea that lawsuits will be filed was meant to state only his personal opinion of what he is expecting could happen, and he has no way of estimating cost in defense of that. **Senator Werk** said he imagined if a lawsuit was filed, it would be the Attorney General defending the lawsuit, not the Commission. **Mr. Chakarun** replied he's not a lawyer so he presumed so, but it would depend on where that lawsuit fell.

Senator Werk said one thing he is confused about is placing in statute restrictions on married filing jointly. He said his impression is when a return comes in to the Commission, and the Idaho return doesn't match the federal return, it raises a flag for the people working on it. If the federal return is a joint return and the state return is filed separately, the auditor would need to know why there is a discrepancy. **Mr. Chakarun** answered the Commission would not see the federal joint return, but rather a proforma, and as long as their return matches the state proforma, it would not be noticed. **Senator Werk** said he doesn't understand that because he doesn't understand proforma. **Mr. Chakarun** said the tax software will take a federal return and have some questions of what income goes where for two single returns, so data taken off the individual returns will not be linked together in any way. He said they won't know if it is a same sex couple or not.

Senator Hill commented about his frustration with the way the federal government processed the tax code, and noted the Commission did the fiscal impact the right way, but there is a good chance Congress will make changes next year that will change the fiscal impact then, and the Joint Finance Appropriations Committee has to interpret it, so it can be misleading on what the fiscal impact really will be.

MOTION: **Senator Hill** moved, seconded by **Vice Chairman Rice**, to send **H 375** to the floor with a **do pass** recommendation. The motion carried by **voice vote**. **Senator Werk** asked to be recorded as voting no.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:52 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, February 05, 2014

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Vote on the appointment of Ken Roberts to the Idaho State Tax Commission	
H 381	Relating to Income Tax and the option to donate to the Veterans Support Fund	Tamara Mackenthun , Veteran Services
H 384	Relating to Income Tax and income earned on an Indian Reservation	Bill Roden , Hopkins Roden Crockett Hansen & Hoopes
RS22745	Relating to Counties and the county's ability to lease a hospital or hospital facility	Senator Sheryl Nuxoll
RS22701	Relating to Income Taxation and to provide for relief from joint and several liability on a joint return if certain conditions occur	Senator Les Bock

COMMITTEE MEMBERS

Chairman Siddoway
Vice Chairman Rice
Sen Hill
Sen McKenzie
Sen Johnson

Sen Vick
Sen Bayer
Sen Werk
Sen Lacey

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, February 05, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, Johnson, Vick, Bayer, Werk and Lacey

ABSENT/ EXCUSED: Senator McKenzie

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) to order at 3:03 p.m.

GUBERNATORIAL APPOINTMENT: **Chairman Siddoway** invited the Committee to consider the vote for the gubernatorial appointment of Ken Roberts to the Idaho State Tax Commission. **Senator Werk** said he thought the hearing was very substantive and appreciated the Committee for having it.

MOTION: **Senator Werk** moved, seconded by **Senator Hill** to send the gubernatorial appointment of Ken Roberts to the Idaho State Tax Commission to the floor with the recommendation that it be approved by the Senate. The motion carried by **voice vote**.

H 381 **Chairman Siddoway** invited Tamara Mackenthun, Deputy Administrator at Idaho Division of Veterans Services, to the podium to present **H 381**, relating to income tax and the option to donate to the Veterans Support Fund. **Ms. Mackenthun** said this legislation gives nonresidents of Idaho the option to donate to the fund, just as residents already have the option. She said the fund is used to provide a variety of information, training programs, equipment, ceremonies, recreational activities and social rehabilitation programs that support veterans. The fund brings in about \$40,000 each year, and most of the grants average \$1,000 to \$2,000.

Senator Hill asked why the options would be listed differently on the 40 and 43 tax forms, and expressed concern that the problem may be on the forms for other funds as well. **Ms. Mackenthun** answered that she did not see any other optional funds that were not already listed on both forms.

MOTION: **Senator Lacey** moved, seconded by **Senator Bayer**, to send **H 381** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 384 **Chairman Siddoway** invited Bill Roden, who represents the Coeur d'Alene Tribe, to present **H 384**, relating to income tax and income earned on an Indian reservation. **Mr. Roden** expressed appreciation to the Idaho State Tax Commission (Commission) for their efforts on this bill. He gave some history of the bill, saying that in 1974, the Commission adopted a rule that provided that a member of an Indian tribe who was employed on a reservation would be exempt from income tax on income earned from that employment.

Mr. Roden shared that the rule came about after a 1972 Board of Tax Appeals case in which a member of a tribe in Oklahoma had been employed by the tribe on the reservation. He paid taxes through withholding, and when that employment ended after four years, he applied for a refund, which the state did not grant. The Board of Tax Appeals decided it did not make a difference if he wasn't a member of "that" tribe as long as he was employed and resided on that reservation. The Oklahoma District Court ruled that the tax commission was incorrect and affirmed the Board's ruling and a refund was ordered and paid.

Mr. Roden said since that time, the law has followed that ruling. He said however, in 2011, the Commission engaged in some changes to income tax rules and the process that had been used for decades was changed without any negotiated rulemaking around the issue. He said the new rule was that a person had to be a member of the tribe on whose reservation he was employed and earning income, and it passed in the Legislature without any background information on the issue.

Mr. Roden shared that following the rule change, after erroneous instructions were sent out to employers about withholding, the issue was brought to the attention of the Commission, which has cooperated to get the rule back to the original meaning. **Mr. Roden** said this bill **H 384** implements HCR 32, which rescinded the 2011 rule. He said it affects only a couple hundred wage earners in Idaho and there is no fiscal impact because the tax has not been being paid and the Commission has withheld enforcement of the rule pending this vote.

Senator Vick asked if the date on the bill is intended to be January 1, 2013. **Mr. Roden** said yes, that is the intent, because there was agreement that the rule did not apply to 2012 and the Commission did not enforce it. The same principle applies for 2013 income, which would be due now in 2014, and since it would not be affected, the bill did not need to be retroactive.

Senator Hill commented that the bill seems to read that one must still be a member of "a" tribe, which he understand to mean one can't move onto a reservation and receive this exemption, and he asked if that is correct. **Mr. Roden** said tribal members pay tax on all income earned "off" the reservation, so they may still have taxable income. He said the person has to be a member of a federally recognized tribe, reside on the reservation and earn the income on the reservation.

Senator Hill asked for more explanation on how this rule will be interpreted if a member of a tribe lives and works on a reservation and then moves off the reservation but keeps the job. He asked if the income would be prorated. **Mr. Roden** said his understanding is the portion of the income earned during the residency would be exempt, but if someone moves off the reservation and earns income off the reservation, it would not qualify for the exclusion.

MOTION:

Vice Chairman Rice moved, seconded by **Senator Werk**, to send **H 384** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

RS 22745

Chairman Siddoway invited Senator Sheryl Nuxoll to the podium to present **RS 22745**, relating the counties' ability to lease a hospital or hospital facility. **Senator Nuxoll** stated the bill would increase the cap on a county's ability to lease a hospital or hospital facility without public auction from 20 years to 35 years. She deferred to Clayne Tyler, prosecuting attorney for Clearwater County, for further description.

Mr. Tyler said he'd like to address two provisions in Idaho Code § Section 31-836, one which requires that any hospital leases into which a county enters cannot exceed 20 years or it goes to public auction, and second is the statutory cap on all leases at 30 years. He said the request is to make both provisions 35 years. He said the reason why is that Clearwater County owns a hospital facility that is the only hospital on the Highway 12 corridor between Lewiston and Lola, Montana. He described it as a critical hospital in the area.

Mr. Tyler shared some history on the hospital, noting that when the county exceeded its financial ability and expertise to run the hospital, the Sisters of Benedictine Services agreed to take it over at a critical point. He said the county entered into a long term lease for the hospital and equipment, and it is now run by Essentia Health System. **Mr. Tyler** clarified that the county owns the hospital but does not run it. He said the county has a very good relationship with the operators.

Mr. Tyler said the lease is coming to its conclusion, so the county is in possession of an old facility that is in dire need of infrastructure improvements and it has a group that wants to use private funding to make those improvements, which are estimated to cost several millions of dollars. He said the county does not have taxpayer funds to invest, but the hospital operators do and are willing to make the investment. He said the analysis shows the county and the operators need a long enough term lease to recoup the value of those improvements. **Mr. Tyler** said the operators are willing to run the hospital without county taxpayer dollars as long as they can lease it long enough to realize their investment. He said this is a shift from taxpayers to private enterprise so the county can continue ownership of the facility that taxpayers purchased.

Mr. Tyler commented that Section 31-3115 requires that for a county to lease or sell any public property, it must have voter approval for that sale. He said he thinks that is appropriate, and is not asking for amendment to that. He said the public should have a say in what happens to public property. He said with respect to this issue, it went on the ballot and support went above 92%.

Senator Johnson asked if Clearwater County is a hospital district or if this hospital receives property tax dollars. **Mr. Tyler** replied, no there is no district. The county formerly owned and operated the hospital, and it does not receive property tax dollars. He said it operates entirely independent of taxpayer money, and the lease is the pay for the operation.

Senator Werk asked how many facilities are affected. **Mr. Tyler** said he didn't have exact figures, but he said any small or rural county that continues to own and operate a hospital may eventually have to make this type of decision. He said health care is getting so expensive and those smaller counties will find themselves in similar situations.

Vice Chairman Rice asked if 35 years will be adequate for the general rule, or is this time frame geared specifically for this one circumstance in Clearwater County. **Mr. Tyler** answered 35 years was chosen based on the actuarial analysis that Essentia Health System went through for Clearwater Hospital specifically. He said the original draft requested in excess of 35 years to allow for flexibility, because the more flexibility the better. He said the length was reduced because they thought too big of a bite may have been a bad thing. **Mr. Tyler** said 35 years was chosen as the smallest increase that would be necessary to accomplish the goals of the hospital in Clearwater County.

Vice Chairman Rice said his concern is that the bill is only going the minimum for this one hospital, and perhaps it should go out far enough to be a better general rule, and they may want to consider that in the hearing for the bill. **Mr. Tyler** said there are other provisions the State uses which allow for leasing for up to 99 years without requiring public auction. He said his concern is this is such a critical facility for North Central Idaho and he doesn't want to risk having an auction. He said, "It's too critical to the area."

MOTION:

Senator Johnson moved, seconded by **Vice Chairman Rice**, to send **RS 22745** to print. The motion carried by **voice vote**.

RS 22701

Chairman Siddoway invited Senator Les Bock to the podium to present **RS 22701** relating to income taxation and to provide for relief from joint and several liability on a joint return if certain conditions occur. **Senator Bock** said this proposal relates to what is called an "innocent spouse." He said he has been working on it since last spring and it includes suggestions from the Commission.

Senator Bock said he would describe for the Committee what an innocent spouse is and how this is important to individual taxpayers. He said it doesn't affect anyone else. He said it arises in situations where a husband and wife have filed a joint tax return which has an understatement of income, and now the couple is separated or divorced. He said the spouse who did not know about or receive any benefit from the understatement of income on that joint return is the innocent spouse.

Senator Bock shared an example from early on in his law career. He said in that case, a husband and wife filed a joint return and then divorced, but unfortunately the husband, unbeknownst to his wife, had cashed in an IRA of \$25,000. **Senator Bock** said without some relief, the wife would be liable, even though she was in the dark and innocent of having the understatement, and he said it would be unfair to charge her the tax on that income. He said he took the case to the Commission and it turned down the request for relief, so he filed a petition in court and the wife was relieved of the tax.

Senator Bock said Idaho does not have any rules that relate to the innocent spouse. He said this proposal simply conforms Idaho law to the Internal Revenue Code provisions. He said the Commission said if the taxpayer receives relief at the federal level, it will grant it at the state level.

Senator Hill thanked Senator Bock for bringing this issue to the Committee's attention. He said in all his years of doing taxes, he didn't know the State didn't have this provision. He said he would like to sit down with the Commission to find out what it didn't like about the provision. He said he thinks it is much needed as a fairness issue, and he hopes the Legislature in the future does not have to conform with individual sections of the Internal Revenue Code to be compliant.

Senator Bock called the Committee's attention to a handout with a copy of the Commission's decision (see attachment 1).

MOTION: **Senator Hill** moved, seconded by **Senator Werk**, to send **RS 22701** to print. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:40 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, February 06, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1265</u>	Relating to Airport Zoning and protection of public airports as essential community facilities	Senator Lee Heider
<u>S 1241</u>	Relating to Trespass to revise trespass posting provisions	Senator Jim Guthrie

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

Room: WW50

Phone: 332-1315

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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, February 06, 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 3:02 p.m.

S 1265 **Chairman Siddoway** invited Senator Lee Heider to the podium to present **S 1265** relating to airport zoning and protection of public airports as essential community facilities. **Senator Heider** said the bill deals with two sections of code. He said Idaho Code § 21-503 will give zoning authority to political subdivisions to create zoning for airports around cities and counties, which would empower entities such as county commissioners, county planning and zoning commissions, city planning and zoning commissions or a city council to make decisions surrounding airports. He said the purpose of this act is to create a better environment and safe aviation.

Senator Heider said the bill adds an item (m) to Idaho Code § 67-502, the purpose of which shall be to promote the health, safety and general welfare of the people of the state of Idaho as described in the bill. The new item (m) reads: "To protect public airports as essential community facilities that provide safe transportation alternatives and contribute to the economy of the state."

Senator Heider said the next part of the bill is about planning duties. He said the idea is for airports to be treated like other entities within a city or county when considering planning and zoning issues, with consultation of the manager or person in charge of the local public airport. He said the bill is not asking for anything special, but to have airports given the same consideration in planning as would a school district, for instance. **Senator Heider** gave an example of what happens when a community wants to build a school in an undeveloped area. He said if planning and zoning looks at it and realizes there will be a superhighway going right past that school, or it needs a setback of 50 feet, or other administrative buildings are going to be put in the area, those considerations are taken into account. **Senator Heider** said the bill would allow the same considerations for an airport. He said for example, if a new cell tower or warehouse is needed in Twin Falls, a bad place to put that would be off the approach end or departure end of a runway, as that would be an aviation hazard. He said it would be a bad idea to build a duck pond near an airport.

Senator Heider said airports are indeed a valuable part of the community. He shared an example of encroachment around the airport in Rexburg, which has become landlocked because of lack of planning in conjunction with BYU Idaho, which has a future need for more student housing. He said he is not saying that an airport is the highest and best use for that location, because perhaps it is student housing, but if that's the case, the airport needs to be located in another area. He said planning and zoning needs to be involved in a public hearing setting to select a future site.

Senator Heider gave more examples, mentioning the airport in Burley is now in the middle of town, and the taxiway of the airport in Hailey is too close to the main road through town, and now Hailey is looking to relocate the airport further south. He mentioned issues at airports in Coeur d'Alene and Sandpoint, that the list goes on and on because planning has not been a part of determining airport locations, which has led to encroachments of airports and unharmonious uses around airports. **Senator Heider** said this bill tries to resolve the issue so that airports will be considered prior to granting any special permit or variances that might have a fiscal, economic or airspace impact on aviation.

Senator Heider said issues of planning and zoning around airports were put under the authority of the Idaho Transportation Department (ITD) back in 1947, and this issue hasn't been addressed since then, which is why he said it is so important to move it into title 67 which deals with zoning. He stated there are other aviation authorities present who are available to answer questions and testify if needed. **Senator Heider** noted that there is some wording in a section of the bill that will need to be fixed, so he recommends it be sent to the Amending Order.

Senator Werk asked for clarification on what sections need to be changed.

Senator Heider said there are issues in Sections 21-503 through 21-506, that don't really apply anymore because if planning and zoning is allowed to take responsibility for the planning around airports, then the director of ITD goes out of the picture. He said the sections that deal with ITD making decisions will no longer be in effect, because they will be made under city and county planning and zoning functions.

Senator Werk said he wasn't sure how comfortable he'd feel sending this to the Amending Order because there are too many changes that need to be made. He said perhaps having a piece of trailer legislation that could take care of these issues may be another option for the Committee to consider, and if the deadline for printing legislation is missed, it could be introduced through a privileged committee.

TESTIMONY:

Chairman Siddoway invited Bill Miller to the podium to testify. **Mr. Miller** said he lives in Boise, and as a pilot, he used to fly in the air national guard, as well as commercially throughout the State, and he still flies search and rescue. He said he was at one time the Director of Aeronautics when the state agency operated 30 smaller airports. He said he was also on the commission at the Hailey airport for four and a half years. **Mr. Miller** said from his background, poorly planned airports create a problem for airport managers, the community and users of the airports. He said, as Senator Heider pointed out, airports can be surrounded by other uses that cause problems for the airport, and at the same time, the airports can cause problems for the community and its citizens. He said the purpose of this bill is to use appropriate planning and zoning efforts to ensure surrounding land actions do not limit airport operations and growth or set up the community to be impacted by the airport. He said that's why this is an essential piece of legislation.

Mr. Miller shared a powerpoint presentation with photos of circumstances surrounding several airports (see attachment 1). He pointed out how the airport in Hailey is in a canyon which makes it very noisy for the community when there is a cloud ceiling, not to mention the hazard of the highway running parallel to the runway. He showed a photo of the airport in Santa Monica, California, where the residential community is built right up next to the airport, and there have been lawsuits there for years. He said, "We don't want our airports to get like this."

Vice Chairman Rice asked if ITD has issued any regulations regarding zoning around airports in Idaho. **Mr. Miller** answered he is pretty sure it has not, even though it has had the authority since 1947. The only zoning the Division of Aeronautics, as a small state agency, has ever really done is some of their own small airports that they operate around the State. They have not gone into any community to do zoning for them. In relation to Senator Werk's comments earlier, those provisions of Title 21, Section 5, will be irrelevant if this bill passes.

Vice Chairman Rice asked to clarify that the purpose of this legislation is so cities or counties themselves can do zoning for their airports. **Mr. Miller** answered yes, that is correct, they will do their own comprehensive plan. He said all communities are required to do comprehensive plans, so this provision will add to the items that the plan has to address. He said sometimes an airport will overlap jurisdictions with cities and counties, and they will need to work together on their comprehensive plans.

Vice Chairman Rice commented that instead of making multiple changes to multiple sections, there could be a statement added for § 21-505(b), that requires when cities and counties do comprehensive plans, that zoning around airports be considered and the airport authorities be contacted for that.

Mr. Miller continued with his presentation and mentioned the Division of Aeronautics is working on a draft of a guidebook for airport planning. He said they will have fresh copies distributed to local entities who do comprehensive planning, as a guide on how to plan around an airport, taking into consideration noise, traffic patterns and other technical information.

Senator McKenzie shared his concern about the transfer of power from ITD to cities and counties and how it is a broad power that is specified in code on how they can restrict uses on the land. He said his question is what if someone purchased land around an airport, and then the city regulates the usage of it; it would be akin to a regulatory taking, and if the city does that, the landowner would potentially need to be compensated by the city for the limited use of the land, as is the case for takings for right of ways. He said it seems that ITD hasn't run into that, but cities would if they try to limit height requirements around an airport. **Mr. Miller** answered he wasn't quite sure what the question was, but he understands that takings do exist with other planning and zoning restrictions on what surrounding properties can do, and it seems to him the process would be similar to what occurs with other resources and sites.

Mr. Miller deferred to Kerry Requa of Twin Falls for the remainder of the presentation. **Chairman Siddoway** welcomed Mr. Requa to the podium.

Mr. Requa introduced himself as the current President of the Idaho Aviation Association, which has about 800 members. He said they are primarily involved with issues around small airports and back country airports. He said this bill is a common sense approach to dealing with problems that he has seen, as well as addressing the importance of recognizing the value of airports to the economy.

Mr. Requa provided a letter to the Committee (see attachment 2) and continued with a PowerPoint presentation (see attachment 3), pointing out hazards in the cone-shaped protection zone at the end of a runway in Blackfoot. He said there is also a neighborhood on the edge of a golf course that is at the north end of the runway, and the people there complain about agricultural airplane noise in the summer months. There are also trees in the backyards that could cause safety problems along the edge of the runway, even though a golf course is considered a compatible use at the end of a runway. He said everyone should pay attention to the safety zone around runways.

