

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, March 11, 2021

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Rice, Vice Chairman Grow, Senators Vick, Lakey, Souza, Bayer, Ricks, Nye, and Rabe

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.

MINUTES APPROVAL: **Senator Ricks** moved to approve the Minutes of February 3, 2021. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 156 **Relating to Development Impact Fees; To Revise Definitions.** **Representative Tammy Nichols** presented **H 156**, explaining that adding stations and apparatus to the definition of public safety facilities will clarify that fire stations are eligible to collect impact fees. **Representative Nichols** informed Committee members **H 156** was classifying apparatus as equipment, tools, or machines for a particular purpose.

DISCUSSION: **Senator Ricks** questioned if **H 156** would affect impact fees. **Representative Nichols** replied that it would not.

MOTION: **Senator Nye** moved to send **H 156** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 252 **Relating to Agricultural Land Assessment; Regarding Assessment of Land Actively Devoted to Agriculture.** **Representative Aaron von Ehlinger** presented **H 252**, explaining that it would solve the problem of county assessors assessing agricultural land as residential or commercial property. **Representative von Ehlinger** gave an example to the Committee of a farmer's field that consists of pivot corners that may not be currently planted with crops. He emphasized that it is still agricultural land, not commercial or residential, and **H 252** will guarantee it is assessed as such. **Representative von Ehlinger** stated that **H 252** would also include land that is adjacent to a farmer's field and currently stores agricultural equipment. **H 252** is meant to clarify what is considered agricultural land before more problems occur with assessments.

DISCUSSION: **Senator Ricks** pointed out that farmers may build a house, or allow a family member to build, on a corner area of their property. A shop built on a small section of farmland may be used for some type of manufacturing also. **Senator Ricks** questioned how **H 252** would affect those types of situations. **Representative von Ehlinger** responded that any residential structure would always be classified as residential property, and a shop that was not storing agricultural equipment while being used for any other business would be considered commercial property. **H 252** refers to land devoted to agricultural use only, but if the land consists of pivot corners, for a center pivot irrigated crop, or is difficult to farm due to terrain, it would still be considered agricultural. **H 252** does not provide for houses or other commercial structures, he said.

Senator Lakey pointed out that declaring a piece of property difficult to farm due to terrain is ambiguous language that provides an opportunity for abuse. **H 252** could allow a large piece of property to earn the exemption because of storage equipment, while primarily being used for something else. **Senator Lakey** objected to the term "difficult" as being too broad. "Difficult" means the property can still be farmed, it is just more challenging, he said.

Chairman Rice asked Representative von Ehlinger if he would object to adding language stating the land would not be used for any purpose other than agriculture. **Representative von Ehlinger** was in agreement with the language addition.

Senator Nye commented that **H 252** specifies that "tandem" means land not severed from the property or, if severed, land used to support the agricultural use of the qualifying property. **Senator Nye** questioned if the tandem property could be 5 miles away, or even in another county. **Representative von Ehlinger** replied that in his opinion it would not be, but acknowledged it could be possible. **Senator Souza** expressed her observation that Representative von Ehlinger was overly optimistic on how **H 252** would function. **Senator Ricks** related that he understood the intent of **H 252**, but believed adjustments to the language were necessary.

MOTION: **Senator Ricks** moved to send **H 252** to the 14th Order of Business for possible amendment. **Senator Bayor** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Chairman Rice** informed the Committee they would hear **H 277** at this time, instead of **H 276**, as listed on the agenda.

H 277 **Relating to the Board of Tax Appeals; To Provide for Taxpayer Representation in a Hearing.** **Representative Mike Moyle** presented **H 277**, explaining to the Committee that while reviewing rules of the Board of Tax Appeals (BTA), he had identified a rule that should be revised. Rule 30 of the Idaho BTA Rules stipulates that if an individual goes before the BTA, they can only be represented by themselves or an attorney. **Representative Moyle** pointed out that if an individual has an appeal before the Internal Revenue Service, they can be represented by their accountant, appraiser, or themselves. Rule 30 forces someone with limited mobility, unable to represent themselves, to hire an attorney, he said. **Representative Moyle** stated that **H 277** allows the individual the right to be represented by themselves, or someone of their own choosing, before the BTA in the State of Idaho.

MOTION: **Senator Bayor** moved to send **H 277** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 276 **Relating to Income Taxes; Regarding Business Depreciation Income Tax Deductions.** **Ken McClure**, Givens Pursley LLP, representing the Idaho Society of Certified Public Accountants (CPAs), presented **H 276**. **Mr. McClure** explained that the bill deals with what happens when the State of Idaho does not adopt and conform to all the provisions in the federal Internal Revenue Code. He detailed that the federal government instituted bonus depreciation, a form of accelerated depreciation that allows assets to be written off more quickly. **Mr. McClure** stated that Idaho did not adopt bonus depreciation at the time, as the cost of conforming was too great.

Mr. McClure explained to the Committee members that one of the problems arising from Idaho not conforming to the federal tax code is "phantom income," or income that is not actually economically received. **Mr. McClure** informed the Committee that depreciation not allowed as a deduction in Idaho due to nonconforming with the Internal Revenue Code is then added back to the Idaho taxable income. Individuals are required to recognize it as income for Idaho and be taxed on it. Also, if an asset is disposed of, the individual will pay a higher-than-appropriate amount of capital gains on the sale as a result, he said.

TESTIMONY: **Matthew Grow**, CPA, Boise, provided to the Committee an example of the technical problems that **H 276** is intended to solve with regard to passive activity. Passive activity means someone has an ownership interest in a business but is not running it day to day. A business is created, but the person responsible for the day to day operation is unable to support the business financially. An equity partner loans money to the business which is used to purchase equipment. There is no income to the business the first year, but they have the cost of the equipment. The federal bonus depreciation provisions allow them to deduct the full amount of the equipment, resulting in a net loss for the year. That loss is allocated to the passive investor because of their economic interest. Federal passive activity loss rules say they are not allowed to take the cost of the equipment, disallowing the bonus depreciation in the current year, and returning the net income to zero. Current Idaho tax law will add back the bonus depreciation, resulting in a change from a no income loss to a net income in the amount of the equipment. That income is now taxable income for Idaho purposes to the extent of the federal bonus depreciation.

DISCUSSION: **Senator Bayer** requested an explanation of what **H 276** accomplishes. **Mr. Grow** responded that in summary, **H 276** provides that Idaho will not add back as taxable income the depreciation that has been deducted on a federal return.

TESTIMONY: **David Cooper**, CPA, informed the Committee members that he had over 45 years experience in public accounting and was a founding partner of Cooper Norman, a company consisting of CPAs in eastern and southern Idaho. **Mr. Cooper** explained that he originally discovered the issue created from not conforming to the federal code and brought it to the attention of the Idaho Society of CPAs. They determined it was an issue that should be brought before the Idaho Legislature.

MOTION: **Senator Souza** moved to send **H 276** to the floor with a **do pass** recommendation. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, Chairman Rice adjourned the meeting at 3:58 p.m.

Senator Rice
Chair

Machele Hamilton
Secretary