

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, March 05, 2019

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Rice, Vice Chairman Grow, Senators Hill, Vick, Anthon, Lakey, Cheatham, Burgoyne, and Nye

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 Rice** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:01 p.m.

H 160 **Relating to Purchasing by Political Subdivisions; To Provide that a Sole Source Declaration may be without an Emergency Declaration.** **Representative Jerald Raymond**, District 35, presented **H 160**, brought to him by the Idaho Education Technology Association. Political subdivisions in the state are bound by Idaho Code § 67-2806 requiring they seek competitive bids for goods and services benefiting their citizens. One exception is an emergency declaration with a Board of County Commissioners authorizing spending to mitigate the emergency. The second exception is a sole source declaration indicating only one vendor capable of providing the goods or services. **H 160** allows a sole source declaration to be made, absent an emergency declaration. It would remain a transparent public process, allowing for a technical correction with no impact on State or local funds.

DISCUSSION: **Senator Hill** stated that originally there had to be an emergency declaration and questioned why the provision was in statute. He wished to understand why it was there before making a decision to remove it. **Representative Raymond** responded there had never been a need for a sole source emergency declaration, which is the confusion they are attempting to alleviate with **H 160**.

MOTION: **Senator Hill** moved to send **H 160** to the floor with a **do pass** recommendation. **Vice Chairman Grow** seconded the motion. The motion carried by **voice vote**.

H 161 **Relating to Purchasing by Political Subdivisions; To Provide for the Posting of Notice for Solicitation of Information Technology.** **Representative Raymond** presented **H 161**, on behalf of the Education Technology Association. When a political subdivision seeks to procure information technology equipment in excess of \$100,000, Idaho code requires two notices soliciting bids be published in the official newspaper of the political subdivision two weeks prior to the bid opening date.

Representative Raymond referred to a handout titled "West Ada School District - Elementary Wireless RFP Evaluation." He related he had done an internet search for "RFP for wireless equipment" and there were extensive results available, with the example shown (see attachment 1). The request for proposal was sent in November 2016 and the district opened responses on January 13, 2017. They received six bids in excess of \$100,000. The information received included the total price along with the cost of licensing and support, professional services, training, and miscellaneous expenditures. The report also shows how the bids were reviewed, how they were ranked, and who was awarded the bid.

Representative Raymond pointed out that **H 161** is narrowly defined, as it is for purchases over \$100,000 only. However, it is broad in coverage, as it is not just for school districts but also counties, cities, or any political subdivision seeking to purchase equipment. **H 161** remains a public process and does not preclude anyone from using the current system; it simply codifies our ability to use modern technology in order to reach those who are most able to provide the goods and services being sought.

DISCUSSION: **Senator Lakey** related he has done considerable work as legal counsel to local entities and part of that was documenting when notice was provided. He questioned how that would be accomplished if **H 161** became law. **Representative Raymond** responded that the first page of the example he provided lists the date the posting was made. **H 161** also clarifies that any amendments to an information technology solicitation must be posted in the same place on the political subdivision website and records shall be maintained for six months.

TESTIMONY: **Ryan Gravette**, Technology Director, Idaho Digital Learning Academy, and President, Idaho Education Technology Association testified in favor of **H 161** (see attachment 2).

DISCUSSION: **Senator Hill** asked for clarification regarding legal requirements for notifications. **Mr. Gravette** responded that **H 161** makes no further requirements than current statute, with the main purpose being to generate solicitations. **Senator Nye** questioned if an electronic posting would be in lieu of a newspaper posting. **Mr. Gravette** clarified that **H 161** would allow an online posting to replace a printed one, but both could still be done if desired.

TESTIMONY: **Matt Davison**, Publisher, Idaho Press Tribune, testified against **H 161**. **Mr. Davison** stated his desire to speak directly in opposition of the statement of purpose of **H 161**. **Mr. Davison** related, concerning cost to taxpayers, that Nampa, Vallivue, and Caldwell school districts had spent \$369, \$79, and \$233, respectively, for an entire year. Regarding being burdensome, public disclosure of government spending is never a burden, but a valid way to ensure when large amounts of taxpayer money are being considered. As far as creating unnecessary hurdles, if you search "idahopublicnotices.com" online, every bid from every entity across the state will be shown. In Canyon County there are 122 different government entities and a concerned citizen would have to go to 122 different sites to find the information that the newspaper association has gathered into one. Lastly, the statement of purpose says the current system lacks transparency. **Mr. Davison** wished to point out that everything is currently posted online, does not disappear, and cannot be changed at a later date.

DISCUSSION: **Vice Chairman Grow** inquired if the dollar amount was so insignificant, why would the newspapers care so much about the issue. **Mr. Davison** responded it is not a financial issue; they believe in public notification and the system checks and balances.

TESTIMONY: **Spencer Cook** Idaho Education Technology Association, testified in support of **H 161** stating it will save money, streamline the process and posting requirements, and provide overall transparency. In smaller school districts, posting to a local newspaper does not attract potential bidders as there are no local vendors able to provide the technology needs. Timing is also an issue, as smaller community newspapers may not print daily. School districts are required by law to post financial and contract data to their website, making it practical to also post notices and requests for proposals. The most recent census data shows 77 percent of Idaho households have an internet connection, far greater than newspaper circulation.