Mr. Requa said airports need to have protection to grow as a community grows, because they're a vital part of the economy. He shared some of the additional purposes of airports that contribute to the state economy including: air charter, search and rescue, air freight, air national guard, life flight, agricultural operations and all the jobs and business that goes along with them.

Mr Requa said some of the bigger problems at some of the bigger airports will necessitate moving the entire airport, because the community cannot be moved. He said this legislation helps solve these kinds of problems in the future by giving the local communities the guidance and ability to plan, because the local communities have a better view of what is happening at a local level that would benefit all.

Senator Vick asked if cities and counties don't have the authority to plan and zone around airports now, or does this bill mandate what they will have to do. **Mr. Requa** replied, yes, they do, but they haven't had the desire or ability to do so, and that is why airport considerations need to be a requirement in planning and zoning.

Senator Vick said this bill won't fix the problems that already exist, like the ones at the Blackfoot airport, and asked Mr. Requa if the idea is to avoid more problems in the future. **Mr. Requa** said that is correct. He said he isn't looking to resolve the current issues, because that is beyond the ability of this legislation, but it will help in the future. He said he'd like to point out that long ago, Boise was a small town, too, and the airport was much smaller. As communities grow, airports need to be provided the ability to grow with them. He said he thinks this legislation will cause planning and zoning to focus on airports and other land use aspects during planning.

David Mitchell, Vice President of T-O Engineers approached the podium to speak in support of **S 1265**. His presentation can be read in its entirety in the written testimony he submitted (see attachment 4).

Senator Werk asked if the assumption is being made that communities will be friendly to their airports, or if there is a community that may be unfavorably inclined to having an airport in or adjacent to their community. **Mr. Mitchell** answered that is certainly possible, but the idea of the legislation is that ITD and the Division of Aeronautics would have resources available and would provide guidance to those communities to protect the airports as best they can. He said the advantage of the law as written is that airports are required to be addressed, where right now aviation is not addressed or barely addressed in the comprehensive plan.

Senator Johnson asked how the Federal Aviation Administration (FAA) funding fit into this planning. **Mr. Mitchell** answered the FAA does not pay for the planning. He said airports that accept federal grants are required by their grant assurances, which is 14 pages of commitments the airport makes in exchange for that money, to implement zoning that is compatible with the airport and facilities. He said the FAA cannot enforce that, except through the availability of their funds.

David Ulane, Northwest Mountain Regional Manager for Aircraft Owners and Pilots Association (AOPA) was next to the podium to speak in support of **S 1265**. His presentation can be read in its entirety in the written testimony he submitted (see attachment 5).

Senator Johnson asked Mr. Ulane if he had spoken with other associations, like the Idaho Association of Counties, or the Association of Idaho Cities, to get their opinion of this legislation. **Mr. Ulane** answered he has not, and typically the AOPA works with other aviation associations and the airports. **Chairman Siddoway** commented that the sponsor of the bill did say he worked with both the county and city associations.

Bill Carberry, Airport Manager for Magic Valley Regional Airport in Twin Falls and past president of the Idaho Airport Management Association (IAMA) was next to approach the podium in support of **S 1265**. His presentation can be read in its entirety in the written testimony he submitted (see attachment 6).

Stephen Freiburger, President of Paragon Consulting for Civil Engineering, was next to approach the podium in support of **S 1265**. **Mr. Freiburger** said he is one of the co-authors of this bill. He said the need for this bill was identified a couple of years ago. Idaho airports are vital to the Idaho economy, providing \$2.1 billion in economic benefits. He distributed a booklet to the Committee called "Idaho Airport System Plan Executive Summary 2010" (see attachment 7). He said the biggest impact of airports is how they support other economic growth in Idaho. He said businesses will look at the community's airport and other infrastructure as a main consideration when looking at locating in Idaho.

Mr. Freiburger said the report indicates that ITD has identified \$740 million in capital improvement needs for the airport system over the next 20 years. He said a significant portion, almost half, of that is due to relocation of airports and other issues related to improper zoning and incompatible uses around airports. **Mr. Freiburger** said as an engineer, he considers himself a problem solver, so he asked to sit down with the cities and counties to find a solution to the problems. He said the discussion indicated that part of the problem has been that ITD does not have the local knowledge, community or funding to do planning for all the airports in the State. Another part of the problem is the counties and cities don't have the subject matter experts who understand aviation and airports to be able to zone properly. **Mr. Freiburger** said one thing the authors looked at in this bill is how to set up the system so that communities have the expertise they need.

Mr. Freiburger said the provision in the bill in Title 21 removes the land use portion of zoning from ITD and puts it into Title 67 and includes airports as one of the things to be considered when local entities do their planning and zoning. He said to look specifically at item (q), which provides that the land use agencies will do the planning and zoning, and ITD with its expertise and airport managers with their knowledge of rules, will be available to help educate communities at the community's request.

Mr. Freiburger said Title 21 was put together over a period of years which resulted in a hodgepodge of things in it, so this bill simplifies the code and puts zoning effort into Title 67 and keeps the airspace and aviation hazards under ITD authority, so it becomes a shared responsibility. Airspace is ITD's responsibility, zoning is the local entity's responsibility, and there is a mechanism for support and assistance from subject matter experts.

Mr. Freiburger said he reviewed the bill with people at ITD Aeronautics Division, and they told him this is a good balance as they are out of the land use zoning authority business and instead play a support role, which is what they want.

Mr. Freiburger said the counties and cities associations agree they are the entities that should be doing the zoning, and this bill is what is needed for communities to get the support they need to make educated decisions about their airports.

Mr. Freiburger described some history of the bill, and how it took about two years to get to this point. He said part of the difficulty was some wording in Title 21, which distracted from the main point being simply to separate zoning and airspace authority. He said Senator Heider directed them to simplify the bill and take into account concerns from the opposition, and strike a balance between airspace preservation and land use issues.

Mr. Freiburger said he would address some of the other questions that have come up during testimony on this bill before the Committee. He said Section 505 (b) is there because there are currently two entities with the ability to zone around airports, and the section requires that if there are differences in zoning, the more stringent rule applies. By removing the authority from ITD and placing it with local entities, there is no longer a need for that part of code. He next addressed the question regarding takings and compensating people whose property rights may be affected by zoning. He said current code indicates that if mitigation cannot be made, the local entity has the right to raise public funds to be expended to mitigate the aviation hazard.

Mr. Freiburger said one of the nice things about this legislation is that it does not tell communities to zone in a certain manner, and if a community decides that the economic viability of their airport is not that important to them, they have the right to zone it the way they see fit; however, if a community wants to develop their economic viability and draw in businesses and make the airport a centerpiece of that growth, they are given the technical expertise to do that.

Mr. Freiburger commented on Senator Heider's recommendation to send **S 1265** to the Amending Order in order to remove Sections 504 through 507, which are those sections that reference ITD, the Department, or the Director having responsibility on zoning issues. Anything that has to do with airspace preservation or aviation hazard issues will remain. He said there are two items that need to be negotiated for specific language in Sections 502 and 503, but he said he feels that can be worked out with the opponents. **Mr. Freiburger** said, with that, he highly encourages the Committee to send this bill to the Amending Order.

Chairman Siddoway invited Justin Ruen with the Association of Idaho Cities (AIC) to the podium. **Mr. Ruen** shared a letter from the AIC with the Committee (see attachment 8). He said this bill has been a collaborative effort over a few years with the IAC, ACEC Aviation Committee, as well as ITD Division of Aeronautics. He said they are trying to raise awareness among local officials about the importance of airport zoning, and educate their own people about it, and at the same time try to update the law to reflect the current division of labor that exists between cities, counties and ITD. He said this legislation does not make major changes to the way the process works now.

Mr. Ruen said he sees of merit in that there will be notice to the airport manager when there are development proposals that might impact the airport, which will ensure the airport is better represented and considered in those land use cases and hearings. He said the bill also provides for a more detailed analysis of the airport's needs in the comprehensive plan. He said relocating airports is a brutally expensive process, so it only makes sense that a comprehensive plan address in a detailed way the potential of expansion and other projects required to maintain the airport as a viable resource.

Senator Werk said he has been reviewing Chapter 5 of the Airport Zoning Act, and he said there is substantial work to do in order to line up with what is in this bill. He said he doesn't know why this bill is before the Committee without Chapter 5 being completely redone, noting that some of it would impact operations in cities and counties. He said he doesn't have a problem with the bill, but it seems like only half of a proposal. **Senator Werk** asked if it has been considered how the bill may impact city or county planning and zoning employees ability to do their jobs. **Mr. Ruen** replied that it is his understanding that most of those sections of concern will be repealed, but he would defer to the sponsor on that. He said it may not be quite as heavy of a lift as it may seem.

Vice Chairman Rice asked to clarify his understanding, stating that the idea is to have the Division of Aeronautics give guidance on what is appropriate in zoning of airports by providing information to cities and counties, but the cities and counties do the actual zoning with that consultation process in place. **Mr. Ruen** said that is exactly correct. He said counties and cities have land use regulatory authority, but they are informed in their decision making process by the technical expertise and resources provided by aeronautics. He referred to a very extensive manual on airport zoning best practices that is extremely helpful, which he has been working on with the Division of Aeronautics, with the goal of raising awareness of those best practices, to ensure that the best possible decisions are being made.

Chairman Siddoway invited John Eaton, Government Affairs Director for the Idaho Association of Realtors (Association) to the podium. **Mr. Eaton** said his association has been involved with the issue for the past several years, and he thinks this bill is a good conclusion if it gets moved forward to the Amending Order to get the amendments he thinks it needs to make it work. He said the Association's concerns are with the first section of the bill.

Mr. Eaton said the Association originally had concerns with the second section as well, but their legislative committee reviewed it and now believes it is appropriate. He said there needs to be more of a "call out" and focus in the comprehensive plan for airports and zoning around airports. **Mr. Eaton** said the Association had a statement added on page 5 of the bill, where it refers to public airport facilities, that there be "an analysis prepared with the assistance from the ITD Division of Aeronautics, if requested by planning and zoning." He said that way, it is still the local governments' decision on what to do in the plan, but there is a separate analysis in the plan dedicated to airports. **Mr. Eaton** said the issue was the word "may" in the language, where it read "the component may also include port, harbor, aviation, and other related transportation facilities." He said "aviation" is being removed from that sentence, so that it is now a component that will be considered, rather than may be considered. He mentioned the same thing was done a few years ago with the agricultural component in the analysis.

Mr. Eaton returned to the original concern, not with the overall objective of the bill, but with language that their attorney, Mr. Risch, felt could create potential conflicts. He said the legislation gives local governments the authority to plan, but then left in outdated language from 1947 that leaves the ITD Director still in charge. He offered an example of a city making a zoning plan, but then needing to go through an application process with the ITD Director to ask for a variance. **Mr. Eaton** said he spoke with the Director, who said he wanted no part of that and asked that Mr. Eaton convey that to the Committee. **Mr. Eaton** said the Director's preference is to have that authority taken away from ITD and transferred to the locals, which is what Section 2 does.

Mr. Eaton said what has been proposed is that the Association, ITD, cities, counties, and the proponents of the legislation will work together to remove references to zoning from anything that relates to ITD. He said those concerns have been identified, and those sections will be repealed, which removes the conflict, and the responsibility for zoning lies in the cities and counties. **Mr. Eaton** said he will get the amendments in order for the bill.

Vice Chairman Rice said the changes made in Section 21-503 are not clear about having the Division of Aeronautics provide guidelines, and he feels that the amendments may require more tweaking than just repealing those other sections. **Vice Chairman Rice** suggested **Mr. Eaton** look at that and leave "guideline authority" in for the Division of Aeronautics and ITD. **Mr. Eaton** said what had been discussed is actually eliminating the first section of the bill as well, and then repealing other sections to do whatever needs to be done to make sure none of the agency's existing functions are being harmed. He said, in speaking with Senator Heider, that what the legislation portends on page 5 is that when a local entity does its analysis that it can ask ITD for help, but that would be up to the local jurisdiction to decide whether or not to ask for that help. **Mr. Eaton** said there is already a great deal of information on the ITD website about zoning, and that will remain, so there is plenty of opportunity for local entities to find that, as well as an opportunity for ITD to be proactive in letting communities know that it is there to help if they want it. He said local airport managers have a lot of the same information available. He said this legislation "inputs" them into the process. **Mr. Eaton** said the preference from ITD is that ITD would be out of this statute and the land use planning component would be completely with the cities and counties.

Chairman Siddoway invited Senator Heider back to the podium. **Senator Heider** said he appreciates the interesting discussion. He said the plan of the bill is to remove ITD from the zoning process and go strictly to counties and cities. He said when airports ask for money from the FAA, they get a 95 percent - 5 percent split. **Senator Heider** said when he was on the city council and served on the airport commission, he was always thrilled when the airport came to them with projects to seal the runway, fix a taxiway or build a new building, because the federal government would pay 95 percent of it, and the city would only pay 5 percent. He said it is wonderful that the city would get the benefit of that, except if the airport is not in compliance, the city doesn't get the money. That is why it is important that airports are in compliance with FAA rules, relative to zoning around airports. **Senator Heider** said the bill has been before AIC, IAC, Idaho Association of Commerce and Industry (IACI), and other interested parties, who may or may not have supported this legislation in the past. He said the goal is to get ITD out of the picture, and give authority to cities and counties, which is why this bill needs to go to the Amending Order.

Senator Heider said, "We need to work with land use planners in cities and counties, make sure our airports are safe, make sure they're compatible with other planning and zoning efforts, and whatever zoning is taking place, certainly the airport manager or person in charge of an airport, needs to be consulted when these changes are coming their way and affect airport use."

Senator Hill asked to make certain that everyone in the room is in agreement on what amendments are going to be made, or will that be battled out on the floor of the Senate. **Senator Heider** replied there is agreement on what needs to be done, and they have worked with those who drafted the legislation, and it will be the revocation of a section and the references to that section so that ITD is out of planning and zoning. It will also fix places where it reads "the Director shall" so there will not be conflict. **Senator Hill** commended the parties for working together.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Hill**, to send **S 1265** to the floor with the recommendation that it be sent to 14th Order for possible amendment.

DISCUSSION: In discussion, **Senator Werk** thanked everyone for working together on this legislation, and he appreciates the intent. He said, however, he doesn't have a sense that there is a time limit on what is needed in this legislation, such that things need to move quickly. He said he has looked at Chapter 5 and he is concerned about making rather wholesale large changes, and he thinks it would need to be rewritten instead. He said he will not support the motion because he does not think the 14th Order is the appropriate place to make these changes. **Senator Werk** said he thinks a better procedure would be to either pass it as it is and then have a trailer bill to make the changes needed, so that two different committees can vet the changes to make sure it's right. He said there was mention of Section 1 of this bill also needing to go, and he has concerns about doing all of that in the Amending Order.

Chairman Siddoway repeated the motion under consideration. The motion carried by **voice vote**. **Senator Werk** asked to be recorded as voting no.

S 1241

Chairman Siddoway welcomed Senator Jim Guthrie to the podium to present **S 1241**, relating to trespass to revise trespass posting provisions. **Senator Guthrie** said the bill seeks to amend Idaho Code § 18-7008, 18-7011, and 36-1603. He said right now there are a variety of ways people can post against trespass, including signage, orange posts, or steel posts every 650 feet, which all work pretty well. He said what this legislation addresses is situations where public roads go through private property and big tracks of land that are unfenced. He said this would allow a sign at the start of the area, indicating that for the next amount of miles, the land on either side of the road is off limits and then there would be another sign at the end when the property is no longer guarded against trespass. The legislation also allows for a map to be posted that depicts what is private and public land.

Senator Guthrie said he owns property and some of it happens to be conducive to rock chuck and goose hunting, and perhaps deer and cougar hunting, too. He said he has never posted and they allow people to hunt if they ask and treat the property with respect. He said he thinks it is an individual property owner's option. He said sometimes people think that there are posts because someone is fearful of having their property trashed, but most people are respectful and ask for permission and treat property with respect. He said he thinks the people who don't are the same ones who will take their truck and pull the sign out of the road, and that will always exist. He said the question has come up about enforcement, and he said he thinks the ones who want to trash property or sign, that will remain a challenge. **Senator Guthrie** said he feels this bill does give property owners one more tool, and one more opportunity to alert the public, and those who hunt and fish and hike want to know where they are welcome, so this is a benefit both directions. He asked the Committee to send **S 1241** to the floor with a do pass recommendation.

Senator Hill said he completely supports the bill and would like to know how it was put together. He said there are three different sections with verbiage that is repeated three times. He asked when working with legislative services on this, if there was consideration of setting up the parameters once and then referring to that part of the code in each of the other sections, so there weren't so many pages added to statute. **Senator Guthrie** replied that it is his understanding that it is in different sections of code because it needs to be reiterated in those sections, and perhaps an attorney would have an opinion on that. He said perhaps it could have been cleaned up further or better. **Senator Hill** said he defers to their judgment and wanted to understand if it had been discussed.

Chairman Siddoway invited Dennis Tanakuni, the Assistant Director of Governmental Affairs for the Idaho Farm Bureau (Bureau) to the podium. **Mr. Tanakuni** said the Bureau supports this bill as it will provide a lot of its members more efficient and economic ways to post their property should they choose to do so. He said it's an alternative to the orange paint or sign every 650 feet. He said the Bureau did speak with the prosecutors who were neutral on the issue, trial lawyers had no response, and the sheriff's associations had no complaint. A letter was submitted to the Committee from the Idaho Farm Bureau Federation (see attachment 9).

Chairman Siddoway invited Jim Lowe with Food Producers of Idaho to the podium. **Mr. Lowe** spoke in favor of the bill, noting he was engaged with the sponsor and had an opportunity to be involved with the discussion. A letter was submitted to the Committee from the Food Producers of Idaho, Inc. (see attachment 10).

Kate Haas with the Grain Producers Association approached the podium to voice support of **S 1241**. She said trespass is an issue many of their members deal with and this bill is a great first step to handle that. She said some members have people trespass on their land and claim it was not marked or they didn't know, so for circumstances where there is a public road or right of way going through the land, this is a great step to address the problem.

Senator Guthrie closed the discussion by noting to Senator Hill's point that he is open to cleaning up the language down the road if needed. **Senator Hill** asked about the motivation for this bill. **Senator Guthrie** replied that he has always been a private property rights advocate, and he was approached by the Farm Bureau to help build healthy relationships between landowners and those who want to use the land.

