

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, February 24, 2015

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Johnson, Senators McKenzie, Rice, Vick, Bayer, Guthrie and Burgoyne

ABSENT/ EXCUSED: All present, with a vacancy in District 17.

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 3:03 p.m.

PAGE INTRODUCTION: **Chairman Siddoway** introduced the Committee Page, Nolan Cole and invited him to the podium to tell the Committee about himself.

MINUTES: **Chairman Siddoway** called for the approval of the Minutes from February 10, 2015.

APPROVAL: **Senator McKenzie** moved to approve the Minutes of February 10, 2015. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

HCR 4: **Representative Collins** presented **HCR 4**. This Concurrent Resolution rejects Rules 102 and 128 of the Idaho State Tax Commission (Commission). Rule 102 relates to the sales tax exemption for logging, and Rule 128 relates to lodging sales tax exemptions. Both rules were part of **Docket No. 35-0102-1403**. Rule 102 is an amendment to clarify that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption but not the logging exemption. This rule was part of the negotiated rule making process, and two public meetings were held as well as outreach to several logging contractors; no concerns were expressed. Rule 128 is an amendment to require exempt organizations to use a specific form for claiming an exemption on purchases of lodging accommodations when a qualifying credit card is used. This amendment requires that additional documentation be collected by lodging establishments to ensure the exemption is properly claimed.

MOTION: **Senator Rice** moved to send **HCR 4** to the floor with a **do pass** recommendation. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

S 1093 **Senator Nuxoll** invited Ken Harvey, a rural county citizen, to present **S 1093**. **Mr. Harvey** reported this bill is an amendment to Idaho Code § § 50-222 and 50-221A, stating if more than 25 percent of land owners in cities of less than 8,000 people file a written protest then an election shall be held. This bill is applicable when a city wants to annex less than 99 privately owned parcels.

TESTIMONY: Much discussion ensued regarding **S 1093** and speaking in favor were:

Fonda Jovick, an attorney with Lake City Law Group, stated if a rural city followed through the necessary procedures of the statute, there is no opportunity for citizens to have a voice in the process. She acknowledged citizens could go to the public hearing and object, but it doesn't stop anything. It doesn't give them the opportunity to protect their own rights. Current statute allows for an independent property owner or developer to come in and request an annexation. Opposers, which are typically the affected parcel owners, and the city council sit as an objective neutral body to weigh the evidence and make a decision based on the information presented to them. But, when you have a city as its own petitioner the people lose their objective neutrality. **Ms. Jovick** likened it to going into a courtroom and having the judge be the opposing party. The opportunity for fairness and neutrality is lost. She reported **S 1093** gives county parcel owners an opportunity to vote on annexation, and reiterated she was advocating on the behalf of rural land owners that don't have a voice in a process that forces them into city boundaries they may not want to be apart of.

Senator Rice asked **Ms. Jovick** to comment on the inconsistency of how **S 1093** read in relation to the individuals who has a right to protest. **Ms. Jovick** discussed which cities could object to annexation. She identified them as cities with a population of 8,000 or less and said that some of the language was inconsistent and may do well to be sent to the Amending Order.

Senator McKenzie asked who had the right to protest and the effects of it and also commented on the inconsistent flow of how this bill is written. **Ms. Jovick** said she agrees with his assessment on the need for clarification to make language in **S 1093** clearer.

Senator Bayer asked whether there would be different annexation criteria for a big city versus a small city experiencing similar growth boundaries. **Ms. Jovick** said that was a perfect example of why it would be more appropriate to amend **S 1093** to include all cities rather than limiting it to cities of 8,000 or less. The city of 8,000 or less, assuming it was forced annexation, would not have the opportunity to vote whereas the larger city would.

