

North Idaho activist's anti-impact fee bill killed in House committee

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North Idaho activist Larry Spencer proposed legislation in the House Local Government Committee this afternoon to create what he called a "deferential standard" in cases in which people challenge local government impact fees. His bill, HB 246, was modeled after a Florida law that was overturned in court, then re-enacted, he told the committee; it states, "In any judicial action or appeal challenging an impact fee, the governmental entity has the burden of proving by a preponderance of the evidence that the ordinance or amount of the fee meets the requirements of this chapter."

Lawmakers on the committee had plenty of questions about the bill. "I just feel that opens up a lot of floodgates for a lot of unnecessary court cases," said Rep. James Holtzclaw, R-Meridian. Rep. Lance Clow, R-Twin Falls, asked Spencer if the bill tilts the tables for lawsuits. "Normally the plaintiff has to be able to show a reason that they're in court, a reason that the defendant needs to defend themselves," he said. Spencer responded, "First of all, it costs a lot of money to go to court. It's not something that you do lightly."

He said local governments are "pushing the envelope" on charging impact fees, using them to fill budget holes. "When you look at a city's plan and they're collecting money to pay for their yearly picnic table program at the park, that's something that's a maintenance issue and that can't be included," Spencer told the lawmakers. "This ... provides more authority for the judicial to make sure that these are following the state laws."

Bill Nichols, attorney for the city of Nampa, spoke out against the bill. "It flips it around," he said. "The presumption is that it's invalid." Nichols told the committee, "Development impact fees are primarily designed as a means to give some relief to property taxpayers. ... These cities that have development impact fees have not used them for maintaining picnic tables. If somebody came to me with that idea, I'd squish it in a hurry." He added, "These local governing bodies, in my experience, work very hard to get it right."

Spencer told the committee, "I'm not an attorney, but I do litigate quite a bit." He said he learned that this issue was "the hottest issue in the Florida Legislature in 2009."

Rep. Vito Barbieri, R-Dalton Gardens, said, "I'm seeing some difficulties in this draft that I did not anticipate, didn't see before." He moved to hold the bill in committee, killing it. Rep. Lynn Luker, R-Boise, made a substitute motion to hold the measure at the call of the chair, in case a better version of the bill could be worked out; that failed on a 6-7 vote. The motion to kill the bill then passed on a 12-1 vote, with only the panel's chair, Rep. Lenore Barrett, R-Challis, opposing it.