MOTION: **Senator Hill** moved, seconded by **Senator Werk**, to send **S 1241** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:29 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, February 12, 2014

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION	Page Presentation	Hannah Utley
MINUTES	Minutes of January 14, 2014 Minutes of January 15, 2014	Senator Cliff Bayer Senator Dan Johnson
<u>S 1300</u>	Relating to Counties, to revise a provision relating to the lease of a hospital by the Board of County Commissioners	Senator Sheryl Nuxoll
<u>S 1301</u>	Relating to Income Taxation to provide relief from joint and several liability on a joint return if certain conditions occur	Senator Les Bock
<u>H 377</u>	Relating to Income Taxation, to provide a reference to the definition of "Individual" and to provide taxation for a pass-through entity	Michael Chakarun, Idaho State Tax Commission
<u>H 383</u>	Relating to certification of property tax budgets	Alan Dornfest, Idaho State Tax Commission

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

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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

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, February 19, 2014

SUBJECT	DESCRIPTION	PRESENTER
MINUTES:	Review of Minutes of January 16, 2014	Senator Dan Johnson
	Review of Minutes of January 29, 2014	Senator Roy Lacey
	Review of Minutes of January 30, 2014	Senator Jim Rice
H 402	Relating to income taxes and a computational method for the calculation of Idaho net operating loss (NOL) when a taxpayer recognizes Real Estate Mortgage Investment Conduits (REMIC) excess income inclusion (EII).	Michael Chakarun, Idaho State Tax Commission
H 440	Relating to property taxes, and provisions for assessment of operating property of rate regulated electric utility companies	Alan Dornfest, Idaho State Tax Commission
H 442	Relating to property tax administration, and revisions of operating property assessments, occupancy tax, and yield tax	Alan Dornfest, Idaho State Tax Commission

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Wednesday, February 19, 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 3:01 p.m.
- MINUTES:** **Chairman Siddoway** called for the consideration of the Minutes from previous meetings, noting that the Minutes of January 22, 2014 were not on the agenda but are ready for consideration, as well.
- MOTION:** **Senator Johnson** moved, seconded by **Senator Werk**, to approve the Minutes of January 16, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Lacey** moved, seconded by **Senator Hill**, to approve the Minutes of January 29, 2014. The motion carried by **voice vote**.
- MOTION:** **Vice Chairman Rice** moved, seconded by **Senator Lacey**, to approve the Minutes of January 30, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Werk** moved, seconded by **Vice Chairman Rice**, to approve the Minutes of January 22, 2014. The motion carried by **voice vote**.
- Chairman Siddoway** asked the Committee to make note of a handout provided regarding Rule 205 and he recommended the members review it. **Senator Hill** asked that a copy of the RS about this issue also be provided.
- H 402** **Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager with the Idaho State Tax Commission (Commission) to the podium to present **H 402** relating to income taxes and a computational method for the calculation of Idaho net operating loss (NOL) when a taxpayer recognizes Real Estate Mortgage Investment Conduits (REMIC) excess income inclusion (EII).
- Mr. Chakarun** described **H 402**. He said part of the duties of the Commission is to make recommendations to remedy injustice and irregularities in the tax code. He said this bill is a joint effort of the Commission and the Idaho Bankers Association. He said the bill addresses a problem that occurs when owners of REMIC's incur an NOL in a tax year and are also required to include as income an amount called EII and pay tax on that income.
- Mr. Chakarun** said because EII is taxable income for federal purposes, it is taxable by Idaho because the Commission conforms to the Internal Revenue Code. He said the problem arises if the taxpayer with EII has an NOL caused by other business activity. He said on the federal return, the taxpayer includes the EII as income and pays tax on that income, but the taxpayer is allowed to carry back or carry forward the NOL.

He said, however, that Idaho law is not clear on the loss carryover/carryback issue. He said an argument can be made that since the EII is reported as income on the Idaho return, no NOL even exists, and the NOL disappears and is lost forever. He said the issue has been an audit issue in prior years and the Commission and taxpayers have agreed to follow the federal tax treatment.

Mr. Chakarun said to avoid future audit issues and eliminate uncertainty, the bill adds new code Section 63-3021A to clarify that the taxpayer will not lose the NOL because of the EII and preserve the NOL carryover/carryback for these entities. He said the bill also provides a mechanism to compute the NOL. He said the modification to Section 63-3027 is to add language on how the EII and NOL are treated for multi-state companies.

Senator Hill asked about the definition of EII, saying he can't find one in statute.

Mr. Chakarun said it is a federal concept that has a long history with the federal treasury. He said it is how an entity with an NOL and its income interplay with NOL calculation deduction at the state level. **Senator Hill** said he still doesn't understand what EII is well enough to explain on the floor of the Senate and asked for more clarification, maybe from a federal level.

Mr. Chakarun said he would do his best, and ask Rex Smith from Hawley Troxell for further information if needed. He said EII is a calculated amount that is based on average daily accruals of the income from REMICS. REMICS are Real Estate Mortgage Investment Conduits, or pools of mortgages that have been pooled together and then sold, and there is always one residual owner, which is the one to which the EII is attributed. It is a formula in the Internal Revenue Code that results in a minimum tax that these entities have to pay.

Senator Lacey asked why EII is not included somewhere in this legislation. **Mr. Chakarun** said it is referenced in the new section of code, but it is not defined because it throws back to federal law. He noted that the individuals who work with this concept on a daily basis know very well how this works, and it is a very limited number of taxpayers involved.

Senator Johnson commented there is no fiscal impact noted. He asked if there is a gain or loss to the State or to individual taxpayers in relation to this legislation.

Mr. Chakarun said the Commission has been doing it this way and this provision is now officially conforming to federal law what has been done in practice. **Vice Chairman Rice** asked why it isn't just part of the annual conformity bill. **Mr. Chakarun** said the State NOL statute doesn't line up with federal statute so this has to be done separately.

Chairman Siddoway invited Rick Smith with Hawley Troxell, representing the Idaho Bankers Association, to approach the podium. **Mr. Smith** said he sees this as a technical corrections act to clear up ambiguity and confusion in statutes and this is one of very few times he is in complete agreement with the Commission.

Senator Hill asked him to explain EII. **Mr. Smith** said EII is only relevant at the federal level. He said it is an example of how sometimes terms are only used at the federal level and therefore not defined at the state level. He said it is a minimum income amount that is determined for the residual owners of REMICS, which is like an LLC or partnership. He said residual owners are like the equity owners of this LLC, whereas the regular interest owners are like the debt holders. He said this is one of the most complicated federal calculations he's ever seen, but they are made to determine the amount of income that these residual interest holders have to recognize in a tax year as a minimum amount.

Mr. Smith said regardless of other deductions or losses the taxpayers may have, this amount has to be reported and have tax paid on it. He said that is an unusual feature of federal law. He said it is reported as adjusted gross income on a federal return and so gets carried into the Idaho return, and then conformance stops there because Idaho has different NOL provisions than federal code does. He said that is what creates the ambiguity that this bill will correct to help taxpayers. He said that whatever the excess income is, when it shows up on a return, it doesn't wipe out the NOL that the taxpayer could have otherwise.

Vice Chairman Rice asked to confirm his understanding of the provision in § 62-3021a. He said he thinks it means when income from a federal return is EII, which is a form of alternative minimum taxable income, that instead of using that amount, they get to use the actual loss they have that year instead, and they can use that loss and carry it forward and back. **Mr. Smith** answered that is close. He clarified by offering an example. He said if a taxpayer has a \$1,000 EII for a given year, and there is also a \$100,000 NOL from the taxpayer's business, this provision says that \$1,000 EII still must be reported, but the \$100,000 NOL can be carried forward or back, the way NOLs can be. He said in this provision, NOLs will not be lost because other income is being reported for that year. **Vice Chairman Rice** then asked if his understanding is correct in that the taxpayer can take that EII, which the federal government says is used instead of actual income, and can still use the NOL just like normal, so it allows the taxpayer to offset with actual losses. **Mr. Smith** said yes, that is correct.

Senator Hill asked to take it one step further. He asked if the taxpayer has to pay state income tax on EII as part of his taxable income. **Mr. Smith** said yes, that is correct and that is what has been part of the problem, because the EII shows up and carries over into the Idaho return.

Chairman Siddoway asked what industries have these problems. **Mr. Smith** answered it is primarily the financial industry and banks that take up the residual interest in the REMICS. He said REMICS are popular devices for the pooling of and sale of mortgage backed securities, which was probably part of the debacle in 2008.

MOTION:

Senator Werk moved, seconded by **Vice Chairman Rice**, to send **H 402** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 440

Chairman Siddoway welcomed Alan Dornfest of the Idaho State Tax Commission (Commission) to the podium to present **H 440**, relating to property taxes and provisions for assessment of operating property of rate regulated electric utility companies. **Mr. Dornfest** said this is a Commission bill to codify a valuation procedure for appraising operating property. He said it is the Commission's responsibility to assess the value of the properties of such companies. He said the procedure being codified was used in 2013 in a settlement with Idaho Power Company. He said there has been ongoing debate and dispute on how to compute loss of value due to obsolescence when the cost approach is used as part of the valuation process. He said in addition to the dispute with Idaho Power Company, the Commission has also been in court with Rocky Mountain Power, also known as Pacificorps, over this issue. He said the methodology found in **H 440** reduces the prospect for ongoing disputes by providing for less reliance on the cost approach.

Mr. Dornfest said this provision will "weight" the different approaches - cost, income, and stock and debt approach. This provision gives more weight to the income approach. He said cost approach cannot be weighted more than 20 percent of the total value, which gives more weight to the income approach. He said by doing this, it takes into account and gives consideration for what the effect of obsolescence is, which has been the point of contention between the Commission and the companies.

Mr. Dornfest said there is no additional obsolescence, as it is now "built-in" to the 20 percent weighting of the cost approach. He said this eliminates the argument and codifies the approach that was used in the 2013 case. He said similar methodology was used in the case with Rocky Mountain Power. He said they are aware of no objections.

Vice Chairman Rice asked Mr. Dornfest to walk him through the difference between the results using this formula versus using the entire value of the company. He asked if the point is to find the value of the property, rather than the value of the company.

Mr. Dornfest said yes, the Commission is trying to find the value of the operating property of the company. He said the bill does not change that, nor does it change the reliance on the different valuation approaches. He said this just changes the "weighting" applied to those approaches. He said he asked the appraisal staff to compare their initial appraisal under the systems they had been using previously that had a higher weighting on the cost approach against the results of applying this methodology, and they say this approach lowered the value by about 7.5 percent for Idaho Power. He said please recognize that this has been under dispute and in court. He said there was no way of knowing if the final outcome wouldn't be a number far lower. He said experts in appraisal differ in their approach to the valuation of those companies.

Vice Chairman Rice said his question is more about what the difference is between the result this methodology comes up with and the entire value of the company.

Mr. Dornfest said he doesn't think he could attempt to answer that because the Commission only considers the value of the operating property of the company.

Chairman Siddoway asked if it would help if there was an understanding of how operating property is valued for taxation. **Mr. Dornfest** deferred to Steve Fiscus of the Commission's property tax division.

Mr. Fiscus said when looking at valuing a company, the Commission looks at valuing the assets. He said they look at the value of the assets using three approaches to value: market, cost and income. He said there is a value that may be attributed to a company, but that is exempt because it's intangible, and intangibles are exempt in Idaho. He said all that is being done is changing the bottom line of the assets because the values aren't just averaged, they are weighted. He said using a cost approach could be \$1 billion, whereas using an income approach could make it \$750 million. He said the Commission doesn't just add the two figures and divide them; they are weighted. He gave an example of how this bill would compute it. He said this bill means 20 percent of that weight would go on the \$1 billion from the cost approach, and 80 percent of the weight goes on the \$750 million from the income approach, and that comes up with the value of the assets of the company.

Vice Chairman Rice said yes, that helps.

Senator Hill asked if the lawsuit from the utility companies was because they didn't like the weight the Commission was placing on these approaches. He asked if the Commission lost the case because the statute wasn't clear and what was being challenged were the rules, and if the statute had been more clear they would have avoided the lawsuit.

Mr. Fiscus said he was closely involved in this case and can answer that. He said the Commission did lose in 2008 and 2009 cases with PacifiCorp, but there has not yet been a trial with Idaho Power. He said the Commission and Idaho Power got together to review the reasons for the appeal. He said the appeal was not necessarily based on the weighting. He said that came into it later.

Mr. Fiscus said the case was based on how to measure the concept of economic obsolescence, which is a factor that is outside of these approaches. He said sitting down with Idaho Power to come up with this methodology, the agreement was that by placing 80 percent weight on the income approach, the economic obsolescence is removed, because it is related more to the cost approach. He said that is the agreement and what the Commission used to move forward.

Senator Hill said he's not sure which was better for the State or the utility company, because that's not relevant to him. He said if this Committee decided to amend this bill to 50-50 instead of 80-20, would that be justifiable or would that result in another court case. **Mr. Fiscus** said yes, that would result in another court case because the structure of this methodology was the main focus for eliminating the court cases. **Senator Hill** said he understands that and is trying to consider the reasoning of the court, and whether it was considered unfair or if it was because there was not a specific statute.

Mr. Fiscus said the court did not make a determination on the statute, because the appraiser in the Commission has always had flexibility for the weighting, while trying to use industry standards. He said the court's decision for the 2008 and 2009 cases was based upon a calculation that took into consideration loss from the revenue shortfall, which is the allowed rate of return and the actual rate of return. He said that formula looks at the inability to generate the allowed rate of return.

Chairman Siddoway invited David Langhorst of the Idaho State Tax Commission (Commission) to the podium. **Mr. Langhorst** said he was involved in the negotiation that resulted in the settlement. He said every year the Commission staff assesses operating property, and every year there is a cycle where the taxpayers have a chance to appeal. He said there have been four or five different lawsuits each with two companies. He said they have put off settling those to let them go through the courts. He said considering that rate of lawsuit filings, every year the Commission would be adding two more lawsuits, and there was the potential of spending millions of dollars on that. **Mr. Langhorst** said the code does not say "you shall appraise in this way" but it says "you shall appraise and find the market value" and apply property tax to that. He said this new bill does prescribe a way. He said this is not the only place where finding market value is defined in code.

Mr. Langhorst said in appraising assets, the Commission appraisers were defending their valuation, and the companies hired appraisers to defend their valuation, all over this concept of "obsolescence." The Commission considered what was happening with litigation in other states, and the settlements don't fall on one side of the fence or another. He said it looked like Idaho's litigation could go on for a long time, so that was a motivator to sit down with the companies and work out a mutually agreeable way going forward.

Mr. Langhorst said the weighting in this methodology is 7.5 percent, and in other methods it could be a difference of as much as 28 percent. He said if this bill is not passed, the whole issue will open up again. If it is passed, it is the Commission's opinion that this is a minor adjustment and least harmful to taxpayers.

Vice Chairman Rice asked what is the fiscal impact to counties and cities.

Mr. Fiscus answered he does not have the exact number, but in one case with Pacificorps, it could mean \$4 million in possible pay-backs if the Commission lost in court. He said going forward, those districts will be repaying about \$1.8 million instead. He said going forward with this bill, Idaho Power has said it would not seek a refund for those four years and will instead waive that refund if there is agreement on this bill. He said the 2013 value for Idaho Power has been set using this formula so the shift has already taken place to the taxpayers.

Mr. Fiscus said two other large companies will see that shift this year. He said it will be a decline in the value, but that may be offset in the future as the plants grow and the companies invest. He said even with less weight on the cost approach, if they are adding plants, their value will still increase. He said he doesn't see that as being "significant" but it is not as large as it would be if this bill had not been done.

Senator Hill said sometimes the Legislature passes laws because there has been a court decision and there needs to be statutes brought in line with that decision. He said his understanding is that is not necessarily the case with this bill, but instead the statutes are being brought into line with an agreement that has been entered into with the Commission and the plaintiffs.

Mr. Fiscus answered, yes, that is correct, but the courts were still involved. He said the Commission took on this decision for this methodology because the Commission cannot order taxing districts to refund dollars, so these decisions are going through the court system. He said the Commission is not modeling this language after a court settlement, but instead modeling after the settlement between the Commission and Idaho Power. **Mr. Fiscus** said he also wanted to mention that the counties were involved in this process.

MOTION:

Senator Hill moved, seconded by **Vice Chairman Rice**, to send **H 540** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 442

Chairman Siddoway welcomed Alan Dornfest with the Idaho State Tax Commission (Commission) to the podium to present **H 442**, relating to property tax administration and revisions of operating property assessments, occupancy tax and yield tax. **Mr. Dornfest** stated this is a technical correction bill sponsored by the Commission. He said Section 1 amends Idaho Code § 63-110 to allow the State Board of Equalization (Board) to conclude no later than the fourth Monday of August. That Board consists of the Tax Commissioners. He said this replaces the current requirement to meet "on" the fourth Monday of August, which in most years is not meaningful and has resulted in logistical problems for the Commissioners. He said they try, for example, to attend the assessors' conference which begins that same day or the very next day each year.

Mr. Dornfest said the change in this bill would make it possible for the Board to conclude when their annual business is done. He said that business consists entirely of hearing operating property appeals and equalizing local assessments. He said appeals are filed in early August and local equalization issues are identified by that time as well, and it is extremely rare for the number of issues before the Board to require action on the fourth Monday. He said the bill does not affect their ability to meet through to that day.

Mr. Dornfest said Section 2 relates to two issues with the occupancy tax. He said the occupancy tax is prorated based on the prorated value of improvements, such as homes, dating from first occupancy during a calendar year. The tax substitutes for property tax in these cases and is computed based on the underlying levies of taxing districts, just like for property taxes.

Mr. Dornfest said the bill makes two changes: 1) The bill clarifies that provisions in Idaho Code § 63-602Y which calls for a prorated property tax for property exempt on January 1, but subsequently is taxable, would not apply to improvements subject to occupancy tax. He said this could be the case for a newly constructed home, for example, in which the land is taxable, but the home is not taxable until it is occupied. He said if someone moves in on July 1, occupancy tax comes in for the half of the year. This is so the Commission doesn't double tax the same property. He said he doesn't believe this has happened, but this bill precludes that possibility.

Mr. Dornfest then explained the second change. 2) The bill adds language to ensure that taxpayers are not only notified of their occupancy tax appraised value, but are also notified of their right to appeal. He said they will be given a specific time frame for filing the appeal. He said the appeal has always been permitted, but no statement of appeals rights has been required on assessment notices, and this bill corrects that missing element.

Mr. Dornfest said Section 3 amends Idaho Code § 63-1706 to provide taxpayers with notice indicating the amount of yield tax they owe. He said the yield tax is in lieu of the property tax on forest land and this option to pay the tax after harvest, rather than each year, can be chosen by the landowner. He said the current statute requires the assessor to notify the county treasurer of the amount owed by the taxpayer and requires the taxpayer to pay at the same time property taxes are due. He said, unlike traditional property taxes, there is no notice sent by the treasurer to the taxpayer, which became an issue in one county last year. He said that gap is closed in **H 442**.

Chairman Siddoway asked about the occupancy tax. He asked for clarification if a home is occupied by July 1 would be taxed for half the year at half the value. **Mr. Dornfest** clarified with an example that if the property had a \$100,000 value, the taxpayer would be charged tax on \$50,000.

MOTION: **Senator Johnson** moved, seconded by **Senator Hill**, to send **H 442** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:02 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #2
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, March 05, 2014

SUBJECT	DESCRIPTION	PRESENTER
MINUTES:	Review of Minutes from February 5, 2014	Senator Roy Lacey
	Review of Minutes from February 6, 2014	Senator Cliff Bayer
	Review of Minutes from February 12, 2014	Senator Elliot Werk
<u>H 547</u>	Relating to the Distribution of Cigarette Tax Money	Representative Mike Moyle
<u>H 530</u>	Relating to Use Tax and certain donations of food and beverages	Roger Batt, Batt Associates
<u>H 531</u>	Relating to Sales Tax Exemptions and Camp Rainbow Gold and health-related entities	Jeremy Chou, Givens Pursley
IDAPA RULES REVIEW		
<u>35-0102-1302</u>	Sales Tax Administrative Rules	McLean Russell, Idaho State Tax Commission

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

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.

Senator Siddoway
Chair

Christy Stansell
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, March 06, 2014

SUBJECT	DESCRIPTION	PRESENTER
RULES REVIEW IDAPA 35 35-0103-1302	Property Tax Administrative Rules	Alan Dornfest , Idaho State Tax Commission

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, March 06, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, Johnson, Vick, Bayer, Werk and Lacey

ABSENT/ EXCUSED: Senator McKenzie

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 3:06 p.m.

Chairman Siddoway said the Committee will consider the final docket of rules for the session.

PASS THE GAVEL: Chairman Siddoway passed the gavel to Vice Chairman Rice for the consideration of the rules.

DOCKET NO: 35-0103-1302 **Vice Chairman Rice** welcomed Alan Dornfest of the Idaho State Tax Commission (Commission) to the podium to begin presentation of the docket. **Mr. Dornfest** began with Rule 006 which is for incorporation by reference of certain documents and links to websites. It updates references to appropriate and current editions of guides and professional technical standards used to determine value of certain property and to measure assessment level and uniformity.