TESTIMONY: Speaking in opposition of **S 1093**:

Jerry Mason, counsel for Association of Idaho Cities, gave a brief history of municipal annexation saying it was essentially as old as the State was. He explained the fundamental foundations of annexation and growth of cities and said the annexation process is what has moved Idaho's small towns to become larger cities and provided many small towns to become more modern. **Mr. Mason** reported that for decades, Idaho law has required cities to plan. He said modern communities don't just happen; they come about because private developers and municipal officials cooperate to provide systems that function efficiently for all. A key part of the whole process has been municipal annexation. He indicated that the proposed change in **S 1093** would take away the decision making authority of local government officials and would turn it over to registered voters. In a letter given to each Senator he cited 14 components that were cause for concern regarding **S 1093**. He outlined 6 of the 14 (see attachment 1).

Senator Rice asked about the size of parcels cities can annex and whether there were any restrictions. **Mr. Mason** replied that there is an agricultural exemption for parcels five acres and greater. Otherwise parcels have to be divided or have begun to be divided. It's been the statutory language for well over 50 years. **Senator Rice** confirmed by asking if the parcel size was five acres or larger it couldn't be annexed. **Mr. Mason** replied the city could not include them in an annexation if they are for agricultural use and five acres or more. The parcel owner could simply petition and be excused from the annexation. **Senator Rice** followed up and asked what things the city would look at to deem the parcel agricultural. **Mr. Mason** said the rules that the Commission has established would be used in order to determine agricultural use. **Senator Rice** asked if there was real objection to a system that allows land owners to vote on whether they would be annexed or is the objection that **S 1093** may not be drafted as well as it could be. **Mr. Mason** replied that he believes there is a general concern that if urbanization could happen without annexation, they are basically breaking down the fabric of a system that's been established in Idaho for a century or more.

Senator Vick asked if there was opposition to allowing rural county citizens who own property or reside on property to have a vote on annexation. **Mr. Mason** said he supports Idaho Code § 50-222 which includes three types of annexation: Category A consensual, Category B smaller and partial consensual, and Category C where there is a polling of the owners. There has never been support for voting by voters. The concern lies with voters being able to stop expansion of a city.

Senator Vick asked him to comment on the situation in Bonners Ferry and whether the Association of Idaho Cities gave counsel to cities working to annex. **Mr. Mason** said they provide counsel if they are asked and that situation was particularly unique.

Senator Bayer asked if there were any other taxing districts that determine a property owners tax liability that's outside their boundary before they become incorporated or become annexed. **Mr. Mason** replied that owners bear tax liability when they become annexed, and each individual case has so much variance and uniqueness.

John Eaton, Government Affairs Director with the Idaho Association of Realtors, stated the provision in this legislation doesn't lend to orderly growth, and the situation may well be that one or two people could potentially stop growth. He reiterated that this is not smart growth, good planning, or what the Local Land Use Planning Act predicts or asks.

Senator Vick asked if there was a scenario where Mr. Eaton could support legislation to allow property owners to have a vote in annexation. **Mr. Eaton** said he supports the existing statute as it exists today. **Senator Vick** asked if he believed it was possible in the future, such as in cases discussed today would there be an opportunity for owners to vote. **Mr. Eaton** said he wasn't familiar with those cases and confirmed that his belief was that legislation such as **S 1093** would stop growth and development.

Senator Nuxoll issued closing remarks saying that this was a private property rights bill and suggested forced annexation was not fair. It was taxation without representation, and the government is here to protect rights. **Senator Nuxoll** stated the items in the bill that could be amended and asked that **S 1093** go to the Amending Order.

MOTION:

Senator Vick moved to send **S 1093** to the 14th Order for amendment. **Senator Bayer** seconded the motion. The motion failed.

Senator Bayer, Senator Rice, Senator Burgoyne, and Vice Chairman Johnson voiced their concerns by saying they don't believe the amending Order will be adequate and that they can't support sending **S 1093** to the 14th Order.

MOTION: **Senator Burgoyne** moved to have **S 1093** held in Committee. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:50 p.m.

Senator Siddoway
Chair

Amanda McLennan
Secretary