DISCUSSION: **Senator Burgoyne** stated **H 161** declares the solicitation for bids shall be provided to no fewer than three vendors by written means either by electronic or physical delivery. Current law empowers government entities to notify electronically on their websites if they choose, so he questioned if the issue was cost only. **Mr. Cook** relayed two issues, cost and the time delay of printed newspaper. By statute they must post to the newspaper before they can solicit bids. **Senator Nye** clarified **H 161** relates only to bids on information technology purchases and requested Mr. Cook define information technology. **Mr. Cook** responded that a broad definition would be purchases of a digital nature, anything the information technology department would be in charge of.

TESTIMONY: **Ken Burgess**, Partner, Veritas Advisors, Idaho Press Club, testified against **H 161**, representing specifically the Idaho Press Club First Amendment Committee. **H 161** reduces public transparency particularly as it relates to information technology procurements. Information technology vendors live in a digital world sufficient for them to find and respond to requests for proposals. The patrons of a government entity who are paying for the procurement items are those left out. Public notice requirements are not designed to be convenient for the government entity or vendor, but for the public to know where monies are spent.

TESTIMONY: **Kate Haas**, Partner, Kestrel West, Idaho Education Technology Association, testified in favor of **H 161**, relating that the purpose of the request for proposal process is to promote competition and value for the taxpayer. The request for proposal is not posted in the paper and the dollar amount is not posted. Dollar amounts are not recognized until an entity lists it on their website after the process has concluded.

DISCUSSION: **Senator Vick** questioned if information posted to a website disappears after six months. **Ms. Haas** stated she believed that was not accurate. In the West Ada school district they have all the request for proposals cataloged by year. Also, there are independent websites that cache requests for proposals. Archive.org is an example which has been upheld by the federal courts as a valid, independent source.

Vice Chairman Grow inquired if the purchase was below \$100,000 did it require posting in the newspaper. **Ms. Haas** pointed out that purchases were divided into three different categories: zero to \$50,000, \$50,000 to \$100,000, and \$100,000 and above. In the \$50,000 to \$100,000 category, three vendors must be contacted. \$100,000 and above requires an open, competitive 'request for proposal' process.

TESTIMONY: **Jeremy Pisca**, Attorney, Risch Pisca Law and Policy, Executive Director, Newspaper Association of Idaho, testified against **H 161**. **Mr. Pisca** relayed to the Committee that **H 161** applies broadly to all subdivisions of local government resulting in hundreds of taxing districts. A newspaper can be used as proof of action and timing if there is ever a legal contest as to the validity of an award. Idahopublicnotices.com is a website the newspaper association started at significant cost, but no additional cost to the taxpayer. Every notice required to be published in a newspaper must be uploaded to that website. If **H 161** is approved and the legal publication notification requirement is removed, the information will no longer be available on the searchable website.

DISCUSSION: **Representative Raymond** concluded that **H 161** specifically states information technology notices may be posted electronically on the political subdivision website in lieu of publication in the newspaper; "may" refers to either or both. There are areas of the state where the official newspaper does not reach the patrons in rural school districts and political subdivisions. **H 161** simply codifies language that allows public notices to be posted online where it is easily accessible to anyone.

Senator Anthon thanked Representative Raymond and all who testified, remarking that the world is changing and he believes this is an issue that will continue. Idaho Code § 67-2801 states legislative intent is efficient and cost effective procurement, but also a publicly accountable process. The tradition in Idaho is the more public funds being spent, the more notice there should be. **Senator Anthon** voiced his concern that **H 161** is reversing that policy. He agreed there are places where public notice by newspaper is not adequate and **H 161** was a worthwhile attempt to address the situation.

MOTION: **Senator Anthon** moved to hold **H 161** in committee. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 165 **Relating to Income Tax Refunds; To Provide for the Designation of an Income Tax Refund or Payment to Certain Trust Accounts and Revise Provisions Regarding Minimum Collection Thresholds.** **Representative Jim Addis**, District 4, presented **H 165** on behalf of the Red Cross and six other non-profits listed on the Idaho tax return. **H 165** specifically refers to reducing the threshold for one of these non-profits to stay on the tax return, allowing an Idaho taxpayer to voluntarily contribute.

TESTIMONY: **Melinda Merrill**, Board Member, Idaho Chapter, American Red Cross, testified in support of **H 165**, stating the threshold for remaining on the form is \$25,000 in donations through the Idaho Income Tax Return Fund for two years. Due to changes in federal tax law, non-profits are seeing a decrease in donations. **H 165** would lower the threshold from \$25,000 to \$20,000 in order that all seven non-profits remain on the form.

MOTION: **Senator Anthon** moved to send **H 165** to the floor with a **do pass** recommendation. **Vice Chairman Grow** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Chairman Rice** stated the remaining agenda items would be rescheduled to a later date and adjourned the meeting at 4:16 p.m.

Senator Rice
Chair

Machele Hamilton
Secretary