Vice Chairman Rice asked Mr. Dornfest to present Rule 020. **Mr. Dornfest** said Rule 020 has to do with the value of recreational vehicles for annual registration and taxation. The current method used to value the recreational vehicle (living quarters) portion of the "combined use vehicle" allocates 25 percent or 30 percent of the vehicle's total market value for taxation, depending on the number of heating, cooking and plumbing fixtures in the vehicle. That means only the part used for recreation is being valued and taxed. He said the assessors and Idaho Transportation Department (ITD) informed the Commission this year that the percentages don't reflect current market value as required by law.

Mr. Dornfest said ITD related that it could not determine which unit applied to which percentage, so assessors gathered information from RV dealerships, who said that 50 percent of the sales price would more appropriately represent the market value. He said the language about "fixtures" has been stricken. He said the change does not apply to RVs or trailers not combined with RVs. He said the change has the effect of raising the fee being charged by anywhere from \$5 to \$100. He noted the \$100 figure would be for higher end RVs with trailers. He said the average increase based on data provided is between \$40 and \$53 dollars per unit.

Mr. Dornfest said this was done as a negotiated rule and received no comments. He said outreach has been done to several organizations including Idaho Recreational Council, Good Sam Organization, and some finance managers who are involved in financing these types of units.

Senator Hill asked about the chart and the term "percent good." **Mr. Dornfest** answered that his knowledge of income tax is limited, but from a property tax standpoint "percent good" is the remaining amount after depreciation is taken off. He gave the example that if 85 percent is taken off, that would be the equivalent of 15 percent depreciation.

Vice Chairman Rice asked Mr. Dornfest to present Rule 302. **Mr. Dornfest** said this rule deals with submission requirements for the list of taxable personal property. It was written in accordance with H 599, which had an annual reporting requirement of personal property, even if said property were exempt. He said with H 315, that is no longer needed for most taxpayers who have less than \$100,000 in eligible property. He said to be consistent with current law, this rule is being deleted, except for a few administrative items that will be moved to rule 626.

Vice Chairman Rice asked Mr. Dornfest to present Rule 406. **Mr. Dornfest** said this rule deals with the valuation of operating property of rate regulated utility companies. He said there is companion legislation that this Committee heard and approved in **H 440**. He said this rule mirrors that legislation in that it spells out procedures on how the rate regulated utility companies are to be valued. He said the only difference in this rule is paragraph 01(b), which provides a reference regarding from where the gross domestic product implicit price deflator will be obtained. He said this will probably be moved to Rule 006, and much of it will not even be necessary in the future, but he recommends the Committee approve it as is for now.

Vice Chairman Rice asked Mr. Dornfest to present Rule 407. **Mr. Dornfest** said this rule governs procedures that operating property companies use during their appeals before the Commission. He said these companies are assessed by the Commission, so their first stage of appeal is directly to the Commission rather than to the County Board of Equalization. He said the rule is amended to make the process more of a presentation and less adversarial. He said the rule removes words like "cross-examine" and "examine witnesses" and replaces them with phrases like "parties may ask questions through the presiding officer." He said there is a new provision that allows the taxpayer to accept the stipulated finding rather than have a whole hearing on something upon which everyone agrees. **Mr. Dornfest** said the parties still retain rights to appeal without having to go through the hearing. He said the Commission worked closely with industry representatives from operating property companies and accepted input from them and incorporated changes in the rule to reflect their input. He said in the end, there were no further comments. He said this rule will improve and simplify the appeals process before the Commission.

Vice Chairman Rice asked Mr. Dornfest to present Rule 632. **Mr. Dornfest** said this rule was written to help implement the exemption for oil and gas wells provided in H 141. He said it defines oil and gas wells for purpose of exemption and identifies that land and equipment other than that permanently fixed structures within the wells do not qualify for the exemption. He said the rule does provide for well heads and gathering lines to be centrally assessed and not qualify for exemption, and equipment used in transporting oil and gas shall not qualify for the exemption. **Mr. Dornfest** said the rule also provides for an application process. **Vice Chairman Rice** confirmed that legislation that refers to this rule has passed into law.

Vice Chairman Rice asked Mr. Dornfest to present Rule 700. **Mr. Dornfest** said this rule has to do with definitions that relate to property tax reduction, commonly known as "the circuit breaker program." He said there are no substantive changes, but the rule is amended to provide a cross reference section to Commission Administrative and Enforcement Rules. He said the need for this has arisen with requests for sharing information that would otherwise be confidential information.

Mr. Dornfest said the Commission already has approval to share such information under certain circumstances, as provided by the Administrative and Enforcement Rules. He gave an example in which a legislator called the Commission requesting information about a taxpayer who had contacted the legislator with an issue with the circuit breaker program. He explained that in the past he did not realize there was a provision for disclosure, so the Commission would not have been permitted to share information, but it is permitted, and this rule clarifies that to prevent confusion in the future.

Vice Chairman Rice asked Mr. Dornfest to present Rule 803. **Mr. Dornfest** said this rule makes two changes relating to information provided to the Commission and to the counties by taxing districts when they request their property tax budget each year. He said the amendment requires the budget certification "L2 Form" must be signed and clarifies that whatever levy the Commission approves ultimately shall not exceed the levy computed using the amount shown on the notice of budget hearing. He gave an example in which a district would publish a hearing notice of the intention to have a property tax budget of \$100,000. He said the district is bound by that, and although they are permitted to go lower, they cannot exceed that posted amount. He said to avoid concerns the Commission is codifying that practice with this rule.

Vice Chairman Rice asked Mr. Dornfest to present Rule 902. **Mr. Dornfest** said this rule is about property tax notices and exceptions to those notices. He said there has been an exception in rule for a long time that states when taxpayers have their tax paid by the circuit breaker program, they still have to receive a notice. He said when H 599 passed, it included language stating that similar notice needs to be provided to taxpayers who owe \$0 as a result of the personal property exemption. He said that does not make sense under the current property exemption. He said under H 599 it will be an annually re-computed amount, and taxpayers may be left in question about what amounts may be owed. **Mr. Dornfest** said therefore, they have the requirement to send notice to taxpayers who owe nothing because of the personal property exemption.

Vice Chairman Rice said that concludes the discussion of rules for this meeting, noting consideration of Rule 626 and Rule 205 will be held for a later date.

**PASS THE
GAVEL:**

Vice Chairman Rice returned the gavel to Chairman Siddoway.

Chairman Siddoway thanked Mr. Dornfest for his appearance before the Committee. He commented that legislation is being considered that may impact Rules 626 and 205, so when that is sorted out, the Committee will complete its action on this docket.

ADJOURNED:

There being no further business, **Chairman Siddoway** adjourned the meeting at 3:29 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, March 11, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>H 546</u>	Relating to Idaho Reimbursement Incentive Act	Jeff Sayer, Department of Commerce
<u>H 560</u>	Relating to Local Governmental Entities and a central registry and reporting portal	Representative Janet Trujillo

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

Room: WW50

Phone: 332-1315

email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, March 11, 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 Local Government and Taxation Committee (Committee) to order at 3:02 p.m. The Chairman noted that the Senate will reconvene on the floor at 4:00 so the Committee must adjourn by then.

H 546 **Chairman Siddoway** welcomed Jeff Sayer, Director of the Idaho Department of Commerce (Department), to the podium to present **H 546**, relating to the Idaho Reimbursement Incentive Act. **Mr. Sayer** offered his thanks to the Governor and his office, the Idaho State Tax Commission (Commission), this Committee, members of the House committee, and other organizations who helped with this legislation. **Mr. Sayer** said there have been situations over the past year where Idaho found itself unable to be competitive in important projects that would have been wins for the State. He said through that experience, the Department has learned a few things about its incentive packages.

Mr. Sayer said the reality is the world is becoming very competitive and sophisticated and if Idaho wants to be competitive, the State needs to take a hard look at the incentives that can be put on the table. He said there are limitations in the current incentive tools, one of which is that the majority of the tools are limited to infrastructure only. **Mr. Sayer** said he's found this to be a significant barrier in the Department's ability to reach out to what he refers to as "professional service jobs" and projects that bring higher paying jobs that don't need infrastructure. He said Idaho also has an opportunity to embrace a trend occurring across the nation where states have figured out how to design their incentives in a way that makes them performance based. He said that means that "the reward does not come to the company until the results have been delivered." **Mr. Sayer** said what is before the Committee in **H 546** is a tool that addresses those three issues simultaneously.

Mr. Sayer began reviewing the bill by stating that the Fiscal Note was carefully designed with Derek Santos of the Idaho Division of Financial Management and the Commission. He said he would touch on the high points, and that the big part of the bill is in the definitions. He said the applicant, the business entity, and the application have all been designed with the help of the Commission and corporate attorneys "with the intent to not leave anyone out." He said the intent is to make this available to any business in the State or someone who wants to come to the State.

He said the next significant piece is the community match. He said this is done verbatim with what was passed in the Opportunity Fund last year. He said it is designed to be flexible to include the smallest to largest communities. He talked about the definitions of a meaningful project, the minimum number of new jobs, and the nature of those jobs must be met in order for a business to qualify. He said those minimums are 50 jobs or more for an urban environment or 20 jobs or more for a rural environment. He said he felt it is important to accommodate smaller communities and make this accessible for them. He said that is the main driver for the lower threshold for rural communities. **Mr. Sayer** said there are also a number of carefully designed sideboards in some of those definitions.

Mr. Sayer said another significant part of the bill is the definitions of new state revenue. He said this is the heart of the bill. He said if someone brings a meaningful project and a minimum number of jobs, they will be reimbursed up to 30 percent of three tax types: the sales taxes they pay, the income taxes paid by the entity, and the payroll taxes paid by the entity. He said there are definitions of rural and urban, which followed weeks of discussion on how to design those definitions. The threshold is a population of 25,000 or higher is an urban community, which are required to meet the 50 jobs or higher threshold. He said everything else is rural, noting that smaller communities and unincorporated areas are included in the rural definition. He said there is one nuance in the urban definition that will affect four communities whose populations are less than 25,000 but are right next to an urban community.

Mr. Sayer said the application process is a fairly extensive process. He said the Department is not saying someone can apply with a one-page request. He said there are many things the Department asks for when a company requests this incentive, including a description of the project, the nature of the jobs, the quality of the jobs, the number of jobs, the capital investment, and their intent to draw from Idaho suppliers and bring new business to Idaho. He said it also includes a very specific request for them to acknowledge the detriments that may come to Idaho markets because of their company coming and possibly being a competitor to another company. He said the application is specifically designed to draw out this information so the Department has a full scope of the situation before a decision is made.

Mr. Sayer said the bill designates the Economic Advisory Council (Council) as the approving body of these applications. He said this is not something that should be at the Director's discretion. He said there is very specific language that sets the Council apart in that position, and not as part of the negotiation process. He said having that separation and check and balance was critical in this design. He said the agreement with the applicant is also very extensive. In that agreement, the Department will establish with the company the performance requirements expected in order to qualify for the incentive. He said those requirements will be part of the negotiation from the beginning. He said the agreement will also outline the record-keeping requirements. He said the bill establishes the documents the Department has the right to look at to verify the ongoing reporting from the company. He said everything will be outlined at the outset so there are no surprises for either party.

Mr. Sayer said his favorite sideboard in this process is under the heading "Applicants Annual Reporting Procedure." He said this has been referred to as the annual checkup clause. He said, "We felt like this was critical." He said as a package with a company is negotiated, a percentage up to 30 percent will be established, for a term of years, which is established based on the nature of the project. He said during that term of years, the company must come in every year and certify that they have in fact met their projections and verify that they've paid the taxes.

Mr. Sayer said the most significant series of sideboards built into this bill is the annual reporting required by the Department to the Legislature, the Governor, and the public. He said this is where the Department establishes that it intends to be fully transparent in this process. He said there are stipulations that are required to be reported, which not only include the activity but also analyze the success of the tool and evaluate its effectiveness. He said the Department is also required to establish the estimated cost, the actual cost and "a laundry list of things we're required to disclose." He said the intent is to be fully transparent.

Mr. Sayer said one element that was added at the last minute that he feels is critical as an additional gesture of trust and goodwill is an annual independent third-party audit. He said a CPA firm will audit not only the activity, but more importantly, the internal controls of the Department surrounding this process. He said he felt that was important for public purview so they know exactly how the responsibility the Legislature is giving the Department is being handled.

Mr. Sayer said the final piece of the bill has been referred to as the safety valve feature. He said this was a recommendation from the Governor's office, and the Department likes the idea, which is under the heading "Suspension of the Idaho Reimbursement Incentive Act." He said if the economy collapses and the Governor has to issue a hold-back on State spending, he also has the ability by executive order to suspend this program until further notice, until such time he reinstates it by executive order. He said that way this program can be held back until the economy rebounds. He said in the event there are existing agreements under the Incentive, they will be honored to their fullest extent.

Mr. Sayer said the bill ends with a directive that the Department will be responsible for the rulemaking. He said that process is going to include a number of parties, many of whom have already been at the table to help think this process through, including economic development partners, corporate tax attorneys, the Commission, members of the Legislature, and as many minds as possible for implementation. He said the Department is hopeful and excited about having this tool in its hands to further and accelerate Idaho's economy.

Senator Werk thanked the Director for his explanations and the meetings. He said one of the concerns is where this bill is taking the State, with people talking about "cronyism" and who is making decisions and how they will be made, and if those decisions cannot somehow be appealed. He asked how this has been addressed to avoid that or the appearance of that. **Mr. Sayer** said that is a critical piece in how the Department tried to think this through. He said one of the first things is that the Department won't be the only party at the negotiation table. He said the community will be there as well to jointly negotiate the provision with the company. He said the group will negotiate the terms of the deal, and that will be presented to the Council. He said that Council is already established in statute as a seven member Council, with six from each region of the State, and the seventh member is at-large, each with a three or four year overlapping term with political balancing provisions, so no one party has more than four members. He said it has been a functioning council for several years. It is the Council's responsibility to approve or reject. The Council is not be a part of the negotiations.

Mr. Sayer said he feels the strongest control over this issue is that people will be able to see exactly what is going on. He said the intent, in order to meet the requirements in the bill, is to follow a model that Utah has used. He said Utah's website outlines every transaction using this incentive over the past five years, and it has descriptions including a summary of the project, number of jobs, the nature of the project, why it was granted the incentive, as well as the agreement with the company and the State. He said those items will be on full display for everyone to view. He said, "It will be our intent to follow the same pattern." **Mr. Sayer** said regardless, the Department will be required to report annually all activity, evaluate the activity, published publicly, and the independent third party audit. He said the Department felt all of these things together are an appropriate level of checks and balances to respond to the concerns Senator Werk mentioned.

Senator Werk said one issue Mr. Sayer did not address in his answer was the complaint about an appeals process if someone was turned down. **Senator Werk** said it doesn't make any sense to him since a decision is being made on a tax incentive based on the merits. **Mr. Sayer** apologized for missing that part of the question. He said that was discussed and what was decided was that with this design, the Council has the ability to approve or reject, and that decision is final. He said the challenge with making it subject to appeal would be that the Department would be put into a quagmire of processes and appeals. He said it is a simple mechanism where it is an approve/reject process, but the applicant has the opportunity to modify their application and re-apply. He said that way they are not blocked from accessing the process. If the company is rejected, the company will know what the reason was and can renegotiate.

Senator Hill asked to work through a practical hypothetical example. He said a manufacturing company in Boise decides over the next five year to add ten jobs per year for five years, for a total of 50 jobs. He said in exchange for that, the company and the Department negotiate that the Department will give back 30 percent of taxes over ten years. He said after one year, the company creates ten jobs, so would the taxes for the first year be received at that point in time. **Mr. Sayer** said no, that would not qualify for the incentive because the Department is requiring that there needs to be a minimum of 50 jobs or more. **Senator Hill** said ten times five is 50 jobs. **Mr. Sayer** said, right, but if the threshold is reached at the beginning of the fifth year, the minimum would then be reached and the company would qualify for the incentive, but not for the previous four years, only for the fifth year. **Senator Hill** asked to clarify that the minimum must be reached first before any of the incentive may be received. **Mr. Sayer** said that is correct, and it is clearly delineated in the definitions.

Mr. Sayer asked to build on that by saying what the Department wanted to accommodate is someone who had 20 employees and felt like they could go to 80 employees over the next five years. He said if they go from 20 to 80, the Department could still enter into an agreement with them, but the incentive would not actually kick in until the company reaches the minimum threshold. He said if someone added ten each year, in the third year reached 50, they would then get the incentive for years three, four and five.

Senator Hill continued with Mr. Sayer's example, saying if the company gets to 50 in the fifth year, but the bargain the company made is that it will get the taxes back for ten years. He said what happens if in year seven, the company drops down below the 50 jobs; would that disqualify the company from all of the rebate for that year or from year seven on, or does it make the company go back to the negotiating table to say it doesn't deserve the 30 percent, so how about 20 percent instead. **Mr. Sayer** said if the company falls below 50 employees, it would not get the incentive for that year, and the full amount would be gone. He said trying to prorate that was too complicated. He said the statute says in the year that milestone is not achieved, the company would not get the incentive. He said, however, if the company rehires those employees and restore the number to 50 (or the amount the company promised), the company would get the credit for the remaining years.

Senator Vick asked for more information about the appeal process, noting how Mr. Sayer answered the question in terms of someone who did not get approved. **Senator Vick** said he would like to explore what happens when an application "is" approved but someone else thinks it is inappropriate and wants to appeal that decision. **Mr. Sayer** said the way the statute is designed, they would not have the ability to influence that decision, so they could reach out to file a complaint to the Senator or the Department. He said decisions by the Council are final. He said at that point the Department would be instructed to enter into an agreement with the company and establish it based on the terms that had been negotiated.

Senator Vick asked Mr. Sayer if he is comfortable with that. **Mr. Sayer** said, "I am," and added that he feels this process is going to be fairly extensive, in that the Department is asking the company to come forward with a fairly broad portrayal and picture of how their company coming into the State or expanding will affect other industries and companies, as well as the local economy. He said the Department feels that it will have a fairly broad base of information to consider to make a careful decision. **Mr. Sayer** said that's another reason why he feels it is important for the Council to be that oversight body, so that there are seven additional sets of eyes from a different region of the State. He said there will be mixed perspectives, mixed backgrounds, and he feels that is an appropriate balance of people to be making that final decision. He said he feels like this will be able to catch most or all of the issues in that process.

Senator Johnson asked about local governments in this process. He said a concern that he has heard and has himself is that some of the smaller local governments may not have the same resources to draw upon to make these matching requirements. He asked if Idaho Opportunity Funds would be available by local entities to use for matching any of these projects. **Mr. Sayer** said he hadn't thought about that fund being a match. He said his preference would be that it would not be a match. He said the Department is looking for communities to come forward and put skin in the game in a way that is meaningful to them. He said the provision under community match has been designed to be flexible, and offered the example that all some communities have to help "match" is by contributing a backhoe and an operator for two weeks to help dig a trench for a water line. He said that was their "skin in the game." He said the county joined in adding to the match for the Opportunity Fund Grant given to them, but the purpose is to have the community join as partners with the Department and put what is meaningful to them on the table so they make the investment alongside the Department. **Mr. Sayer** said that meaningful contribution can range from a backhoe for two weeks up to an elaborate urban renewal district to draw from in a robust community like Twin Falls.

Senator Johnson asked why a full time job is defined as 30 hours per week. **Mr. Sayer** said that is a fairly common standard for full time designation. He said they felt that was adequate, rather than trying to elaborately describe jobs. He said the intent is to make sure they are non-seasonal full time, which would block anything part time. **Senator Johnson** asked about the Business Advantage Tax Credits and the New Jobs Income Tax Credits for small employers provisions from 2005. He said the thresholds companies had to meet to qualify are higher than what is contained in this legislation. He asked Mr. Sayer to address the reason why they're different and if the small employers would be able to take advantage of any of them. **Mr. Sayer** said the intent of this design is to make it accessible by as many people as possible who can meet those minimum thresholds. He said Senator Johnson is correct in that those other programs do have a lot of provisions and can be hard to meet, and they are not as accessible as he wanted this bill to be. He said a lot of thought and analysis has gone into those minimum thresholds of 20 jobs and 50 jobs, and into making sure that threshold isolated the big projects that Idaho is often competitive in, so they could access this incentive.

TESTIMONY:

Chairman Siddoway noted that several people had signed up to testify on this bill, but as the Committee is short on time to please make the comments brief.

Chairman Siddoway invited Wayne Hoffman, President of the Idaho Freedom Foundation, to the podium. **Mr. Hoffman** spoke in opposition of the bill saying that special incentives, perks and deals do not work. He said the way to improve Idaho's standing in tax ranking, since Idaho is one of the worst in the nation, is to reduce taxes for everyone, not just select businesses decided by a government agency.

Mr. Hoffman provided the Committee with a letter from former Senator Rachel Gilbert who wrote in opposition to this legislation (see attachment 1). **Mr. Hoffman** said people he talks with are horrified by this proposal and say it is colossally bad tax policy as it picks winners and losers, and the losers are small business owners, who are the backbone of the American economy. He said a business who has two people on payroll and doubles it to four would be a meaningful project, but this legislation would not consider it that way. He said in fact, the small company now has to pay 30 percent higher taxes than the competitor company who has the resources to hire more employees. His statement can be read in full in the attached document (see attachment 2).

Chairman Siddoway invited Julie Hart of Westerberg and Associates to the podium. **Ms. Hart** offered to pass due to time constraints.

Chairman Siddoway invited Christopher Guill of Blue Sun Energy with Juniper Resources to the podium. **Mr. Guill** said that is a biodiesel company based out of Denver, Colorado. **Mr. Guill** said he lives in Boise and owns a number of small and medium sized businesses in this community. He said Blue Sun Energy is looking to bring a biodiesel facility to Idaho. He said there is a 30 million gallon plant operating in Missouri, which was built there because of tax incentives that existed at the time. He said those incentives have expired and the business is incredibly competitive with the market as a whole. He said the company is looking to place a new 30 million to 100 million gallon plant somewhere. He said he prefers Idaho because he lives here, but the company is looking all across the nation. He said there are different reasons to put businesses in different places, like access to waterways, transportation, and feed stock, for example. He said he wants the plant to come to Idaho, and it would bring new high paying jobs to Idaho. He said he believes this is the sort of bill that would bring it to Idaho, and he will be going to his board of directors tomorrow to tell them about this bill to consider in their decision making process.

Senator Bayer asked for clarification on his statement about there being tax incentives elsewhere that have expired so that the company is now looking elsewhere, including Idaho. **Senator Bayer** asked for Mr. Guill to assess the long-term business parameters such as transportation infrastructure, education of workforce, and stable tax policy regarding income tax rates in comparison to incentives like those offered in this bill. **Mr. Guill** said when the Missouri plant was built, there was a 30 cent per gallon tax credit, which expired over a period of time. He said the company is not moving that plant as it remains operational. He said the consideration is where to place a new plant. He said some of the variables being primarily considered are access to transportation and feed stock, which Idaho has. He said on a whole, he thinks Idaho is highly competitive in those areas, especially with research at Idaho National Laboratory and Boise State University. He said he thinks it is the whole package that would bring something like this to Idaho. **Mr. Guill** said in his opinion, a policy like this is a long term policy because it is performance based to bring jobs over a long period over time to meet certain thresholds. He said if the incentives have to be there for the business to be profitable, it wouldn't make sense. He said he feels the incentive of what brings that investment here is more important.

Chairman Siddoway invited John Runft of Runft & Steele Law Offices PLLC to the podium. **Mr. Runft** spoke in opposition to the bill. He said he is representing the Tax Accountability Committee (TAC), which is a volunteer nonprofit organization, so despite his green tag, he's not being paid for this presentation. He said he is not here to address tax policy or most of what has been discussed here. He said he is here with what he feels is a dagger at the heart of this legislation, which is the exemption of any function by the judiciary in this process. He said what has been created under the name of an advisory council is not really an advisory council, because it is a deciding organization. He said seven people make a decision that is not reviewable by the judicial branch. He said this is the dream of every executive branch to not have judicial oversight over anything it does. He asked who guards the guardians. He said this bill is fundamentally wrong. **Mr. Runft** provided a handout to the Committee with further explanation of his position, which can be read in full in the attached document (see attachment 3).

Senator Vick asked about Article 7, Section 7 of the Idaho Constitution which says, "All taxes levied for state purposes shall be paid into the State Treasury and no county, city, town or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for state purposes." He said this legislation seems to be changing the way that companies pay the same proportionate share, and he asked **Mr. Runft** if he sees a problem with this violating the Idaho Constitution. **Mr. Runft** answered that he would have to look at that statement at more length, but he said this provision cuts out the entire judiciary branch and that is a problem in itself.

Chairman Siddoway invited George Gersoma of the Idaho Business Alliance (Alliance) to the podium. **Mr. Gersoma** said he's here representing himself as a small business owner. He said he has three reasons to oppose this bill. He said as a business owner, this bill does nothing for him. He said he has an Idaho owned, Idaho based and Idaho headquartered company. He said after 28 years he has 35 Idaho based employees. He said there is no way under the sun for him to qualify for any benefit from this bill. He said secondly, other members of the Alliance tend to be small businesses, like Idaho Cowboy Supply, run by a woman and her daughter, and American Trailer Sales and Bert Tractor all in Caldwell. He said none of these existing businesses who have built and supported the Idaho economy will garner any benefit from this bill.

Secondly, **Mr. Gersoma** said, because of the competitive nature of Idaho, "we'd like to whip Oregon, beat Montana and outlast Utah and win the prize" in attracting new businesses to the state. He said he has high respect for Mr. Sayer as he has done a fabulous job in the Department. He said no one is able to know which businesses and industries are going to be successful, and governments don't create jobs, businesses do.

Mr. Gersoma said thirdly, the mere fact that there are special incentives should indicate that there is something wrong with the model. He said if Idaho is not competitive and attracting new business, there is a problem, so rather than having special programs or bandaids to make Idaho more appealing, the state should create an environment so compelling that businesses will want to come here. He suggested things like no corporate income tax or relief for the unemployment insurance burden, which he said is the second highest tax burden in the nation.

Chairman Siddoway invited Michael Ferguson, Director of the Idaho Center for Fiscal Policy, to the podium. **Mr. Ferguson** said he is not in favor or in opposition of the bill but planned to provide information for the Committee to consider in its decision. **Mr. Ferguson** said he would address the questions what will it cost the state's revenue stream over time; whether it is likely to achieve its intended purpose; and, whether there are any weaknesses in how it is designed. He provided a handout outlining all of these issues (see attachment 4).

Chairman Siddoway invited Margaret Watson of the Economic Advisory Council to the podium. **Ms. Watson** passed due to time constraints.

Chairman Siddoway invited Mr. Sayer back to the podium to close the discussion. **Mr. Sayer** said there were excellent points raised by smart people. **Mr. Sayer** said this bill is intended not as a replacement for good tax policy. It is intended to go hand in hand with good tax policy. He said the bill is designed to allow Idaho to be competitive in those situations when it is losing projects or where there needs to be stronger incentive tools.

Mr. Sayer replied to Mr. Ferguson's reference to a hypothetical yogurt company by saying a yogurt company did come to Idaho over Nevada. He said Nevada had zero taxes and were going to ship milk over the Sierra Nevada Mountains to Reno, but still came to Idaho instead. He said companies are sophisticated enough to know the economics with their analysis of transportation, payroll, and energy costs to select several possible comparable locations. He said after their analysis, the company calls the state to say it is a finalist, and that is when the State of Idaho needs this tool to be competitive.

Mr. Sayer offered another example in which Cliff Bar chose Idaho over Utah because Idaho's package was slightly higher than what Utah offered. He said the reason both of those projects were won is because there were substantial urban renewal dollars available as support. **Mr. Sayer** said this tool will allow any company in Idaho, even Mr. Gersoma's company, to access if they make a significant investment in Idaho's economy. He said what that investment is would be 50 or more jobs in an urban area or 20 jobs in a rural area. He said the bottom line is that "in that moment, if we don't offer incentives, other people will." He said the Department is asking for the Committee's support to have this tool that has been carefully designed to be post-performance. He said he stands by the idea that this doesn't require out of pocket costs for the State. He said the Department will know every year what the benefit is, what revenues are coming in, and that a small percentage goes back to the company, but there is a net benefit to the State. He said the way the reporting structures have been designed, he has confidence it will know that every year. He ended by saying he appreciates the opportunity to be before this Committee.

Senator Vick asked Mr. Sayer about the constitutionality question that was asked earlier. **Mr. Sayer** said corporate attorneys helped draft the language in the bill, and assured him that it did not block them from judiciary or legal proceedings should they choose that path. He said the wording allows flexibility within state government statutes as an appealable agency action. He said as he is not an attorney, he can't speak to exactly what that means, but the attorneys who drafted it were explicit that this does not block someone from accessing the judiciary process.

Senator Vick said his question has to do with Article 7, Section 7, of the Constitution which says that "no one shall be released or discharged from their or its proportionate share of taxes to be levied for state purposes." Senator Vick said he is not a constitutional expert but he wondered, since people will be treated differently under bill, if Mr. Sayer had considered that. **Mr. Sayer** said he is not a constitutional expert either. He would say this bill is not dissimilar to other incentives being used, and whatever premise or foundation established for other incentives would fall under that category. He said this has been carefully designed to allow Idaho to be competitive and carefully managed so the State is protected every step of the way. **Mr. Sayer** said he was not sure how it relates to the constitutional mandate.

Senator Bayer said he appreciates all the work the Department does. He asked Mr. Sayer if he "has any knowledge of any comparable scenarios where flexibility of a tax liability lies outside directly in code." He said a lot of other incentives and tools have an "if this, then this" regarding taxes. He said this bill takes a different approach, and he wonders if Mr. Sayer thinks it's "novel" or "if that type of responsibility outside the Legislature exists in some comparable way to this language." **Mr. Sayer** said the only thing he can turn to that is comparable in design is what was passed last year with the Opportunity Fund. He said that is a delegation of authority to oversee \$3 million in grant funds that also were performance based. He said the bill asks for a certain amount of delegated authority to engineer this incentive to fit the situation presented. He said the Opportunity Fund is \$3 million that is under the Director's sole discretion, and this bill is far bigger than that. He said there is no way it would be appropriate for this to be solely in the Director's discretion, which is why there is oversight with checks and balances in the process.

Senator Bayer said he appreciates the analogy, but that is a grant whereas this is a tax liability metric. Senator Bayer said he recognizes there has been scrupulous effort to avoid an unwitting competition circumstance with existing Idaho businesses, and asked what if something like that were to develop. He asked what would happen if there was a broad spectrum business coming into the state that overlapped with existing businesses in the State, that could now have implications to their competitiveness regarding the pricing of their products because their margins are now smaller. He asked what dialog has there been around that potential scenario.

Mr. Sayer said there has been quite a bit of discussion about that issue. He said that is one of the fundamental tenets of this bill, is to make sure it's not a case of picking winners and losers. He said while evaluating this process, they came back to one fundamental premise, which is that they want to reward any company that makes what is deemed a significant investment in Idaho's economy. He said if the market is presenting an opportunity, an existing company has every right to step in and take advantage of it, and should they expand and bring the same number of jobs an outside company would they would get the same incentive. He said that is where the fairness part comes in, to provide reward to any company who invests in Idaho's economy. He said competitive situations will be monitored and that will be considered in the decision process.

MOTION:

Vice Chairman Rice moved, seconded by **Senator Lacey**, to send **H 546** to the floor with a **do pass** recommendation.

Vice Chairman Rice said there was a question raised about constitutionality, and he has personally looked at the relevant sections of the Idaho Constitution, and he feels the section right before the one read, specifically allows exemptions, and this bill would fall under that constitutional provision. He said his opinion is that this bill would be constitutional.

Senator Johnson thanked Mr. Sayer and said he still has more questions and until he gets a higher level of comfort with it, he cannot support it. He said he appreciates the work Mr. Sayer is doing for the State.

Senator Hill expressed his appreciation and said he has made it clear that he doesn't like things like this. He said he doesn't like bidding wars with other states, or buying someone's business to come here, and he's made several of Mr. Ferguson's and Mr. Hoffman's arguments. He said he has voted against job incentive bills. He said he has also talked with his colleagues in other states, and "we have to compete." He said it is more than just competing on providing a stable tax structure and education system. He said other people will buy Mr. Guill's business if we don't offer something. He said this bill is the best option come yet. **Senator Hill** said, "You are going to be held accountable. Every single one of these projects that you report to us next year, I will quiz you on, couldn't you have gotten that for 20 percent instead of 30 percent rebate, or couldn't you have gotten that for five years instead seven years, and we will talk about every single one of those, because I want to make sure you made the best deal you could." He said Mr. Ferguson is right that we will never know on some of those if they came to Idaho because of the incentive or if they would have come anyway. **Senator Hill** said, "But I know that I trust you and you will make every effort to do the best job you can for the State of Idaho, as well as for those businesses." He said it is for those reasons he will support the motion.

MOTION: The motion carried by **voice vote**. **Senator Johnson** and **Senator Bayer** asked to be recorded as voting no.

Chairman Siddoway apologized to Representative Janet Trujillo that the Committee is out of time. He said the Committee would need to postpone the discussion on her bill **H 560** until Wednesday, March 12, 2014. **Representative Trujillo** indicated her understanding.

ADJOURNED: **Chairman Siddoway** adjourned the meeting at 4:13 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, March 12, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>H 560</u>	Relating to Local Governmental Entities and a central registry and reporting portal	Representative Janet Trujillo

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

Room: WW50

Phone: 332-1315

email: sloc@senate.idaho.gov

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 on 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

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, March 13, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>H 602</u>	Relating to Income Tax to add a clause to H 384	Bill Roden , Hopkins Roden Crockett Hansen & Hoopes
<u>H 370</u>	Relating to Cigarette Taxes	Michael Chakarun , Idaho State Tax Commission
<u>H 451</u>	Relating to County Records to allow for the photographic or digital storage of records	Phil McGrane , Chief Deputy Clerk, Ada County Clerk
<u>H 595</u>	Relating to income taxes and contributions to medical savings accounts	Representative Brandon Hixon

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, March 13, 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 3:01 p.m.
Without objection, **Chairman Siddoway** reordered the agenda to accommodate a request from the presenter who needed to make an out of town appointment.

H 595 **Chairman Siddoway** welcomed Representative Brandon Hixon to the podium to present **H 595** relating to income taxes and contributions to medical savings accounts. **Representative Hixon** outlined the provisions of the bill.
Representative Hixon said the sole purpose of this important legislation is to empower all citizens of Idaho by encouraging them and their employers to contribute to their privately held Idaho Medical Savings Account (MSA) to utilize as a hedge against high health care costs. He said these changes are brought forth to update the severely outdated MSA statute that was enacted in 1995. He said Idaho MSAs are individual accounts that are held at private institutions across Idaho for the purpose of saving for medical expenses. They are not the same as Federal Archer MSAs, as this is Idaho's own sovereign program.
Representative Hixon said upon passage in 1995, the annual contribution limit set forth was \$2,000 per person. He said these contributions and the interest earned on them are tax deductible for state purposes. The money can accrue year over year and need not be exhausted at the end of each year, and contributions can be made by individuals or employers. He said the contributions can be used for eligible medical expenses in accordance with Internal Revenue Service Code Section 213(d), eligible medical expenses, including physician visits, insurance premiums, deductibles, copays, contact lenses and eye glasses, to some over-the-counter drugs, prescriptions and much more.
Representative Hixon next outlined the changes being made to this law and why. He said the first change removes the outdated cap of \$2,000 per person and raises it to \$20,000. He said this is necessary because health care costs have seen enormous increases statewide, noting that even Idahoans with good insurance coverage often end up with large bills after a procedure. He said, "In my mind, an average Idahoan cannot afford the high cost of health care any longer, and removing this cap allows for them to accrue and save tax free money to help pay for necessary medical expenses."

Representative Hixon said the next change gives an incentive to all Idaho employers to start contributing to their employees' MSAs, by giving the employer a 10 percent tax credit and allowing them to roll that credit over for up to 15 years. The credits are not refundable.

Representative Hixon said his thought behind the change is to encourage Idaho companies to contribute to these accounts, putting the money back in the hands of the people to save for and combat high health care costs. He said businesses small and large have felt the crunch of high costs associated with health care in recent years. He said employees are the most important thing to any business, and this will give them an incentive and very useful tool that will ultimately result in happier and healthier employees who will begin constructing a financial safety net for medical costs.

Representative Hixon said the last change ensures that if a person in Idaho seeks State assistance for medical reasons, such as from the CAT Fund, that person's MSA must first be exhausted before receiving assistance. He said the reason for this is that in the event someone's employer or an individual has contributed to these accounts and they have accrued an amount of tax free savings, it is good taxpayer friendly policy to require the use of these funds first before assistance is rendered.

In closing, **Representative Hixon** said he would summarize his feelings about why the changes are needed. He said he feels one of the biggest issues people face in Idaho today is the high cost of health care and the detriment it places every day on hard working Idaho families. He said Idaho is near the bottom of the states in per capita wages, and that when combined with health care cost increases that seem to have no plateau or ceiling, this is a recipe for bankruptcy for Idaho residents. He said in fact, 50 percent of all bankruptcy cases in Idaho are medical-related.

Representative Hixon said the underlying premise of this legislation is to give Idahoans some much needed buying power for health care expenses, noting it will not fix the high cost of health care, but rather give Idahoans an extra tool against them. He said "most of us" were taught the importance of saving our money, and this legislation perpetuates that idea for some of the biggest costs we face every day - medical costs. He said many Idaho families are just one major medical procedure away from bankruptcy, and this legislation will ease that burden. He said it covers the entire spectrum of Idaho's population. He said older people who may have higher medical costs can put more money in to help ease those costs, while younger working people have an opportunity to start saving and can use the money to pay regular costs, while saving more and more in case they need extra for a major procedure.

Representative Hixon said it is his hope that as Idahoans use this tool, that it may help inject some free market shopping for people that now have buying power from their savings accounts. He said, "Remember that money talks, and if someone has cash to bring to the table, I would hope that it would be a powerful negotiation tool for them to use, as well."

Representative Hixon said one other good side effect this bill may bring forth will be that the interest that the financial institutions holding these MSAs have will increase significantly because the cap has been raised. He said right now, many institutions have stopped this program because of the current \$2,000 cap. He said he hopes the Committee sees the value of what these changes will accomplish for Idaho families and he asked for their affirmative vote.

Senator Werk asked how this legislation interacts with the federal statute, and if the tax credit is only for the State. **Representative Hixon** replied that is correct, the tax savings is for State purposes only. He said people can use medical expenses on a federal level to deduct from federal tax, but they must meet federal requirements. He said he thinks double-dipping would be minimal from that. He said this is also the opinion of the Idaho State Tax Commission (Commission).

Senator Werk asked if there are compatible and incompatible accounts and accounting of these credits and benefits between federal and state requirements, and how is the Commission going to be able to incorporate this legislation when handling those returns that may have differences. **Representative Hixon** asked the Chairman for permission to read an email from the Commission regarding Senator Werk's question. The Chairman granted permission, and **Representative Hixon** read the following:

"From: Alan Pack, Tax Policy Specialist, Idaho State Tax Commission; Sent: Thursday, March 13, 2014 2:29 p.m.; To: Representative Brandon Hixon; Cc: Michael Chakarun; Subject: Idaho MSA" – "Representative Hixon, Idaho's MSA does create a double dip situation, i.e. an individual can claim medical expenses as itemized deductions and also get a deduction for contributing to an Idaho MSA. This is how it has always been with the Idaho MSA contributions. However, with the increase in the percentage of federal adjusted gross income (10%) the number of individuals that will be able to claim medical expenses as itemized deductions will be severely limited. Only those with major or catastrophic medical occurrences will be able to itemize their medical expenses. There are still two classes of individuals that retain the 7.5% limitation for medical expenses, those being lower income and people age 65 and older. We do not think the double dip situation occurs very often." "Alan Pack • Tax Policy Specialist Idaho State Tax Commission • Tax Policy"

Senator Werk asked for clarification on the amount in the Fiscal Note. He asked if the \$4 million figure was per week, per month, per year or over ten years.

Representative Hixon replied that the \$4 million is the amount of the fiscal impact that the Commission provided based on current holdings with MSAs. He said originally there was no cap placed on this, so when a \$20,000 cap is placed, that is the amount the Commission came up with. He said it would be a potential tax liability down the road. **Senator Werk** asked again if it is a \$4 million per year liability once this kicks in. **Representative Hixon** said he is double checking, and he said he believes it would be per year.

Chairman Siddoway welcomed Elizabeth Criner of the Idaho State Dental Association (ISDA) to the podium to testify. She said the ISDA is supportive of **H 595**. **Ms. Criner** called the Committee's attention to a letter from the ISDA's legislative committee chairman, Dr. Steve Bruce, that outlines their position on this issue (see attachment 1). She said that many people in small business do not have dental policies today. She said even in her own business Veritas, employees are better off putting money aside each month rather than purchasing a policy, because it doesn't cover as much out of pocket as other types of health care policies might. **Ms. Criner** said in looking at current restrictions of MSAs, a \$2,000 cap could be a single critical oral health event. She said that is why she is in support of raising that cap and giving consumers another tool in the toolbox to help finance their oral health care needs. She said she always likes to promote that oral health is as important to general health as anything else. **Ms. Criner** asked the Committee to support the legislation.

Chairman Siddoway invited Suzanne Budge, representing the National Federation of Independent Business (NFIB), to the podium to testify. **Ms. Budge** said the NFIB has long supported flexibility for employers with businesses who have fewer than 50 employees for self-funding and high deductibles and maximum flexibility at every level. She said a colleague of hers was involved in writing the initial legislation in 1995 on behalf of farmers in the small group market. She said Idaho was leading the vanguard for this type of approach for medical funding to support self-employed people before it was popular or even included in federal law. She said MSAs did come at the federal level which improved the tax situation, but the State level is still a significantly helpful tool for those who self insure and pay those dental bills and medical costs. **Ms. Budge** noted that she personally uses MSAs to help cover medical and dental costs. She said the NFIB supports this bill and any other legislation that provides flexibility in this arena.

Chairman Siddoway invited Representative Hixon to return to the podium. **Representative Hixon** said, "What this bill boils down to is putting money back in the hands of the people in the state of Idaho so they can have a fighting chance against high health care costs." He said these are increases that are seen year over year over year with no plateaus, but yet higher still. He said he realizes this is an investment of \$4 million per year, but he thinks the return on that investment given to Idaho citizens would be very great. He said this would be a benefit to every Idaho citizen, not just one group or another, which he thinks makes for good legislation and good public policy. **Representative Hixon** asked the Committee to send it to the floor with a do pass recommendation.

Chairman Siddoway asked if Representative Hixon has worked with anyone on this bill in the Senate who would be the sponsor on the Senate side.

Representative Hixon answered no.

Senator Hill commented that he wanted to commend Representatives Hixon and Wood who worked on this bill. He said he thinks it has some good advantages in encouraging people to save for medical expenses, which keeps medical expenses down when people pay for them out of pocket instead of through insurance. He said at the same time, he feels the need to let the Committee know that he has three concerns, and will leave it to the Committee to determine the best policy. He said he will share his concerns in reverse order of importance. **Senator Hill** said his first concern is that he has spent 13 years here trying to simplify the tax code, but more and more differences are added between state and federal returns. He noted that this is not a new difference, because MSAs already exist, but this is a larger amount. He said hopefully it will get used more.

Senator Hill said another concern he has is about the point of trying to promote a free market system, but this bill offers a 10 percent credit to employers who contribute to the MSA. That would mean that not only do they get an income tax deduction for it, but they get a 10 percent credit as well. He said employers don't get a 10 percent credit for offering health insurance to their employees. He said therefore, in essence, the bill tries to influence and tell them what is the best way to insure their employees. He said employers are getting an additional incentive for the MSA not available for insurance premiums, and in a way letting them double dip by letting them have a credit as well.

Senator Hill said his biggest concern is about fairness. He shared an example that he worked through recently with Michael Chakarun of the Commission, who was also present in the audience if correction is needed in this example.

Senator Hill said a taxpayer has \$100,000 in earnings and puts \$20,000 into an MSA and gets a tax deduction on their State return. Then that year, or another year, (it really doesn't matter) he has \$20,000 in medical expenses paid with this account. He said when they itemize their deductions, most taxpayers have to reduce the medical deduction by 10 percent of their adjusted gross income. In this example, that would mean 10 percent of \$100,000 which would be \$10,000 to reduce. This means on his itemized deductions, there is a \$20,000 expense, which needs to be reduced by \$10,000, resulting in a \$10,000 deduction on his itemized deductions. In addition, he said, he still gets to deduct the \$20,000 he put into the MSA.

Senator Hill said that by pushing that through the MSA, and paying for the same expenses, all of a sudden he has a \$30,000 deduction for a \$20,000 cash outlay. He said that might be a good policy the Committee may want to allow, but he said it's a struggle for him. He said he wants everyone to understand how this all works so they can make their best judgment.

Vice Chairman Rice asked Senator Hill if that \$10,000 itemized deduction on the federal return flows through and shows up on the State return. **Senator Hill** said yes, and confirmed with **Mr. Chakarun** in the audience, who also said yes, that is right.

Senator Werk stated, "We want to be fair to all taxpayers if we can." He said if this starts to double, triple, and quadruple dip, then it gets to be difficult. He asked how this analysis changes for a taxpayer who makes only \$30,000 and does not get the same amount of deductions and somehow magically comes up with \$20,000 over the years to put in one of these accounts. On the other end, what if someone earns \$500,000. He asked if this bill benefits a higher income person more than it benefits a lower income person.

Senator Hill commented that it is hard to go through every scenario in his mind, but it seems the benefit would be opposite, because a very high income person with \$500,000 in earnings can only deduct medical expenses to the extent they exceed \$50,000, which is 10 percent of their earnings. In addition, he said, when a taxpayer is in that high level, their itemized deductions start to phase out. In that high income case, the only way that taxpayer will get to deduct medical expenses would be through the MSA, and they could only deduct it once because they're not getting the itemized deduction because they're not over the threshold or it's being phased out, or both.

Vice Chairman Rice asked Senator Hill about the discussion in which a taxpayer puts \$20,000 in during one year, and deduct it and then they have the \$20,000 expense, then they maybe get an additional \$10,000 deduction. He asked what if, under current law, they put in \$2,000, then \$2,000, then \$2,000 over the years until there was \$20,000 in the account. He asked what happens when there is then a \$20,000 expense, would the taxpayer - under current law - get the \$20,000 and the \$10,000 deductions. **Senator Hill** answered yes, they would, and that is the same problem that exists now. He said they can double dip with what they have now. The difference is the magnitude of the dipping.

Senator Werk said he assumes the level at which the cap is set on an annual basis only impacts the issue from the standpoint of the level at which it happens. He said if instead of \$20,000, the decision was that \$10,000 was a more reasonable level, the same kind of effect would still happen, but the accrued tax benefits would be that much less.

Senator Hill said he thinks so, noting that he gave an example for simple math, not to exaggerate the issue. He said depending on the person's income level, whether or not they itemize, and what they itemize, they still may not qualify to use the \$10,000 in the itemization. He said the nice thing about MSAs is they allow taxpayers to deduct expenses off the top, whether or not they itemize, whether or not they go over the limit for medical threshold.

Senator Hill said it is a good plan, but he wishes the federal law would catch up to the amount. He said if it were a federal point, then it would go all the way through, but the federal returns do not allow a deduction on the front end and also on the Schedule A, so there is not a double dip, nor is there a difference between the two returns that need to be kept track of, nor a 10 percent credit that needs to be calculated on a separate sheet over and keep track of for future use, and other complications. He said he really doesn't want to discourage someone who thinks this is a good idea, but he believes everyone should have all the information when making a decision. He said it has some good points, but he probably won't support the bill.

Senator Vick asked Representative Hixon how he arrived at the \$20,000 amount in this bill. **Representative Hixon** answered there was no magical formula by which he came up with that number. He said when he presented it originally, there was no cap. The Committee decided it would be best at \$20,000.

Senator Werk said he appreciates the discussion and he sees the merit of the bill. He thanked the dental representatives for attending. He said he appreciates Representative Hixon's efforts through the process. He said there are two aspects with which he is uncomfortable, including the 10 percent credit on the employer's side. He said when there is an incentive like that, it tends to skew behavior to offer one thing over another, when there may or may not be a benefit. He said that gives him pause. He said he is also uncomfortable with the jump from \$2,000 to \$20,000.

Senator Werk said he would like to amend the bill and remove the 10 percent employer credit and put the cap at \$10,000 as a more doable jump.

MOTION: **Senator Werk** moved, seconded by **Senator Hill**, to send **H 595** to the 14th Order for possible amendment.

DISCUSSION: **Senator Hill** said he would feel better about something different, but he doesn't know if he will support it after it's amended either. He said if it gives the Committee more assurance, he'll support the motion so it can get to the floor so the whole body could eventually vote on it.

ROLL CALL VOTE: **Chairman Siddoway** called for a roll call vote. **Senators Hill, McKenzie, Johnson, Bayer, Werk** and **Lacey** voted aye. **Chairman Siddoway, Vice Chairman Rice** and **Senator Vick** voted nay. The motion carried.

Chairman Siddoway thanked Representative Hixon and requested he work on a proposal for amendments to resolve concerns and to find a Senate sponsor for the bill.

H 602 **Chairman Siddoway** welcomed Bill Roden, representing the Coeur d'Alene Tribe, to the podium to present **H 602**, relating to income tax to add a clause to **H 384**.

Mr. Roden said he **H 602** is a measure advised by the Legislative Services Office (LSO) to make an adjustment to **H 384** which has already passed the Senate, the House and was signed into law by the Governor.

He said **H 384** corrected a situation with relation to income earned by an Indian tribal member employed on a reservation that was not his own. He said there was no objection to the bill. He said the bill had a retroactive clause to January 1, 2013. He said LSO advised him that there is case law that if there was not an emergency clause, it could invalidate the retroactive provision. He said for that reason, LSO suggested returning with this bill to include an emergency clause to correct the problem.

MOTION: **Senator McKenzie** moved, seconded by **Senator Werk**, to send **H 602** to the floor with a **do pass** recommendation.

DISCUSSION: In discussion, **Vice Chairman Rice** commented that he also does not see the need for this bill as the Commission would already be stopped because it was party to the lawsuit and so would be bound by the decision of the judge and would be bound by the decision of the U.S. Supreme Court. He said it doesn't hurt to do this bill, just to be sure.

The motion carried by **voice vote**. **Chairman Siddoway** noted that Vice Chairman Rice carried the initial bill on the floor and would carry this one as well.

H 370 **Chairman Siddoway** welcomed Michael Chakarun, Tax Policy Manager with the Idaho State Tax Commission (Commission) to the podium to present **H 370**, relating to cigarette taxes. **Mr. Chakarun** said this bill is a technical correction relating to the tobacco tax.

Mr. Chakarun said the first change amends Idaho Code § 63-2511 to eliminate a reference to vending machine operators. Cigarettes cannot be sold from vending machines so this language is no longer needed. The second change relates to collection and enforcement, Sections § 63-2516 and § 63-2563. He noted these sections have many references back to the collection and enforcement provisions of the Income Tax Act. This is done in the product tax statutes to avoid duplicating language. The income tax collection and enforcement statutes make reference to taxable year but cigarette and tobacco use monthly taxable periods. This bill adds language to clarify that any reference to taxable year in the Income Tax Act enforcement statutes shall be considered a taxable period in the cigarette and tobacco tax statutes. The proposed language is consistent with the language used in the collection and enforcement statutes for beer in Idaho Code § 23-1050A, and for wine in Idaho Code § 23-1322A. Those changes to Idaho Code were added in 1984.

Chairman Siddoway pointed out to the Committee that the Secretary had put the minutes from the previous discussion for the Committee to reference. He said he hopes Mr. Chakarun's explanation alleviates the Committee's concerns from the initial presentation. **Vice Chairman Rice** said he appreciates and prefers using the language taxable period rather than taxable month.

MOTION: **Senator Lacey** moved, seconded by **Senator Bayer**, to send **H 370** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 541 **Chairman Siddoway** welcomed Phil McGrane, Chief Deputy Clerk with Ada County Clerks, to the podium to present **H 541**, relating to county records to allow for the photographic or digital storage of records. **Mr. McGrane** said the purpose of this bill is to update and modernize the code to allow counties to digitize their public records and then dispose of the paper. He said the language used in this bill was taken from the city code which was updated in 2009 to allow cities to do this very thing. He said one distinction that differs from the city code is that this bill also includes permanent records.

Mr. McGrane said that allows all records at the county level to be digitized. He said many of the most important records have already been digitized by specific statues, such as land records. He said they no longer keep any paper records. He said court records have already been digitized for quite some time. He said this bill will include all other records like vouchers, receipts, and items that become public record when they are created. **Mr. McGrane** said the Idaho Association of Counties supports this legislation.

Mr. McGrane said the reason this came about is that a few years ago Ada County was looking to purchase a multimillion dollar building to store paper records because they had amassed so much paper. He said the office came together and realized they should invest tax dollars more wisely. He said by storing items digitally, they consolidate and do not spend nearly as much to manage those records. He said the benefit is the documents are more accessible to the public. He said one can imagine sifting through numerous volumes of records is not the same as searching on a computer. He said this will also manage the security of the documents much longer. **Mr. McGrane** asked the Committee to move this forward with a do pass recommendation.

Senator Johnson asked why the legislation doesn't recommend a format for digital storage. **Mr. McGrane** said the standard practice is to use tif images. He said it doesn't matter if software changes because tif images can always be read because of the management of them. He said the records retention people at each of the counties handle them, and this works for them.

Senator McKenzie said he thinks this is a good idea and makes records safer. He said digital records are easier to maintain, backup and store offsite, whereas paper records are easily destroyed if there's a fire. He said the courts have done this for a while, and he does it with his own practice that otherwise would have a ton of paper. He thinks it's a cost effective and secure measure.

MOTION: **Senator McKenzie** moved, seconded by **Vice Chairman Rice**, to send **H 451** to the floor with a **do pass** recommendation. Motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:50 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #2
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
8:00 A.M.
Room WW53
Wednesday, March 19, 2014

SUBJECT	DESCRIPTION	PRESENTER
PLEASE NOTE DAY AND TIME CHANGE		
MINUTES	Review of Minutes of March 5, 2014	Senator Lacey
	Review of Minutes of March 12, 2014	Senator Werk
	Review of Minutes of March 13, 2014	Senator Vick
RULES REVIEW		
IDAPA 35		
DOCKET NO. 35-0103-1302	Property Tax Administrative Rules	Alan Dornfest , Idaho State Tax Commission
H 584	Relating to Homestead Exemptions and provisions for active duty military service	Representative Christy Perry
H 441	Relating to Taxation of Personal Property	Seth Grigg , Idaho Association of Counties
H 598	Relating to Sales and Use Tax and remotely accessed computer software	Jay Larsen , Idaho Technology Council

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, March 19, 2014

TIME: 8:00 A.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 8:05 a.m. Without objection, the Chairman asked to reorder the agenda.

H 584 **Chairman Siddoway** welcomed Representative Christy Perry to the podium to present **H 584**, relating to homestead exemptions and provisions for active duty military service. **Representative Perry** shared that this issue was brought to her attention by Sgt. Martin Lopez from the United States Marine Corps. She said he and others like him are from Idaho and have homes here. She said current code says that active duty military personnel can keep their homeowner's exemption only when they are deployed in a combat zone specifically.

Representative Perry said often, military personnel will be in a combat zone intermittently, not necessarily all year long. She said there are also many military personnel who are actually deployed to a combat zone, but their orders will not necessarily reflect the combat zone because what they are doing and where they are is classified information. She said the specificity disallows some of our military members through no fault of their own.

Representative Perry said the legislation is very narrow in scope and allows an active duty military member to maintain his or her homeowner's exemption if they are deployed outside of the State, irrespective of whether they are in a combat zone specifically. She said the bill does call for personal responsibility on the part of the military member to reapply each year and prove their active duty status.

Representative Perry shared a letter with the Committee from Sgt. Lopez (see attachment 1). She quoted from the letter where Sgt. Lopez wrote, "upon further investigation, I discovered that again my homeowner's exemption had expired." She said this bill will make it easier on our military households to have some control, allows for a process for them to apply each year, and stops the constant changes to their household finances. **Representative Perry** said she would like to make the point that although these military families are moved around considerably, if they have a home in Idaho, they do pay their taxes, and this bill in no way changes that fact. She said what it does do is level the playing field for them and treats them like every other Idaho citizen. She noted that there is no impact to the state funds and the Division of Veterans Affairs, the Idaho Association of Counties and the Idaho Realtors Association are supportive of the bill. She also noted that Senator Guthrie had agreed to carry this bill on the floor.

- MOTION:** **Senator Lacey** moved, seconded by **Vice Chairman Rice**, to send **H 584** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.
- MINUTES:** **Chairman Siddoway** called for the consideration of Minutes from previous meetings, noting that the Minutes of March 6, 2014 were not on the agenda but are ready for consideration as well.
- MOTION:** **Senator Lacey** moved, seconded by **Vice Chairman Rice**, to approve the Minutes of March 5, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Vick** moved, seconded by **Vice Chairman Rice**, to approve the Minutes of March 13, 2014. The motion carried by **voice vote**.
- MOTION:** **Senator Werk** moved, seconded by **Senator Hill**, to approve the Minutes of March 12, 2014. The motion carried by **voice vote**.
- MOTION:** **Vice Chairman Rice** moved, seconded by **Senator Hill**, to approve the Minutes of March 6, 2014. The motion carried by **voice vote**.
- H 441** **Chairman Siddoway** invited Seth Grigg of the Idaho Association of Counties to the podium to present **H 441**. **Mr. Grigg** shared that **H 441** is technical in nature. He offered some background to explain why this bill is before the Committee today. He said in 2008, the Legislature enacted the first personal property tax exemption, granting a \$100,000 exemption to businesses. He said the replacement money from that exemption was to be recalculated annually, and the assessors would continue to track and file declaration forms with the county each year. He said in 2013, H 315 changed that. He said it kept the \$100,000 exemption, but it triggered that exemption immediately, whereas the other one was contingent upon a state revenue amount being hit. He said it also fixed the replacement amount in time rather than a recomputation each year. He said that created problems that were not recognized until after the bill became law. **Mr. Grigg** explained the changes to the bill. His detailed points about the changes can be found in the attached document (see attachment 2). He noted that **H 383** did take care of some of the issues and this bill will follow those consistencies. He said **H 441** has two sections because one is the current law, and the other will go into effect in 2017 due to legislation that was enacted a couple years ago regarding a bankruptcy lawsuit in Boise County.
- Senator Vick** asked if people who own private homes on state land can apply for a homeowners exemption. **Mr. Grigg** said he assumes so, but he is not certain and would defer to the Commission, who from the audience nodded yes.
- Chairman Siddoway** thanked Mr. Grigg. He commented that much effort has been made during the session to do more work on the personal property tax exemption. He said there is a Rule that will affect legislation which deals with the three and a half factor, which relates to fixtures as defined in the rule book. He said it deals with equipment not required. Chairman Siddoway said **H 441** is in the position to be used for amendments to get that necessary legislation through. Because of that, Chairman Siddoway said, he will recommend this bill be sent to the 14th Order for amendment.
- MOTION:** **Vice Chairman Rice** moved, seconded by **Senator Hill**, to send **H 441** to the floor with a recommendation that it be placed in the Amending Order. The motion carried by **voice vote**.
- DOCKET NO.** **35-0103-1302** **Chairman Siddoway** invited Alan Dornfest of the Idaho State Tax Commission (Commission) to the podium to present the final rule in the docket that was previously before the Committee. **Chairman Siddoway** noted there is a handout for the Committee to reference as Rule 205 is discussed (see attachment 3).

Mr. Dornfest stated that Rule 205 clarifies statutory definitions of real and personal property to assist assessors and the Commission in determining what property qualifies for the \$100,000 personal property exemption enacted by the legislature with H 315 in 2013.

Mr. Dornfest said the amendments found in Section 04 of Rule 205 are intended to clarify the definition of personal property to provide guidance to assessors and taxpayers as well as to allow for more uniform application of the exemption. He went on to describe the three clarifications:

(1) He noted first that Section 04 restates the statutory definition of "improvement." He said items considered structures or buildings are improvements, and as improvements, must be defined as real property which is ineligible for the personal property exemption. He said this was based on analysis of Idaho Code § 63-201, in which Subsection 11 defines "improvements" as meaning "all buildings, structures, erected upon or affixed to land." He said in the same code section, Subsection 23 defines "improvements" as real property.

(2) **Mr. Dornfest** said Section 03 of the rule reiterates the three factor test, under which once movable items become part of improvements to real property, they become real property, by being physically incorporated into the real property improvements, integral to the use of the real property, and intended during their useful life to be permanent additions to the real property.

Mr. Dornfest gave the example of a window. He said a window was once movable inventory, but then it became part of a business building or house, at which point it is a fixture, and therefore real property. He said because there is a section of statute that excludes articles affixed to real property to enable proper utilization of the articles, making such articles personal property, there is confusion between the three factor test and this extra provision.

(3) He said Section 04(a) of the rule helps resolve this by advising that when this extra provision conflicts with the traditional, well established and nationally recognized three factor test, the three factor test prevails. He said, then in the window example, once installed, it is a fixture which is part of the building, and it is an improvement to real property that is no longer personal property.

Mr. Dornfest then explained that Section 04(b) of Rule 205 provides examples of improvements considered ineligible by reason of being structures, such as cell towers, underground storage tanks, poles and towers, signposts, pipelines, and railroad track. He said an underground storage tank is a good example because it has to be affixed, even though at one time it was personal property, but he would argue it is not personal property under the three factor test.

Mr. Dornfest said most of the time there is no conflict, but he said if there is a conflict, Rule 205 takes the position that the "predominant determinant" as to determining whether a fixture is real property would be the three factor test, and not the extra half factor.

Chairman Siddoway stated if this Committee decides to reject this rule, it will give the Commission the opportunity to go back to the three factor test of annexation, adaptation and intention.

Senator Hill asked if the bill that was just sent to the 14th Order for possible amendment would have the amendments being considered to take care of the provisions in Rule 205 and would supersede Rule 205 anyway. **Chairman Siddoway** answered that is correct. He said the proposed amendments to **H 441** would directly affect this rule and would supersede it and would put in statute what has been dealt with in rule, which would make it legislative authority rather than just rule.

MOTION: **Senator Hill** moved, seconded by **Vice Chairman Rice**, to approve **Docket No. 35-0103-1302**, with the rejection of Rule 205.

In discussion, **Senator Bayer** asked a procedural question. He asked if the potential amendments on a House bill would not be subject to further hearings and/or testimony in the legislative process. **Chairman Siddoway** answered that is correct in that there would not be any further Committee meetings. He said bills sent to the Amending Order will have discussion on the Senate floor.

The motion carried by **voice vote**.

H 598

Chairman Siddoway invited Jay Larsen, CEO and President of the Idaho Technology Council (Council), to the podium to present **H 598**, relating to sales and use tax and remotely accessed computer software. **Chairman Siddoway** pointed out to the Committee that there is a handout provided by the Commission that may help during the presentation (see attachment 4).

Mr. Larsen said his Council represents about 50,000 employees and companies that operate in the technology industry, which has grown significantly over the past five to ten years. He said just in the Boise Valley, there are about a thousand more software developers that have a salary range of \$60,000 to \$120,000. He said the Council focuses on helping technology jobs start and thrive in Idaho.

Mr. Larsen thanked the Committee members for their support offered when he was before this Committee last year. He said he came here for two reason: 1) to gain alignment for the modernization of cloud services or electronically delivered software for services like accounting and legal services, and to provide that these software services are not subject to sales tax; and 2) to discuss the hyper growth of this industry now and in the next several years, and how the industry helps manage and optimize the operations in agriculture, manufacturing, food processing, forestry, mining, financial management, social networking, analytics, security, and much more. He said this legislation will help grow the future of this industry that has a five times multiplier as one of the highest paid industries in the world.

Mr. Larsen defined cloud services by saying they basically enable a customer who pays a license or leases or subscribes to a service for computing, storage, control, robotics, processing and analytics. He said last year the business community ran legislation that basically excluded cloud services from taxation in Idaho as H 186. He said the Commission asked for clarification of the Council's intent. He said the bill was reintroduced as H 243 with language from the Commission, and it passed the Legislature overwhelmingly and was signed into law by Governor Otter.

Mr. Larsen said during the rulemaking process, it became clear that the Commission and the industry came to an impasse in their ability to determine what the language really meant. He said it was decided to bring new legislation to remove ambiguity, which is what **H 598** is about. He said it is not a new tax exemption, but rather an update to definitions to reflect modernization of the industry, while repealing language from the last year's bill and clarifying the intent of the Legislature.

Mr. Larsen said he put together a broader consortium for discussion because it affects so many people and companies. He said Simplot, Micron, Internet Truck Stop, Clearwater Analytics, IACI, Farm Bureau, Boise Metro Chamber, Idaho Association of Realtors, Idaho Automobile Dealers Association, Idaho Restaurant and Lodging Association, Idaho Food Producers, SuperValue, Centurylink, Verizon, and the Pocatello Chamber of Commerce are just some of the companies and organizations who support this bill.

Mr. Larsen offered an example of how the Commission interpreted the intent. He said if a customer pays a subscription service for something on the cloud and puts it on his computer and downloads or prints something from it, that action would be a taxable event based on last year's bill. He said that was not the intent. He said the Council's intent was that a customer pays for a service and can go in and manipulate information as needed. **Mr. Larsen** said the new legislation is a little broader to allow industry to grow and to remove ambiguity.

Mr. Larsen shared four points about the fiscal impact. He said he felt it was important to keep the growing entertainment segment of the industry out of the exemption, which would include videos, books, games and music. He said doing so will provide great revenue for the State. He said the second point is the bill removes the retroactive clause at the request of the Commission, which said making it retroactive made a significant financial impact. Thirdly, he said because of the language of the last year's legislation that said "cloud services are remotely accessed software not subject to the sales tax," he thinks the Commission still is populating some figures in the impact. He said the Commission has supplied him with information regarding several disputes about cloud services, which may contribute to the fiscal impact. He said the last impact is that the business of downloading software is decreasing and cloud services remotely accessed software is increasing more into the future.

Mr. Larsen asked for the Committee's support in sending **H 598** to the floor with a do pass recommendation.

Senator Werk thanked Mr. Larsen for the explanation and asked for more detail with specific examples of where the conflicts were on specific types of products. He said he'd like a more tangible handle on what is being discussed. **Mr. Larsen** gave an example of using a GPS on a tractor. He said the GPS goes through cloud services through the internet and the farmer sits in the tractor while the tractor does its work. He said that would not be a taxable event. He said if he downloaded TurboTax, which could be purchased off a shelf at an electronics store, he would pay tax on that. However, he said if he had an opportunity to pay for a TurboTax subscription service, that would not be a taxable event, and he would have the ability to have other consolidated services, such as information storage.

Mr. Larsen said another issue with the Commission was how to delineate items for customers, because last year's legislation said "like services" would be taxable, meaning if the same item could be downloaded or purchased off the shelf. He said that is why this bill makes it so that anything downloaded off the cloud or having access off the cloud would not be a taxable event. He said other examples of non taxable events would be financial services accessed through the cloud or storage of pictures on the cloud. He said the most important thing to realize is that these examples were not taxable before either. He said until such time that the Commission interpreted portions of this tax code, people and other businesses were not paying taxes on these situations because they are services that are not taxable events. He said it did not come on their registers until audits started taking place a couple years ago.

Mr. Larsen shared examples of 1) a local security company that is one of the top in the world that has grown to half a billion dollar company in the past eight to ten years and 2) a financial institution that manages Fortune 500 companies that is in the top in the world. He said they both use cloud services to deploy their products to their customers. He said customers manage "time accounting" in cloud services, and Micron and HP manage services they provide to their customer base via the cloud. **Mr. Larsen** said this is a space that will continue to grow and excel in Idaho as it is optimized.

Senator Werk said he assumes a company providing services in the cloud is not "what we're dealing with here." He said, "We're dealing with people who are accessing these services from the cloud." He said if there is an Idaho company that provides cloud services all over the world, it is not feeling the heat from this issue. He said it is the user who is feeling the heat as to whether or not they pay tax. **Mr. Larsen** said, "You're right, that is a big issue." He said if he has a company in Idaho and that company's customer is in Idaho, that company is subject to collecting the 6 percent tax from that customer, and that customer has to pay that 6 percent tax (and he said he doesn't know if they are or not), so it is affecting both sides, the company and the customer, especially if the company's operations are in Idaho.

Senator Werk commented that Idaho doesn't collect internet taxes unless there is a nexus in the State. He referred to the tractor example of the tractor guiding itself along the field, stating that he is trying to figure out how a tax would be collected on that service. He asked if that would be a use tax and people would be expected to report that on their returns because it wasn't collected as part of the interaction.

Mr. Larsen said one of the people who helped craft this legislation was one of the top tax attorneys in the State, Rick Smith with Hawley Troxell, and he would defer the question to him. **Chairman Siddoway** cautioned the Committee about time constraints and that one person scheduled to testify is from the Commission. **Senator Werk** withdrew his question.

Senator Vick directed attention to the handout, noting that some parts of the taxable status matrix were still written in as "uncertain." He asked who will decide and how will it be decided whether those events are taxed or not. **Mr. Larsen** answered that he has not seen the document, so he cannot comment on it, but he hopes **H 598** will provide more clarity and clear up ambiguity. He said there were at least nine times in last year's legislation where discussions got hung up on language and definitions, but this bill removes those words. He said he would work with the Commission in rulemaking to clarify any issues and remove obstacles.

Senator Bayer asked for clarification on the origin of this document. **Chairman Siddoway** said he requested the information from the Commission and it was provided by McLean Russell.

TESTIMONY:

Chairman Siddoway welcomed Michael Chakarun, Tax Policy Manager with the Commission, to the podium to testify. **Mr. Chakarun** said the Commission is not here to support or oppose the legislation. He said he's here because the Commission believes it has understated the Fiscal Note. He said the Commission feels it is more along the lines of \$8 million "minimum" per year and will likely grow as more of the services move toward the cloud. He said the Commission appreciates Mr. Larsen and his group's decision to remove the retroactive provision of the bill, because that could have caused the Commission to have to pay refunds.

Mr. Chakarun offered some background. He said it was in 1986 that software was first incorporated into the sales tax code and was defined as taxable tangible personal property. He said the fact that software came on a disk or other media did not matter for sales tax purposes. He said the software itself, the 1's and 0's was tangible personal property. He said in 1993 all information stored in an electronic medium became tangible personal property as well. He emphasized that it was the information itself, not the medium on which it came, that was taxable.

Mr. Chakarun said last legislative session, the Commission was asked to provide a fiscal impact for H 243, and it did so based on publicly available data for software sales. He said they took global industry data and tried to scale back to what the Idaho impact might be. He said in the end, the sponsors calculated their own much lower fiscal impact for the bill. He said over the course of the summer's rulemaking activity, the Commission discussed the issue on several occasions with individuals from the public participating in the rulemaking. He said they believed that tax had not been collected on most sales of cloud-based software, and consequently they alleged the data used by the Commission in calculating the fiscal impact was poor.

Mr. Chakarun said arriving now in 2014, calculating the fiscal impact of **H 598**, the Commission considered those discussions from last year and chose to approach the fiscal impact from a different angle. He said the Commission reviewed sales tax returns, information obtained in the course of sales tax audits, and publicly available financial statements of approximately 100 taxpayers which they were able to identify in the short time frame available. He noted that significant additional time would be required to review even a small portion of the remaining 55,000 sales and use tax permit holders.

Mr. Chakarun said only transactions on which tax has been consistently collected for many years were included in the fiscal effect number. He said taxes that could be collected under interpretations of existing law, but were under audit or appeals and were not collected are not included in these numbers. He said of the 100 taxpayers, 28 were identified that the Commission could confidently say pay tax on these types of transactions. He said those taxpayers' information is confidential data and could not be disclosed to industry groups. He said that would mean collecting \$5 million in taxes to Idaho on an annual basis, and he said the Commission is very confident and comfortable with that number.

Mr. Chakarun said the Commission looked at 100 out of 55,000 tax returns, and those 55,000 are not the whole tax base, because companies don't have to have a sales and use tax permit to do business in Idaho, so there may still be these types of transactions on which taxes would be paid on a corporate return. He said the Commission's \$3 million estimate would be a conservative estimate of what that untapped population might contribute to the Fiscal Note. He said if they couldn't find evidence that a taxpayer didn't pay sales and use tax, the Commission didn't include that taxpayer.

Mr. Chakarun said the broad overview is that this bill moves far beyond what H 243 did last year. He said it is going to exempt smartphone and tablet apps, downloaded software, online software of which there is a downloadable or boxed version, enterprise software, and software maintenance contracts. He said pure help desk software is never held taxable, but software in which the customer receives help desk functionality plus software updates would be taxed at 50 percent, half taxable, half not taxable. He said some maintenance contracts are such that a customer cannot buy the software unless they also purchase the maintenance contracts, and that is taxable. Mr. Chakarun's comments were provided in writing (see attachment 5).

Mr. Chakarun said he would like to yield his time to Mr. Russell to walk the Committee through the matrix. **Chairman Siddoway** granted the request to yield. McLean Russell of the Commission approached the podium.

Mr. Russell said he tried to keep the matrix as close to prior versions as possible with updates of exemptions under **H 598**. He said page one addresses the traditional types of software loaded onto the computer, but with various delivery methods. He said essentially this bill exempts any delivery method besides a disk. He said this is where the primary fiscal impact is because it would exempt very large software packages that large companies use which cost millions up front and millions to keep up each year. He said item 1C of the matrix is in response to the bill, which addresses computer software that is delivered by the load and leave method. He said this line item does not affect individuals but only the big companies. He said this stuff doesn't come on a disk and so is exempted. He said this is a major difference from the current climate to what will the climate will be like under this bill.

Mr. Russell said the next section is about cloud type services. He said during discussions last year, everyone agreed that software that is delivered electronically was taxable, as was software delivered by the load and leave method. This is where this year's bill is more expansive than last year's. He said the fiscal impact of \$8 million that Mr. Chakarun shared does not include cloud based software. He said it includes only tax being paid on traditional types of software that have been taxable for many years. He said he personally vetted every single taxpayer that came across his desk, and every single one was selling kinds of software that has been used for years. The discussion now is just about differences in delivery methods.

Mr. Russell addressed Senator Vick's question about the line items marked "uncertain." He said this bill will not address all of them, and he said, "Frankly, I don't know if they can be addressed in rule or not. I don't know if we need a statute. That is always the best way to settle some of these issues so taxpayers and the Commission have guidance."

Mr. Russell said page three of the matrix is about digital products. He said most of them do remain taxable. He said the only change on this is where it used to say "movie, book, song or article" it now says "game" instead of "article" because he is uncertain if a digital article will be taxable under the new bill. He said the others are tangible personal property regardless of what the new law says. He said page four has a lot of uncertainty, because it includes things like video streaming, Netflix, Hulu and digital subscriptions to newspapers. He said, "We don't know what to do with it now and I don't think we'll know what to do with it under **H 598**."

Mr. Russell moved on to page five, which he said is where a large source of the fiscal impact lies. He said this is large companies who purchase data and the rights to use proprietary consumer data so companies can know what's going on in their industry. He said this bill would exempt all of that because it never comes on a disk.

Mr. Russell discussed page 6 of the matrix, and said 6B currently says taxable, but in reviewing the bill again today, he said events or shows that can be viewed at anytime through video on demand would fall in the category of uncertain, probably exempt. He then spoke about the items on page 7, and commented that while the bill does specifically say that digital games will remain taxable as tangible personal property, there is much uncertainty about it because of the various delivery methods and the current language in the statute that goes back 20 to 30 years.

Mr. Russell said he wanted to run through this information with the Committee so the members "understand what they are exempting, what they're excluding from taxation." He said he uses the word exempt and realizes this is a change in the definition. He's using the word exemption in the colloquial.

Vice Chairman Rice expressed concern that it appears to him that the Commission was interpreting printing off a report as being a separate a taxable event, even though the software wasn't taxable. He said he has a problem with that, because he doesn't see anywhere in tax code that that would be a taxable event. He said that would mean all sorts of services would be taxable, and he said it reminds him of the Stamp Act that led to the American Revolution. He asked Mr. Russell to explain the rationale on "why we suddenly have a Stamp Act that has never been passed by the Legislature."

Mr. Russell answered that "I can't speak to the Stamp Act" but he can say that during last summer's discussions, there was a lot of talk about documents. He said the problem they had was software that had online components loaded on computers. He said the particular cases Mr. Larsen referenced were research databases that are primarily in the cloud now, which 20 years ago were a set of books on a shelf, as for a lawyer or accountant. He said this information is now in the cloud and allows someone the ability to pull anything they want out of the database and load it onto their computer. He said that was one of the key issues that created an impasse and could not agree on how that should be treated. He said it was never the Commission's intention to put into rule or tax remotely accessed software from which reports can be printed.

Senator Werk said, "This is just so muddy." He said instead of having a wall full of legal books, he has a service that provides him with information that he needs. He asked under the current policy, would it be the Commission's duty to treat every per-transaction-basis each time he downloads a chunk of case law as a taxable event, so that he is taxed when he downloads case A on one day, and then gets taxed again the next day when he needs to download case B. **Mr. Russell** answered that the line item being discussed is 4D on the matrix. He said if someone were to pay for a chunk of content and just get that chunk of content, he believes that would be taxable under current law. He said information stored in an electronic medium in Idaho is tangible personal property and has been for 20 years. He said the problem is with online libraries where someone has access to everything and downloads only what is needed, like a court case or tax law or whatever. He gave an example of how everything "LexisNexis Westlaw" sold 20 years ago was taxable and now a lot of their sales are not, or it is uncertain whether they are.

Senator Werk asked if this doesn't pass and everything remains the same, how on earth does the Commission propose to collect tax on these types of ethereal transactions. **Mr. Russell** asked Senator Werk what he means by ethereal transactions, and if that means the difficulty in administering and enforcing tax collection. **Senator Werk** replied yes, based on the types of transactions being discussed. **Mr. Russell** answered that in general, these companies and providers are often very large and if they have a presence and nexus in Idaho, they generally know when they should or shouldn't be collecting tax. He said they collect it on the items they think they should be and don't on the things they don't. He said when talking about very small companies, it is always a problem in tax enforcement in every industry. He said the Commission does good work in auditing and informing and helping nonfilers get permitted if they need to be. He said in many of these areas tax is being collected. He said it is particularly large companies that are paying the use tax, and that is why this is such a big fiscal impact in actual dollars, not just what the Commission thinks should be collected.

Senator Werk said he is hearing discrepancies in the claims about the Fiscal Note. He said under Joint Rule 18, he would challenge the sufficiency of the Fiscal Note on **H 598**.

Senator Hill thanked Mr. Russell because members were struggling with what this bill actually does, and even though there are many things still uncertain, this matrix is helpful. He said it is "our fault, not yours" because it is the statutes that the Legislature passes that makes things uncertain. He said he appreciates the help.

Senator Vick had a question about line 4A in relation to online digital library of movies or music, with examples of Netflix and Hulu. He said there is a specific exclusion for music, movies, and books. He asked Mr. Russell to explain how he came to the determination that it is uncertain if these items are taxable or not. **Mr. Russell** said during discussions last summer, they could not agree on whether access to an online library with "information stored in electronic medium" that could have items downloaded made it "tangible personal property" or not. He said without something in the code that says something like "a subscription to a library of digital movies" making it very clear, there is uncertainty. He said he could make an argument that it is taxable and he could make an argument that it is not taxable.

Senator Vick said, "The exclusion then for music doesn't apply, in your mind." **Mr. Russell** said he thinks it makes it clear that if someone gets a digital movie and pays for it, and gets a digital song and pays for it, that one movie or song is subject to tax. He said it's when there are other types of transactions that it becomes less clear.

Chairman Siddoway invited Jim Lowe to the podium to testify. **Mr. Lowe** said he is here to represent Food Producers of Idaho, which has voted to support and track **H 598**. He said agriculture has become a very technology-intense industry and farmers rely heavily on online and cloud based services. Mr. Lowe's testimony is in writing and is available in the attached document (see attachment 6).

Chairman Siddoway invited Jonathan Parker with the firm Holland and Hart, representing Internet Truck Stop, to the podium to testify. **Mr. Parker** said Internet Truck stop is only eight miles from the Oregon border, but the owner is from Idaho and wants to stay in Idaho, despite Oregon throwing millions of dollars of incentives toward them to relocate to Oregon. He said he believes **H 598** is a good bill that will keep Idaho based businesses in Idaho and attract new ones. Mr. Parker's testimony is in writing and is available in the attached document (see attachment 7).

Chairman Siddoway invited Rick Smith of Hawley Troxell Law Firm, representing the Idaho Technology Council, to the podium to testify. **Mr. Smith** said there have been many issues raised about uncertainties remaining in this bill, about the fiscal impact, and about why this bill is even here after last year's bill. He said he thinks this bill does remove many uncertainties that were present in last year's bill. He said "we're not going to get them all." He said software applications and cloud technology will change over time, and there's no way to clarify everything in one bill at one time. He said he thinks they will probably come back in a few years and look at it again.

Mr. Smith said there is clarification for sure if software is in tangible form it will be taxable. If it is not in tangible form and is electronically delivered or accessed over the cloud, it will not be taxable. He said the bill establishes a bright line with respect to that. He said for clarification of the fiscal impact, this bill makes clear that digital products, music, books, games and videos would be taxable. He said that has been in doubt for a long time. He said these products, which will be coming into use more and more, are going to be taxable and are going to generate sales tax revenue for the State of Idaho. He said he thinks that is an offsetting factor to the fiscal impact that has been estimated by the State.

Mr. Smith addressed some of Senator Werk's questions about the problems encountered last year with the Commission. He said last year's bill excluded from tax remotely accessed software; software that is out on the cloud. He said every time an Idaho user accessed software from the cloud, whether from an Idaho or out of state software developer, there will always be some kind of "output" that will result from that access. He said it would be like printing a report or printing out a case, or some other instance of electronic download of the product. He said the Council and the Commission couldn't come to terms over the intent of the legislation.

Mr. Smith said if it is remotely accessed, it should still be excluded even if there is some downloaded product that everyone knows one would have with any software application. He said the clarification they tried to make with this bill is that if electronic download of remotely accessed software is that big of a problem, then "let's make a better bright line and include electronically downloaded software as part of the software that is excluded from tax." He said that should remove a lot of uncertainty that has been present for a long time, including with last year's bill. He said there is an additional fiscal impact from that.

Mr. Smith said he would dispute the amount the Commission has expressed. He said he thinks the Commission has conceded that the method they used to determine fiscal impact is something they don't do in measuring other fiscal impacts. He said they reviewed 29 (sic) tax returns and looked at them to estimate what taxes were paid by those taxpayers for software products. He said he doesn't know how they could tell from those returns what kind of software those companies were buying, whether it was remotely accessed software, electronically downloaded software, or software delivered in tangible form. He said it could be that those software packages were packages that would continue to be taxed even after this bill is enacted. He said he thinks there are fundamental problems with the method the Commission used to determine the fiscal impact.

Mr. Smith said everything he has heard and read is that the movement of software applications is going to be toward the cloud. He said more and more is going toward the cloud and less and less will be electronically downloaded. He said to the extent that there is a fiscal impact from this additional electronic download feature, revenues from that would be diminishing over time anyway. He said from his view, even before last year's bill, Idaho did not have the statutory authority to tax transactions on the cloud in the first place. He said whatever the fiscal impact might be from this bill which comes from the migration toward the cloud is foregone revenue to begin with, because it's not something that Idaho had the right to tax at all.

Senator Hill said he understood from Mr. Chakarun's testimony that the Commission had already taken into account that this bill had been changed to remove the entertainment parts. He said it sounds to him like Mr. Smith is saying they are overstating it because they haven't taken that out. He said Mr. Smith noted he has a problem with their method of calculating the fiscal impact, and he asked what method did the Council use. He said this is setting quite an interesting precedent, because he has had tax bills he's carried himself in which the fiscal note from the Commission "didn't feel right" but they are the only ones who have the actual data to go back and reference, as limited as it may be at times. **Senator Hill** asked what empirical data or evidence is Mr. Smith using to challenge the fiscal note.

Mr. Smith said he understands that the Commission's fiscal note does not include any additional impact or mitigation from the fact that entertainment is now taxable and was taxable as a result of last year's bill. He said his point is that he thinks the increasing clarity provided by both last year's and this year's bills will clarify that these types of entertainment products are taxable and have an offsetting impact that should make this whole clarification process more palatable to the Legislature.

Mr. Smith said he thinks in the future digital products are going to increase in use, and he does not think they have been consistently reported or taxed, so he thinks this will be an additional source of revenue that the Commission didn't try to quantify because it was not part of their charge. He said he thinks it is something fair to consider.

Mr. Smith said yes, he has problems with the Commission's method. He said to answer the question about what he'd do differently, he pointed out that the problem is the Commission has all the information. He said he'd like to be able to audit what they did, but "they won't give it to us because it's private confidential taxpayer information." He said he can't get in there and dissect it any better than he is now. He said he thinks it is fair to say that they've conceded it is a pretty unscientific method they used. **Mr. Smith** said they just looked at returns, which are not very detailed as to what types of software is being purchased or what methods of delivery were used for that software, in order to know whether or not that software would have been taxable under this bill. He said if it would have been taxable under this bill, it is not fair to consider it as part of the overall fiscal impact. He said the way the Council did it is to take the Commission's number and "just discount it a little bit." He said the Council thinks it's overstated. He said it is a guess because this is a very difficult area, and it is hard for the Commission, too. He said it's hard to know what is taxable in the first place, how that is impact estimated, and how it's going to be counted in the future because it will all be in the cloud and Idaho wouldn't be able to tax that anyway.

Chairman Siddoway invited Mr. Larsen to the podium to close the testimony. **Mr. Larsen** said the reason people like cloud services is because it allows them to get a custom product that would have cost them millions and millions of dollars for only \$30 because that cost has been spread out. He said, "Do not be deceived on this issue; it is much clearer than this." He said the ambiguity comes from the Commission. He said the Council clearly defines that entertainment is excluded from the exemption, and the Commission tries to tell you that Netflix is a service where you buy movies and it could be argued either way. Mr. Larsen said it cannot be, because in their method, it is supposed to be taxed. He said the Committee can now see the difficulty they had last summer during discussions, because the Commission brought in the ambiguity. He said "It doesn't need to be that way." He said this bill clarifies it. He said there will be some things that need to be discussed, but he believes there will be really good rules out of this. He said this is good legislation that will really help the State of Idaho. He said the Council will come back to the Legislature, because this is all about modernization. He said what will happen with the hyper growth of this industry will be phenomenal, and they'll need to come back multiple times in the next two to five to ten years. He said they don't know what the next cloud service will be. **Mr. Larsen** asked for the Committee's support.

MOTION:

Vice Chairman Rice moved, seconded by **Senator Bayer**, to send **H 598** to the floor with a **do pass** recommendation.

During discussion, **Senator Werk** said he doesn't know which way to go on this because the Fiscal Note is disturbing. He said, "Any additional monies that go into any kind of not taxing something or taking money away impacts our ability to fund education. I don't know which way to go on this, but I don't like the idea of money not being able to be put into education."

Vice Chairman Rice said in regard to the Fiscal Note, the Commission did a study, but the statistical information collected and compiled was not as good as he would like, and that adds to the uncertainty. He said he understands the Commission is addressing that and hopefully there will be better numbers in the future. He said he is comfortable with what it is.

The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 9:30 a.m.

Senator Siddoway
Chair

Christy Stansell
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
8:00 A.M.
Room WW53
Thursday, March 20, 2014

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION	Page Presentation	Rebecca Swanson
MINUTES:	Review of Minutes of February 19, 2014	Senator Bayer
<u>HCR 61</u>	Relating to Idaho State Income Tax Commission Pending Rules	Senator Siddoway
<u>H 600</u>	Relating to Income Taxes and bonus depreciation	Michael Chakarun, Idaho State Tax Commission
<u>H 593</u>	Relating to Funds and the Sales Tax	Representative Lance Clow

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Thursday, March 20, 2014
- TIME:** 8:00 A.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 8:04 a.m.
- PRESENTATION:** **Chairman Siddoway** welcomed the Committee Page, Rebecca Swanson of Rigby, to the podium for a presentation. **Chairman Siddoway** asked Ms. Swanson to share her Senate experience with the Committee. **Ms. Swanson** said she has loved it here, and she is sad it is ending. She said it has been neat to see first hand the entire process, and she has gained a better appreciation for how government works. She said while she's been here, she's learned how to be patient and how to work very hard. She said she appreciates that the Senators are "regular people" with whom she can converse.
- Chairman Siddoway** asked about her plans when she leaves the Senate. **Ms. Swanson** said she will graduate high school in May and then will go to Europe for a couple of weeks as a senior trip, then she will return home, work for the summer and go to college in the fall. She has several offers and hasn't yet decided which school she'll attend, but she plans to study education with a focus in elementary or special education, along with French. **Senator Werk** asked where in Europe she would visit, and she said Wales, England, and Scotland. **Senator Werk** asked, why not France. **Ms. Swanson** said she really wants to go, and her dad is a French teacher and has been to France several times and hasn't taken her there yet. **Chairman Siddoway** asked how many members of her family have been Senate Pages. **Ms. Swanson** said two older sisters, an older brother and a brother-in-law who have all been pages. She said she has another little brother who will be here in about four years.
- Chairman Siddoway** said the Committee has certainly appreciated Ms. Swanson's assistance during the session, especially helping Secretary Christy Stansell. He presented her with a letter of recommendation, a letter from the Committee and a Senate watch.
- MINUTES:** Chairman Siddoway called for the review of Minutes from previous Committee Meetings, noting that the Minutes of March 11, 2014 were not on the agenda but were also ready for consideration.
- MOTION:** **Senator Bayer** moved, seconded by **Senator Werk**, to approve the Minutes of February 19, 2014. The motion carried by **voice vote**.
- PASS THE GAVEL:** Chairman Siddoway passed the gavel to Vice Chairman Rice.

MOTION: **Chairman Siddoway** moved, seconded by **Senator McKenzie**, to approve the Minutes of March 11, 2014. The motion carried by **voice vote**.

PASS THE GAVEL: Vice Chairman Rice returned the gavel to Chairman Siddoway.

HCR 61 **Chairman Siddoway** stated that **HCR 61** is the resolution for the rule the Committee took action to reject yesterday. It relates to Rule 205 in the pending rules of **Docket No. 35-0103-1302**.

MOTION: **Senator Werk** moved, seconded by **Senator Bayer**, to send **HCR 61** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 600 **Chairman Siddoway** welcomed Michael Chakarun, Tax Policy Manager with the Idaho State Tax Commission (Commission), to present **H 600** relating to income taxes and bonus depreciation.

Mr. Chakarun said the American Taxpayer Relief Act of 2012, signed into law in January 2013 (Public Law 112-240), extended bonus depreciation for 2013. That is from Section 168(k) of the Internal Revenue Code. **Mr. Chakarun** said the conformity bill decoupled Idaho from bonus depreciation only through 2012.

Mr. Chakarun offered some background. He said since the addition of bonus depreciation to the Internal Revenue Code in 2002, Idaho has conformed and allowed this deduction on Idaho income tax returns for only two years, 2008 and 2009. He said to continue Idaho's standing practice of not conforming to bonus depreciation, **HB 600** amends Idaho Code § 63-3022(O) by adding language to state that for tax years beginning after December 31, 2009, Idaho will not conform to bonus depreciation.

Mr. Chakarun said making this change will avoid an annual update to the statute each time Congress extends bonus depreciation, which it has done at least five times since 2002. He said the bill also removes the references to two federal tax statutes enacted by Congress in 2010 as these references will no longer be needed. He said that means Idaho permanently decouples from bonus depreciation, unless the Legislature affirmatively wants to instate it for a future year.

Senator Hill said it seems this has to do with the gain or loss of the sale of property after 2009. He said he doesn't see the bill talking about the deduction for the bonus depreciation, and he asked if that is already covered or implied in this legislation, or if this bill isn't passed there is no deduction for bonus depreciation which would mean the seller doesn't get the higher basis when the property is sold. **Mr. Chakarun** said the Commission has mirrored the language that it used for decoupling prior to 2008. He said when bonus depreciation is taken into account, the depreciation will be based on regular modified accelerated cost recovery. He said the idea is to make sure the taxpayer reduces the basis by the regular depreciation, not by any bonus depreciation, for those years that Idaho does not conform with federal code. **Senator Hill** asked if this works. **Mr. Chakarun** said yes.

Senator Vick asked for a brief history lesson as this is an issue that seems to have been decided before he came to the Legislature. He asked why Idaho decoupled from this portion of the Federal Tax Code. **Mr. Chakarun** answered that Idaho decoupled because the fiscal effect has been so large on the State of Idaho. He said before Idaho decided to decouple from bonus depreciation for tax years beginning and after 2009, there was a \$10 million negative fiscal note for that year, and the next year was about a \$6 million or \$9 million fiscal note. He said the numbers are substantial. He said if Idaho did not make this change and instead conformed with bonus depreciation this year, the fiscal effect to Idaho would be an \$18.5 million reduction in General Fund revenue for FY 2015.

Vice Chairman Rice asked if the federal government tends to renew this every year, why this bill hasn't been brought forward in this session sooner. **Mr. Chakrun** said the 2013 extension was done last year in the fiscal cliff bill that was passed in January. He said the Commission probably should have done this at that time, but it was preoccupied with issues and "quite frankly, we missed it." He said for more background on bonus depreciation, it was enacted following the terrorist attacks of 2001 because Congress was worried there would be a negative economic impact. He said the government wanted to make sure people would still buy machines and equipment. He said it would sunset and then reinstate, sunset and reinstate.

Senator Hill moved, seconded by **Senator Lacey**, to send **H 600** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 593

Chairman Siddoway welcomed Representative Lance Clow to the podium to present **H 593**, relating to funds and the sales tax. **Representative Clow** said this bill establishes a Tax Relief Fund. He said it is modeled after a concept being used in other states, including Utah. He said this will be the place for funds that may come from the Marketplace Fairness Act if and when it is passed by Congress. He said that money would accumulate in this fund to be distributed at the discretion of the Legislature, as it sees fit "for tax relief rather than the growth of government." He noted there is no particular tax relief item in mind at this point.

Representative Clow said he met with many stakeholders and interested parties and they discussed that this fund is a form of "fiscal flexibility" which means it could be used for property tax relief, sales tax relief, grocery tax relief, income tax relief, or whatever option may be necessary at that time. He said right now, he knows of no money that is qualified to come in for this account. He said there are no use taxes being remitted on tax returns, nor are there random tax checks coming in to the Commission from retailers around the country. He said the fund is designed to implement the Marketplace Fairness Act concept.

Representative Clow stated that retailers with nexus and physical presence in the State are required to collect sales tax and remit it to the Commission; however, retailers who do not have a nexus in the State are not required to collect those taxes. He said it is the responsibility of those that make those purchase to remit that tax on their income tax returns, but most people do not pay attention to that line, and there is not a lot of money being collected at this time. He said that line item is not intended for that money to go into this account.

Representative Clow said many people may ask when and what money will come in. He said the U.S. Senate passed the Marketplace Fairness Act bill, and it is now in the U.S. House, where hearings have been started. He said one agreement that has been made in Congress is that from a federal standpoint, sales taxes from remote sellers are not a new tax. He said remote sellers are not just internet sales but could also be direct marketing, direct mail or telephone solicitation. He said they are looking at simplification issues. **Representative Clow** said the U.S. House could pass the Act before the end of the year, but after elections.

He said if that bill does pass and Idaho has not done anything to simplify its tax laws to comply with the U.S. Senate version, there is potential that some retailers around the country might start remitting tax to Idaho, and this fund would be a place to put it. He said if Idaho were to conform to federal simplified provisions, Idaho could see larger amounts of money coming in, but at this time, there is no money coming to this account. **Representative Clow** said he wants to have it available in case the federal government were to take action before the next legislative session.

Representative Clow pointed out language in **H 593** that would need to be amended. He said he inquired with the Commission on how the monies would flow through the General Fund and he said his question was not as well-worded or he misinterpreted the answer, so there is a suggested amendment to fix that misunderstanding. He said on page 5 line 37 following the word "tax" there will be an insertion of "less amounts otherwise distributed in Subsections 1 through 10 of this Subsection." He said it was never the intention of this bill to take funds that might otherwise go to cities, counties, and other funds. He said this amendment would fix the bill.

Senator Johnson commented that there are parts of the bill he likes and parts he doesn't like. He said he will support sending it to the Amending Order. He said he is concerned about putting funds there for future tax relief.

Chairman Siddoway asked if the money that is voluntarily remitted on returns from sales, which he understands is about \$1 million to \$3 million, does not go to this fund. **Representative Clow** answered it is correct that monies that are filed on tax returns absolutely are not directed to this fund. He said those are use taxes that go to the General Fund as they always have. He said there is a reference to voluntary remittances, which this bill would provide for, but there are none at this time. He said there is an estimate that if Idaho were to simplify code and align and join with a national coalition group called Streamlined Sales Tax Governing Board (Board), there may be as much \$1 million to \$3 million that national retailers without nexus in Idaho might start remitting. He said only about half of that might be new money though, because some retailers might be doing it out of convenience rather than directly as new money. He said he doesn't see a big change until Idaho simplifies and the federal law passes.

Chairman Siddoway asked for an explanation of what all is entailed in joining that Board. **Representative Clow** said the Board has been discussed for several years. He said it is a coalition of 24 states who have joined together to simplify their tax code. He said the Board is mostly working on definitions, like with "sourcing" - where does the sale actually occur, at the point of sale or the point of purchase. He said some items need to be aligned and simplified. He said part of the federal legislation being discussed about simplification says that if a state is part of the Board, it automatically has met all of the simplification requirements.

Representative Clow said it doesn't mean Idaho couldn't potentially do that on its own, but it does make it a lot easier, especially in a state of this size, rather than reinvent the wheel. He said Idaho has attended the Board in an advisory role and not as a voting member. **Representative Clow** said he personally attended the Board's meeting last year and found it quite interesting. He gave examples of some definitions. He said Idaho taxes food, and some people like that, while some people don't. He said other states don't tax food, but they tax candy, so the determination at the grocery check out line is what is candy and what isn't. He said the Board defines what candy is so all 24 states treat it the same. He said the Board doesn't dictate whether a state has to tax candy or what to tax or not to tax. He said he doesn't see anything that would indicate joining the Board would generate additional tax or reduce tax, nor would it affect Idaho's ability to exempt things. He said states retain sovereignty over what is taxed and how it is taxed.

Chairman Siddoway welcomed John Watts of the Idaho Chamber Alliance to the podium. **Mr. Watts** spoke in favor of the bill, saying he believes it is the first step in the right direction toward fairness.

MOTION:

Senator Werk moved, seconded by **Vice Chairman Rice**, to send **H 593** to the 14th Order for possible amendment. The motion carried by **voice vote**.

Chairman Siddoway thanked the Committee for their work this session, as well as all those who participated and provided testimony to move legislation along.

CONVENED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:31 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary