

House Transportation & Defense Committee

Minutes
2009



MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: January 14, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, and Ruchti

**ABSENT/
EXCUSED:** Representatives Roberts, Bedke, and Ringo

GUESTS: Mollie McCarty, Legislative Liaison, Governmental Affairs Program Manager, Idaho Transportation Department

CALL TO ORDER: **Chairman Wood** called the meeting to order at 1:30 p.m.

Chairman Wood mentioned the seating arrangement. If anyone has concerns, he/she should talk with Chairman Wood.

Chairman Wood introduced the following people:

- Committee Secretary, Cindy Williams.
- Committee Page, Madeleine Fehlman (Maddy). Chairman Wood explained some of Maddy's duties.
- New committee members, Representatives Jarvis, Mathews, and Labrador.
- Ms. Mollie McCarty, Legislative Liaison from the Idaho Transportation Department (ITD). Ms. McCarty has been with the ITD for 10 years and is quite familiar with GARVEE.
- Representative Hart as committee Vice Chairman.

Chairman Wood offered last session's minute books to any member that wanted one.

Vice Chairman Hart talked about Chairman Wood's memorandum dealing with the list of assigned rules. The first person shown by each rule is the lead person for that rule. Vice Chairman Hart asked that everyone read their rules by Monday. On Monday, the lead person should indicate to Vice Chairman Hart whether a hearing will be necessary. If there is any doubt about a rule, the committee should go ahead and have a hearing.

Chairman Wood explained that we have two joint meetings planned: January 20 and 22, 2009. On January 20, a joint meeting will review the ITD audit from the Joint Legislative Oversight Committee (JLOC). The JLOC meeting on this is the previous day (January 19, 2009). In the January 22, 2009 joint meeting, the ITD will present its annual report.

Chairman Wood said that she met with the Governor yesterday and is preparing to do some work on legislation. She'll keep everyone informed on what is being contemplated. She solicits feedback and suggestions from all committee members.

Chairman Wood stated that the ITD audit was worth the money spent and will provide direction. All legislators will benefit from seeing it. It provides more solid ground for knowing whether the public should be asked for more money. It is thorough and does a good job of covering the questions that the committee presented ahead of time. It is confidential, so it cannot be shared with anyone outside of the House or Senate Transportation committees.

In response to questions, **Ms. McCarty** said that in the meeting on January 22, 2009 the ITD would talk on an overview level about the review and could answer some questions, but she wasn't sure to what extent they would be doing that. She thought their comments would be fairly concise. They will be presenting an overview of the ITD budget. **Chairman Wood** mentioned that the Governor's proposals are in everyone's mailboxes.

With permission from Chairman Wood, **Ms. McCarty** talked briefly about the Governor's revenue enhancements package. She said that the ITD has been asked to propose fee increases for the Department of Motor Vehicles (DMV) and that they would talk about that, but right now, they would not be talking about other portions of the package. In response to a question from Chairman Wood, Ms. McCarty said that she has not received input yet from Senator McGee but would like to coordinate with him.

In response to a question, Ms. McCarty said that there would not be an omnibus bill. Rather, there would possibly be four bills from the Governor's proposal and one bill from the ITD. This is due to some feedback from the Governor's office about how representatives would like to receive the proposals. **Chairman Wood** stated that neither she nor Representative Lake wanted an omnibus bill. She also understands that everything right now is a "moving target."

Chairman Wood stated that the committee will not meet this coming Friday (January 16, 2009).

ADJOURN:

There being no further business before the committee, **Chairman Wood** adjourned the meeting at 1:48 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

**HOUSE TRANSPORTATION and DEFENSE COMMITTEE
and
SENATE TRANSPORTATION COMMITTEE**

DATE: January 20, 2009

TIME: 1:30 p.m.

PLACE: East Conference Room, J. R. Williams Building

HOUSE MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, and Ruchti

SENATE MEMBERS: Chairman McGee, Vice Chairman Hammond, Senators Keough, Corder, Heinrich, Broadsword, Winder, Werk, and Bilyeu

**ABSENT/
EXCUSED:** None

GUESTS: The signature sign-in sheets are attached to these minutes.

Also attached are the audit report, a hard copy of the slide presentation, and a handout entitled "Crosswalk of HCR 50 to ITD Performance Audit."

Senate Chairman McGee called the joint committee meeting to order at 1:40 p.m.

Chairman McGee explained that this was the first meeting for the Senate Transportation Committee this legislative session. He introduced the Senate Transportation Committee Secretary, Betty Osborn, and the Page, Kaela Olson. Roll was called for the Senate. Silent roll was taken for the House.

Rakesh Mohan, Director of the Office of Performance Evaluations, introduced the audit team presenters and thanked several people from various government offices, the Idaho Transportation Department (ITD), and the ITD Board. He explained that the audit team has about 140-years combined experience in many areas of government and the private business sector. Besides Director Rakesh, the presentation team consisted of the following people: **Michael Huddleston**, Consultant, Woodinville, WA; **Robert M. Williams**, Robert M. Williams & Associates, Clinton, WA; **Bob Thomas**, Robert C. Thomas & Associates, Olympia, WA; **Jim Brock**, MBA, PMP - Project Manager, Avant IMC, LLC, Camp Hill, PA; **Roberta Manshel**, Sr. Consultant, Avant IMC, LLC, Camp Hill, PA.

Mr. Michael Huddleston thanked the legislators and the ITD for letting them participate in the project, and explained that the questions in the legislation passed last year were the cornerstone for their work. These questions are in Appendix B of the audit report and in the "Crosswalk of HCR 50 to ITD Performance Audit" document.

The audit focus was on the ITD highways, though ITD has a much greater breadth. **Mr. Huddleston** reviewed the summary of the findings, which can be seen on slides #13, and #14. He mentioned that while several things are lacking, some districts are better than others. There is some good innovation, much hard work, and some areas are exceptional. These successes should be elevated and expanded statewide.

Some themes in the audit report include the following: It is very important to catch-up and manage the State network of highways. Idaho is behind peer states in keeping the road network at a high level of serviceability. Bringing them up to a higher level of serviceability will save hundreds of millions of dollars because it is cheaper to maintain a road than it is to rebuild. Even though we want to capture the savings that audit recommendations would realize, these savings will not solve the highway funding shortage.

Mr. Huddleston explained that they hope the Legislature will develop explicit policies to promote maintenance and preservation as the highest priorities for the transportation program. Policies should not allow new capacity projects that take money from preservation. Project planning should include long-term maintenance costs for any new roadways. He emphasized that addition of new resources as a simple solution with "business as usual" is not the recommendation. There are some specific management tools and practices that also need to be implemented.

Chairman McGee asked that committee members hold questions until the end of all the presentations.

Mr. Jim Brock explained that the slides he would show were a subset of ones already presented to the Joint Legislative Oversight Committee (JLOC). He emphasized the effort that went into the audit, which included interviews with approximately 200 people, 40 from nine comparable states. They went over more than 1,000 electronic data files and 400 hard copy documents, and had a Ph.D. expert who has published many studies, and who provided them with a number of research studies as well as contemporary literature. These sources are listed in the back of the audit report.

Mr. Brock used slide #18 to explain the audit approach. Peer states (slide #19) were based on methods established by the University of California, Davis and from other literature. Virginia and Washington were used as high performing states. They assessed the ITD against these standards and determined gaps, recommended remedies, and identified solutions.

The audit report is broken down into Management and Performance with four subsections (slide #20). It is based on House Concurrent Resolution 50. Each section had an audit objective to help determine whether the questions for that section had been adequately covered.

Audit findings included the following (slide #22): 1) Regarding organization, the national trend for transportation departments is toward decentralized districts or regions, to be closer to the constituents. The ITD is structured this way. 2) Staff size is legislatively limited. The Highway Division has approximately 1,329 full-time positions. This impacts contractor selection

and outsourcing. 3) The high professional turnover is significant and affects decision making.

Recommendations (slide #23) included that there should be a stronger central guidance. District engineers and other people in the districts are very professional, and have a great work ethic. But districts have autonomy that needs to be coordinated from a central guiding position: from the Board, to the Department to the districts. Performance should be reported against strategic goals. And goals should be consistent statewide.

In terms of addressing the professional and technical turnover, a formal management succession and leadership development process should be developed and implemented. This will have qualitative benefits for moral, recruitment, and retention. In the last year, the ITD has begun some recruitment and retention practices that have shown benefit. These should be continued.

The discussion was turned over to **Mr. Bob Williams**. The second audit objective was financial planning (slide #25). Financial planning captures the implications of revenue and expenditures over a period of time. A short-term period is in the range of 5 years, and a long term is in the range of 20 years. They wanted to look at the maintenance, preservation, and improvement expenditures and revenues as they relate to a plan. At the Department, plans are in place that are critical. The first is GARVEE (Grant Anticipation Revenue Vehicles), a \$997 million financing plan, which is a commitment of federal revenue for a series of projects. There is a series of five-debt issuances, two of which have already taken place for a total of \$400 million, and prospective issuances of another \$600 million that will extend through the year 2010. The implications of this are reflected in the delivery of projects and also the debt service, which will extend over the next 20-plus years.

The second plan is the Department's 8-year plan that forecasts revenues and looks at operating and capital expenses. Within those capital expenses, there is a mix of projects in the 5-year State Transportation Improvement Program (STIP).

There is a 20-year plan, an 8-year plan, and a 5-year plan.

The last plan they looked at was the proposal of a \$240 million statewide revenue increase, of which the ITD would receive \$137 million. The Department has submitted a plan regarding how they will use this. But the 8-year plan did not integrate that \$137 million. A subsequent slide shows what the implications of that increase would be.

Relative to the GARVEE financing plan, (slides #26 and #27) approximately \$1 billion dollars are planned to be issued through 2010. The first issue was in 2006 for about \$200 million. The market was very favorable when those bonds were issued relative to the way the bonds were structured. The State has a policy of issuing bonds before the first dollar is spent. For example, when the \$200 million was issued, there was a forecasted cash flow that extended for approximately the next two years. The bonds were issued at a time that was sufficient to meet any commitments that were planned over that period. This resulted in a very large cash balance that would be spent down over an extended period of

time. Due to market interest rates at that time, the State could issue taxable long-term bonds paid at a rate of about 4.5 percent, and then reinvest the large cash balances at short-term taxable rates that were sufficiently high so there was no net cost of borrowing. The State earned more money on those cash balances than they were paying. Due to IRS regulations, those funds had to be captured and sent back to the federal government, but there was no net cost.

For subsequent fund issues, the market has changed. Long-term tax-exempt rates are higher than short-term tax-exempt rates. So for the second issuance for another \$200 million, the State will incur a cost of \$2.5 million of negative arbitrage. That's a consequence of carrying those large cash balances and having financed them with long-term debt.

For the next three issuances (totaling \$600 million), the bond advisers forecast that the cost will be \$19.6 million, based on a late summer snapshot. Last week, as part of the Governor's response, the cost estimate was \$15.7 million. The situation has improved, and will continue to change as markets change daily due to market dynamics beyond the control of the State. The cost results from the State's policy of issuing long-term debt for construction period financing, and issuing it in the number of issuances that it does and in the time that they occur. The audit recommends that the State evaluate other alternatives (Slide #26).

It is important to ask what the \$137 million will do in the context of the 8-year plan (slide #28). The 8-year plan is very useful, but this missing element affected the requirements of adequately funding restoration and preservation. The ITD said that of the \$137 million, they would commit \$127 million to restoration and preservation. Slide #28 indicates that except for the first year of the increase of \$137 million, the State will face increasing shortfalls in restoration, unless the spending base materially changes. So planned priorities and expenditures in the 8-year plan were revised.

The findings regarding financing plans (slide #29) relate to the idea of using a fully developed financial plan before making long-term commitments. Long-term commitments would describe any debt issuances, or commitments to any major capital projects.

Recommendations are shown on slide #30. Financial plans are critical for any major governmental or business organization. You want to see what the implications are for everything being done over an extended period of time. Relative to capital project financing, the State should reevaluate policies on debt issuance and capital financing relative to the next three GARVEE issuances. The State has the Idaho Credit Enhancement Committee, which is a wonderful vehicle for that. Make sure that deliberations and analyses are made available to the Legislature so that everyone knows the implications of the debt financing structure.

Mr. Jim Brock spoke about the audit objectives of scheduling and budgeting (slide #31). Findings are shown on slide #32. A subfinding was that the rate of increase in commodities costs are outstripping the rate of increase in budget allocations to the district. Also, decision support tools that are standard operating practices in other states are not being used by the ITD. So costs are increasing and budgets are remaining static.

Seal coating is an example. The amount being spent is about the same every year. But costs are increasing considerably and will keep going up, which has resulted in a reduction in the number of roads being seal coated over the last three years. So, there is a worst-first strategy. The worst roads get treatment first.

A preservation-first strategy is an industry best practice (slide #33) and is a current practice in the comparable states that the team talked to.

The most recent comparable states' data is 2006. More Idaho roads are in poor and mediocre condition compared to other states (slide #34). This is significant because of the rate of deterioration. If 35 percent of the lane miles are in poor or mediocre condition and maintenance is diminishing, then we can assume (according to evaluation by engineers, including a former chief engineer from one state and a deputy chief engineer from another state and someone who spent 35 years in planning and programming) that the chart on slide #35 illustrates the acceleration of deterioration over time if roads are allowed to deteriorate to a certain point. A best practice is that a road is maintained. It deteriorates to a certain trigger point, has some remediation done to it, it returns back to an excellent condition, deteriorates to a trigger point...and over time, the deterioration takes a bit longer. The best practice is that a road is maintained (using seal coating as an example) at least twice during its lifetime. On the basis of the data evaluated, the number of miles of roads being maintained on that basis do not equate to this. It is more like once in a lifetime. So once a good road reaches fair condition, the deterioration accelerates. Once it achieves poor, it reaches fail very quickly.

Several studies suggest that spending \$1 on maintenance can delay spending \$6 to \$10 on reconstruction. In general, reconstruction can run \$600,000 to \$1 million per mile. An asset management strategy of preserve first (slide #37) can save hundreds of millions of dollars down the road. The right treatment to the right road at the right time is best practice.

There are three systems in best practice asset management (slide #36) that drive preservation first. The current Pavement Management System (PMS) that the Department has is dated and does not have all the capabilities that the ITD would require for full asset management. The current Bridge Management System is reasonable and is used in the industry. There is no Maintenance Management System (MMS). Having an MMS is standard practice. Integrated with a PMS as well as a financial system, it allows the consolidation of data so that decision makers can evaluate opportunities and look at costs/benefits in terms of outsourcing, overhead rates, etc. With an MMS, they can evaluate how well resources are being deployed. State of the art PMSs have optimization routines to mix and match the different categories of pavement. For example, if you want to achieve a certain level of service, you could run through one of those routines to determine how much that will cost based on the different categories. Or, given X amount of dollars, you can find out the level of service you can optimally achieve. And if integrated with a financial system, everything is in tune with the most current information.

The recommendations regarding scheduling and budgeting are shown on slide #38.

Ms. Roberta Manshel then talked about performance metrics (slide #41). The audit compared the Department with peer states and industry best practices. Using performance measures to provide public accountability as well as improve performance is an industry best practice. Some of the peer states have good systems that you can see on their Web sites. For example, Virginia has a wonderful dashboard system. Anyone can see if a project is on budget, on schedule, and whether there are environmental issues. It is helpful externally and internally for the Department.

The audit found that the ITD is moving toward using project management performance measures better. They are not there yet. The other findings and recommendations are shown on slides #41 and 42.

Ms. Manshel talked about contractor selection from slides #43 through #45. The slides deal with consultant selection also. Standard procedures are in place, but standard sufficient oversight tools are not, for example, standard use of the same kind of scheduling, and the same kind of work breakdown structure of one project to another. They could use some training in project management to oversee large projects more effectively. The Department needs good tools. The design-build strategy is one part of a good toolbox that helps share risk. This works well on certain projects, and the ITD should be able to use this.

The Department needs an office of project management oversight. This would quickly champion project management tools and get them embedded within the districts.

Mr. Bob Thomas spoke regarding major findings of the audit (slide #49) and ways to address the current “untenable situation” (slide #50).

The Department needs accountability. He read from page 17 in the audit report: “The key to the Department’s success will be how it transforms itself from performing necessary day-to-day activities to meet short-term needs, to a forward-looking organization that is performing those activities in pursuit of overall strategic goals and objectives.”

The Legislature should hold the Department accountable for achieving success. The audit report provides about 50 recommendations with subrecommendations. The Department does many things very well. But the recommendations result from finding things that should be in place, but are not. All of these will be necessary to achieve success. Preservation-first will save many dollars. But dollars are not the only goal. The recommendations help them achieve success. However, doing that type of analysis on an ongoing basis would be difficult, because a lot of information has to be put together. At least once in the last year, the Department tried to determine what an overhead rate was, and it was labor intensive and took a lot of effort. An MMS helps make those cost/benefit decisions.

In response to a request to address the situation with engineers and training, **Mr. Brock** said that the report shows a slight discrepancy between Idaho and other states in terms of salaries. They recommend that the ITD pursue management succession and leadership development, because this is a growing trend in other state transportation departments and is showing positive results.

In response to a question about why the team thinks that local road funding lacks basic oversight, **Mr. Huddleston** said that they did not specifically audit the practices of local jurisdictions. They did note that many state resources are going to local road activities. But the activities do not roll-up into a state plan. It isn't clear that city, county, and regional entities are building toward the same outcomes as the ITD. There should be a single plan that all entities are trying to accomplish. It seems that 38 percent of funding is not being held accountable. This was called to attention by the Governor and other stakeholders in the audit process.

A follow-up question asked which Idaho codes needed changing. **Mr. Huddleston** said that they did not flag the specific codes in today's presentation. There were some procurement issues and other recommendations that relate to state government. In a followup session, they could isolate the specific codes. **Both Chairmen** agreed that they would like to have this information.

Mr. Brock responded to a question regarding whether the team was recommending additional software and training for staff (to use the \$6 million), and whether the MMS they were recommending was similar to the maintenance management that the ITD did previously. He answered that the first part of the question was "Yes." Regarding the second part, an MMS was used until 2006, but was discontinued when a new financial system was implemented that made the platform obsolete on which the MMS ran. Since that time, an MMS has been lacking. They recommend that it be replaced.

In response to a follow-up question, **Mr. Brock** said that he could not think of any state that is not using an MMS, and there are a variety of systems and vendors.

In response to a question about why Idaho is considered a peer state to Arizona and Nevada, **Mr. Brock** said that this determination was based on a national study that used a number of criteria to put states into peer groupings.

In response to a question about benchmarks that could be recommended so that changes to "business as usual" can be monitored, **Mr. Huddleston** said that there are measurable outcomes that could be put in place. For example, an asset management system is important and could be procured right away. Idaho is almost alone among peer states in not having one, and this lack makes it hard to catch up in maintaining the roads. Establishing a project management office is important. Establishing project selection criteria could be advanced in the first year. Many other communities have those in place, and they provide some transparency and predictability in the project selection process. This is going to be important (especially if the federal government provides resources to stimulate the economy) so that there is a sense of equity, and so that projects can be advanced. And the development of pavement standards, the smoothness of pavement, how often resurfacing should happen, signage, striping, etc., could all be established in the first year.

Some things could take a little longer, including a unified 20-year State plan. This needs to have the integrated financial planning piece. Also, a

review of how revenue is being allocated to the local governments should be considered because they should be partners in the statewide system. They may be doing some things better than the State. But everyone should be building to the same standards. Also, risk management strategies (such as design-build) could be started now and tried to see how they go. This would provide information for the next legislative session.

A question was raised regarding the acquisitions talked about on page 4 of the audit report. Acquisition usually means new things. How does “growth” relate to maintaining and preserving?

In response, **Mr Brock** stated that since the audit, a lot has changed in the economy. At the time of the analysis, there was anticipation of growth in an overall construction program. When looking at the conditions of the roads, it would seem to a professional (a decline in the economy notwithstanding) that to make improvements would mean some growth in the construction program. Right-of-way acquisitions are in there because (and GARVEE funded projects are included as some of the right-of-way acquisitions) they wanted to be all-encompassing in their description of what growth would be.

In response to a question, **Mr. Williams** stated that the capital planning chart on page 52 of the audit report was based on current practices. In response to a follow-up question regarding the effect of implementing the asset management system, the MMS, and the financial management system, **Mr. Williams** stated that the impact would be to reduce the shortfall in terms of the same level of work. They do not know if the data from the Department captures the current infrastructure. They totally relied on the Department’s assessment of what the shortfall is on an annual basis, assuming current practices. In theory, each of the recommendations will reduce the ultimate cost of remediation. But they do not know the total cost of remediation.

The following questions were raised: If we fail to implement the recommendations, how will future costs be affected if we assume status quo operations? If we would have implemented them 10-years ago, what would the results have been?

Mr. Brock answered that there are several “plans” that they referred to. There is the STIP, and there is also a listing of projects called the HORIZONS documents (short-term, mid-range, and long-term). There are a variety of documents that list projects. But the condition of all the roads are not necessarily reflected in a plan. It may be that the entire condition situation, theoretically, could be larger than what is in the STIP. If you just look at this as the sole basis or representation of the condition of all the roads in the state, you might presume that if these systems had been in place some time ago, they may have had a beneficial effect, but there is no way of determining what the effect would be.

To clarify, asset management is a management philosophy of preservation first as well as sophisticated planning and programming processes. It is an umbrella over those processes that use good systems—pavement management, bridge management, maintenance management, and financial management. But it is not just having the systems. There is a management approach and philosophy that surrounds that. So my answer

would be that asset management would (theoretically) have been beneficial.

At this point, **Chairman McGee** suggested that the joint committee could submit some written questions to the Department and the audit staff, since today would not allow enough time for everyone's questions. Then, the answers could be distributed to all committee members. **Director Rakesh** agreed to this, as long as the questions deal with what has already been found by the audit. Other issues could not be addressed.

Several more questions were entertained as follows.

In response to a question regarding the maintain and preserve approach, **Mr. Brock** stated that they are not recommending only preserve and maintain. But by using the right tools, the ITD could realize better decision making and could develop a better plan for mixing the work among good, fair, and worst roads. Preserve first calls for doing more than just the worst.

In response to a follow-up question regarding the chart on Page 52 of the audit report, **Mr. Williams** stated that the chart captures the money currently in the STIP being used for preservation and maintenance, and what the implication would be if everything but a baseline of \$10 million of new money, which would go to operations, went for preservation and restoration. So this slide does presume that all the money goes there without regard for expansion. They focused this way because they asked the question, "How would the Department use new money?" And this corresponds to what they found regarding what the long-term consequences and liabilities would be of not allocating a significant amount of new money, or reallocating existing money, to preservation and rehabilitation. These liabilities would ideally have been captured in a long-term financial plan.

A senator commented regarding the GARVEE negative arbitrage that some people think the ITD has already lost \$22 million. Also, he asked whether bond anticipation notes are allowed.

Mr. Williams explained that the exhibit on page 49 of the audit report is a projection provided by the financial advisor for a point in time. The circumstances in terms of interest rates are not in our control. Originally, there may not have been a likelihood of incurring negative arbitrage, so it may have never been discussed. But given current circumstances, the \$2.5 million is probably a good estimate. The only question now is what the cash balances will be as the project spends down. The \$4.9 million and the \$10.6 million and the \$4.1 million were projections based on a snapshot in August/September. The sum (\$19.6 million) has been re-estimated to be \$15.7 million based on the Governor's office figures that were received last week. So again, estimates are based on interest rates and reinvestment amounts.

There are alternative strategies, such as bond anticipation notes (BANS). (He did not think the State had used these.) The State currently issues tax anticipation notes that are used for the general fund. It is a revolving 12-month contract at a very attractive rate. Some other jurisdictions have used BANS very successfully during construction period work, and when the

construction is completed, they've issued long-term debt.

The State has made some good points about why they maintain their current policies in terms of the timing of debt and the use of long-term debt, but the audit team does not totally agree. They think the policies merit additional review because of the large amount of money involved. The current policies are not generally being generated by the ITD.

Chairman McGee introduced **Mr. Gerald Hunter**, Executive Director, Idaho Housing and Finance Association, as an expert in bond financing, and asked him to address the funding questions.

Mr. Hunter explained that negative carry is a hot topic, and it is quite standard in project financing. When you borrow long and invest the proceeds temporarily on a short-term basis, and you have a normal yearly curve in the marketplace, you're going to incur some negative carry. The recommendations represent some tools to mitigate negative carry. But there are tradeoffs to consider.

For example, we have considerations for the third series of bonds. We had to postpone financing last fall because of turbulent markets. In October/November, we had a 6.5 percent rate as the borrowing cost for the GARVEE issue. In December, markets had improved to 5.5 percent. We waited because at the first of the year, investors usually step up, and the rate did drop so that the current rate is about 4.5 percent. Negative carry is the cost of issuing bonds at a fixed rate and holding the proceeds temporarily while the money is drawn down. Our bankers have estimated that the cost to us is about 1/4 of 1 percent for the upcoming transaction. This tells us that we can go into the market today and incur a cost of about 4.75 percent (plus the .25 percent of negative carry).

An alternative is to issue variable rate bonds, which we have done a lot. You can go out short-term and not fix the rate until, say, two years out when the roads and bridges are constructed. Then the question is, will the rate be better in 24 months, or do we take the 4.75 percent rate we can get today, even though there is a negative carry? We pay 1/4 percent more to tie down a rate.

Is it better to take a good rate now or wait to see what rates will be later? Historically, anything under 5 percent is usually a good rate. So given a 4.75 percent rate, the idea is usually to take the rate now.

In this market, given the volatility and uncertainty, it may make sense to tie down the rate now. Sometimes it is okay to have negative carry given the market. But other strategies are legitimate in other times.

Regarding BANS, you are generally talking about a state-issued debt instrument like tax anticipation notes. Based on GARVEE legislation, the State does not guarantee any of this debt, which means that issuing traditional tax anticipation notes from the State Treasurer's office is not authorized in current legislation. However, we can try to do that in the marketplace with other types of variable rate instruments, and we have done that in our other financing activities.

Mr. Brock responded to a question regarding how legislative interaction

with the ITD can be improved. On page 87 of the audit report, the following is stated: "ITD should provide more frequent performance reports to the Legislature."

Mr. Brock said that during their interviews, they wanted to find out the flow of information between districts and to stakeholders, to the Legislature, to board members, etc. They did not find a lot of communication with the Legislature. Rather, information was provided to other departments and to constituents. Assuming that the Legislature represents the citizens of Idaho, they wondered how the State at large could know what is going on.

They recommend that the Legislature and the Transportation Board (in conjunction with performance expectations) collaborate and agree upon communication on an ongoing basis and agree on what the expectations are. Since this is a policy issue, things like frequency and the form this should take depend on what the ITD Board and Legislature deem to be appropriate.

When asked for examples from peer states wherein the Legislature is more engaged and what happens there, **Mr. Brock** said that he could not point to a specific state. But a good process (called a balanced scorecard) derived from the private sector ties performance to metrics, and then the Department provides this information to the public at large. There are several documents that are made available on a regular basis.

Virginia communicates well by using a Web site. Anyone in the country can go to the Web site and see a dashboard (which also initiates from the private sector). You can look at the indicator and click on it to drill down to specific projects and get an indication of what the status of state initiatives are. Washington State also provides a great deal of information and metrics through the Gray Book.

Director Rakesh stated that there is a policy. In 2005, the statute was modified so that each agency must provide a performance report every year to the Germane committees. If there is a clear communication of what the committees expect from the agencies, then negotiations can be made about what is possible. The Department needs to know what the committee expectations are, and the Legislature needs to know the goals the Department has to meet those expectations and the plan to accomplish those goals. Then reports can be made about how the plan is implemented and evaluations can be made. In a week, he plans to send a letter to every Germane committee saying that the Office of Performance Evaluation (OPE) would be happy to provide training regarding the information that should be looked at regarding performance measurements.

Mr. Brock responded to a question about design-build (as discussed on page 104 of the audit report) and what the statutory prohibition would be against using this.

Mr. Brock explained that this is a gray area. They received information from the Department that the use of design-build, while it is allowed in legislation, is precluded as related specifically to highways. Design-build isn't popular in certain circles. There are a lot of up-front requirements. It works best on larger projects. They suggest that legislation be drafted to

specifically state that design-build is allowed for highway projects. Studies indicate that design-build results in savings by reducing costs in the initial phases of a project and by increasing the speed of project completion.

Responding to a question about how safety and miles driven fall in the preservation first ideal, **Mr. Huddleston** referred to slide #34 and said that it represents federally reported criteria. The numbers are based on smoothness of pavement and adequacy of roads, etc. More roads are shifting into poor condition. It is counterintuitive to put more money into a road that is in relatively good shape to keep it functioning vs. putting a lot of money into a road that is in poor condition. These federal criteria do look at accident rates and other statistics that can be measured.

The emphasis is that Idaho should try to keep more roads in the upper categories. The emphasis is not on economic development or other social agenda factors, but on just trying to reduce the net cost to maintain the roadway network. While it doesn't seem to make sense at first blush, it does prove best to put more money into the maintenance piece of it up front. The numbers (which do include safety factors) demonstrate that as a winning strategy, and it does take some technology to measure where those opportunities exist.

Mr. Brock added that project selection criteria should be used, and the criteria should include safety.

The team was asked to clarify slide #19. Do the employee numbers represent the number of actual employees or the number of authorized positions? **Mr. Brock** stated that they contacted the states' Human Resources Departments and were given the number of full-time positions, but they did not find out whether the positions were authorized or current.

A representative commented that the Legislature seems to have let down the ITD somewhere because there are several things lacking, yet a third of the positions are unfilled. What legislative improvements could be made?

Mr. Brock answered that the audit focused on the Highway Division's employee count, which is 1,329, and there has been a 6 percent vacancy rate, rather than a 33 percent rate. They don't consider the staffing situation in the Highway Division to be dire. However, there are some steps that could be done quickly in the first year. The structure in place is quite common. Accountability is a key. Having key performance metrics agreed to by the ITD Board is a critical first step.

Having a project management office, within the Highway Division, to drive standards and best practices would go a long way to having some consistency. They suggest taking the GARVEE office and moving it within the Highway Division and (with some transformation) calling it a project management office that drives these things. They can have representatives at each district to work toward consistency.

Responding to a question about how much new road we can add while still managing our current roads, **Mr. Huddleston** said that within the money allocated to the Department, there is not enough to maintain the roads and bridges. Some money could be reallocated. For example, local governments could use local options, freeing up the State's funds. But new resources are needed, too.

Their observation is that if the ITD does not change the way it does business but the Legislature increases taxes and fees as proposed, the ITD will still be short in five-years. They will make it for a year or two, but they will fall behind again.

As examples of some alternative funding strategies, in some other jurisdictions, policies have been adopted that allow basic safety or bridge structure and road characteristics to be maintained as part of the fuel tax or motor vehicle fees. Also, they have considered things like having trucks pay more money because they beat up the roads more, and putting tolls on some roads. There have been some pilot projects started recently in Washington, Oregon, and California to generate more dollars for capacity issues.

Mr. Thomas added that currently, part of the frustration is that the effect of a new capacity project (or any project) cannot be quantified. If the recommended management systems and plans are put into place now, then questions about projects in the queue could be answered much more easily if we were to have a similar hearing two-years from now.

Director Rakesh stated that the Department, Legislature, and Board need a common understanding and agreement on what constitutes the strategic plan. They need to decide what it will take to move forward and how it will be measured. They want to be able to communicate with lawmakers and the public in simple terms and measures, even if there are more complex things that go into determining the measures. Otherwise, they will continue to have the transparency and accountability problems.

Responding to a question about slides #34 and #35, **Mr. Brock** explained that the information came from the Federal Highway Administration and was scientifically derived. It came from a federal report compiled by information provided by the states.

In response to a question about how many times \$1 will need to be spent, which apparently saves \$6 or \$7 later, **Mr. Brock** replied that when you spend the first dollar, you save about \$6. You spend today to maintain the road because in 12 to 16 years, you'll spend \$6 to \$10 for significant repairs.

Chairman McGee thanked the audit team and **Director Rakesh** for the depth of the report, and the speed at which they compiled the report. Both he and **House Chairman Wood** concurred that the report was very valuable for both the Legislature and for the ITD. They also concurred that the committees would compile a list of further questions to present to the Department.

ADJOURN:

There being no further business before the committees, **Chairman McGee** adjourned the meeting at 4:12 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE and SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, January 22, 2009

TIME: 1:00 p.m.

PLACE: Governor's Conference Room

HOUSE MEMBERS: Chairman Wood (35), Vice Chairman Hart, Representatives Smith (24), Roberts, Willis, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King and Ruchi

SENATE MEMBERS: Chairman McGee, Vice Chairman Hammond, Senators Keough, Corder, Heinrich, Broadsword, Winder, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Representative Bedke

GUESTS: The signature sign-in sheets are attached to these minutes. Also attached is a hard copy of the slide presentation. The Office of Performance Evaluations audit is attached to the minutes of January 20.

Senate Chairman McGee called the meeting to order at 1:03 p.m.

House Chairman Wood announced that the House Transportation and Defense Committee would convene on Monday, January 26, to review rules, the ITD audit report, and the annual review.

Darrell Manning, Chairman of the Idaho Transportation Board, introduced board members: **Jim Coleman** from Coeur d'Alene; **Bruce Sweeney** from Lewiston; **Monte McClure** from Meridian (Vice Chair who is retiring after 12-years of service); **Gary Blick** from Castleford; **Neil Miller** from Blackfoot, and **Lee Gagner** from Idaho Falls.

He explained that collectively, these gentlemen have 48-years of service on the Board. **Director Lowe** will present the ITD FY10 budget request. That request has been reviewed and approved by the Idaho Transportation Board. They work closely with the staff through regular meetings and budget workshops to understand, guide, and wisely invest the State's transportation dollars.

The Board believes the budget delivers the tangible products and services that customers, the citizens of Idaho, expect. You will also hear a report on GARVEE, and from the Idaho Transportation Department (ITD) division administrators. He also introduced **Pamela Lowe**, Director of the Idaho Transportation Department.

Director Lowe introduced the ITD Executive Team members: **Scott Stokes**, Deputy Director; **Tom Cole**, Chief Engineer; **Alan Frew**, Administrator, Division of Motor Vehicles; **John DeThomas**, Administrator, Division of Aeronautics; **Dave Tolman**, Administrator, Division of Administration; **Randy Kyrias**, Administrator, Division of Public Transportation; **Matt Moore**, Administrator, Division of Planning; **Mollie McCarty**, Government Affairs Manager; **Jeff Stratten**, Manager, Office of Communications, and **Rick Hinton**, Assistant to the Director.

She explained she would cover the ITD revenue outlook and FY10 budget request, and Deputy Director **Scott Stokes** would give an update on the GARVEE (Grant Anticipation Revenue Vehicles) program.

Mission and Vision (slide 4): Last year, **Director Lowe** reviewed with the committees the new ITD mission statement, "your mobility."

The ITD 's vision is to be an industry leader in transportation. To help achieve that vision, the ITD has four teams working in four focus areas: improving the customer service culture; leading through agency performance; expanding and enhancing partnerships, and investing in the people.

In December, the teams presented the ITD's action plans to the Transportation Board. The ITD mission statement, vision, focus, and action plans are the foundation of ITD's future success.

FY08, FY09, and FY10 Holdbacks (slide 5): Due to the impact of the slow economy and high fuel prices on revenue being generated to the Highway Distribution Account, the Department held back more than \$19 million from its budget over the last two years. In fiscal year 2008, the ITD reduced its budget by \$10.4 million. In fiscal 2009, it cut another \$9 million. The ITD made reductions in personnel costs, its office and equipment building program, the State construction program, out-of-state travel, and new and replacement equipment.

The ITD economist is predicting further reductions of up to \$3 million in FY09 and another \$4 million in FY10, based on his review of the trends so far.

Administrative Cuts (slide 6): In addition, the Department reduced its administrative costs an additional \$1.6 million, primarily by transferring 18 administrative positions to such critical front-line services such as bridge inspection, snow plowing, and road and bridge maintenance. The Department transferred 18 vacant administrative positions to front-line operations in December. Already, winter maintenance on highways across the State has improved with these positions being in the field. The transfer of the 18 employees and additional cost-cutting measures are a 6% reduction in the Department's administrative costs.

The Governor requested the ITD to reduce administrative costs. The ITD supported the request. The Department's shift in personnel to the field not only supported the Governor's request, but it was the right thing to do and supported the goal of decentralization.

Economic Stimulus (slide 7): The Department is ready to quickly put any

economic stimulus dollars to work in Idaho. Working with the State's local jurisdictions, the ITD identified more than 152 projects totaling in excess of \$817 million that could qualify for stimulus money. All of these projects could be ready to go in 180 days, if funding were available.

Idaho's estimated share of the stimulus package for transportation projects ranges from \$75 million to \$221 million. This is one-time money and does not address ITD's on-going maintenance needs.

The Transportation Board authorized the Department staff to prepare eight projects to utilize up to approximately \$180 million in possible stimulus money. These projects will address serious safety, deteriorating infrastructure, and congestion problems.

FY10 Budget, Governor's Recommendation (slide 8): The pie chart shows an approximately \$667.2 million FY10 budget request, and ITD's fund sources. The Department has a full-time position count of 1,833.5 employees.

The bulk of the ITD's budget is dedicated to contract construction and to the construction, right-of-way, and design funded by the GARVEE bond proceeds.

FY10 Funding Allocation (slide 9): The ITD is developing alternate ways to show the Legislature and the public how it spends its money. All the money ITD spends can be placed into five simple categories: plan it, build it, maintain it, use it, and manage it. This chart (slide 9) shows the percent of the budget that will fall into each of these categories:

Plan it - includes planning and designing highway projects.

Build it - includes construction and acquiring right-of way.

Maintain it - includes maintenance work such as patching potholes and snowplowing.

Use it - includes public transportation, aeronautics, and the Division of Motor Vehicles (DMV).

Manage it - includes program administration, financial and information resources, supplies, and facilities.

As the ITD continues to refine this method of displaying its budget, the ITD would like to have input on its potential usefulness.

Peer Review (slide 10): As part of the ongoing efficiency efforts, the ITD requested a peer review from the American Society of Civil Engineers. Volunteers from businesses, state, city, and county governments came to Idaho to review the highway operations.

The report found several strengths. They are: management and structure; staff attitude and capability; mission, vision and goals; new management team; executive management/board relationship; engineering standards; and highway staff's pride in their work.

Peer Review (slides 11 through 15): Also, they reported several areas the ITD can build on. They are highlighted in bold text (on the slides). The bulleted items show the action plans the Department has developed for each area. The items already completed or well underway have a red checkmark (on the slides).

Office of Performance Evaluation (slide 16): The audit had findings in the following primary areas: the lack of transportation revenue, the need for a comprehensive statewide strategy for capital improvements, the need to strengthen performance measures, the need to purchase systems and tools to help manage the transportation system, and the need to enhance the financial planning process. The audit also recommended ways to improve the ITD's GARVEE financial planning.

The audit largely validated the direction the Department has been headed for the past two years. The ITD essentially agrees with the audit findings. Further, when you look at the ITD's agency response, you will see the action plans for each of the areas and when the work started.

Reviewing each finding separately:

- The audit stated transportation funding was inadequate, and that the Department basically has squeezed all it could out of efficiencies. The ITD agrees it needs revenue, and even with continuing to work on efficiencies, the Department cannot close the funding gap.
- The audit said the ITD needed a comprehensive statewide strategy for capital improvements. The ITD agrees and started developing a statewide plan last year.
- The audit stated the ITD needed to strengthen its performance measures. The ITD agrees and has identified 11 performance measures the Department would like to focus on.
- The audit said that the ITD needs to purchase new maintenance, pavement, and project scheduling systems to provide additional data to make the best possible decisions. The Department agrees. The ITD has spent a lot of time this past year identifying the specific systems it needs to have. The Transportation Board heard the final report at this morning's meeting. The next step is getting the money to buy these types of systems. The Department, until now, chose not to take the money off the road.
- The audit recommended that the ITD enhance its financial planning process. The Department has a good financial system that provides important reports and helps meet all state and federal requirements. To accomplish the upgrade, and the enhanced system, the audit recommended that a new maintenance management system, pavement management system, project scheduling system, the statewide plan, and performance measures will all need to be in place and funding provided.
- And finally, the audit recommended ways to improve GARVEE financial planning that possibly could save the State money. Central to these recommendations is the use of more short-term borrowing. But short-term borrowing in a volatile bond market can lead to more risk.

The Transportation Board, following the lead of the Legislature, decided to take a conservative approach. The bonds are sold and the cash is in the bank before awarding contracts. This approach kept Idaho out of the trouble that many states, cities, and counties had when the bond market collapsed last fall.

Many agencies awarded contracts but then could not sell the bonds to either start, or in some cases finish, the jobs or pay the contractors. Idaho avoided this problem with the conservative approach. The approximately \$19 million in negative arbitrage translates into a 2% cost of borrowing money for the \$1 billion GARVEE program. But inflation for the \$1 billion GARVEE program is expected to be 6% or above. The Department's full response is in the audit report.

Leading Through Agency Performance (slide 17): The ITD recognizes it needs to do a better job of tracking and measuring performance so that the Department and others know how they are doing.

Over a year ago, the ITD established a team focused on Leading Through Agency Performance. The team looked at hundreds of performance measures from across the country. The Department identified these measures as starting points. The Transportation Board concurred in December. The next step is to get Legislators', and other stakeholders', input to learn if these are the right performance measures to start with. And, are there others that should be looked at long-term? The Department is flexible on these.

Deputy Director **Scott Stokes** presented a **GARVEE Overview** (slide 18): He stated that it has been a great year in the implementation of the GARVEE program. He discussed financing and management topics.

GARVEE Program Overview (slide 19): The sum of the prior year authorization for GARVEE bonding totals \$597 million. The authorizations allowed the ITD to issue bonds, as needed, to cover the contract amounts on projects. The ITD only issues bonding as needed to cover contracts.

Including the bonds being priced in the market today, the total of issued bonding stands at \$568 million. The Department holds active contracts in the amount of \$364 million and has a significant package of contracts ready to bid with this current bond sale.

GARVEE (slide 20): The colored bars (on the slide) show the bonding authorizations of \$213 million, \$250 million, and \$134 million. The heavy blue line shows the history and forecast of contracting levels. One year ago, as shown with the red circle, the level of contracts issued was at \$156 million for December of 2007.

The Department was engaged, at that time, in working through improvements at the ITD and with the GARVEE team to see dramatic acceleration of projects. The Department was then projecting that within one year, it would be contracted at over \$400 million.

GARVEE Contracts (slide 21): Since that time, these are the projects that have gone to construction. The size of these projects fits local contractors, the scopes of the projects are tailored to get quicker final completion, and the sequence of the projects will result in nice functional segments.

GARVEE (slide 22 - red dot #2, December 30, 2008) With the addition of those projects, the next red dot is the current report back on that prediction one year ago. The ITD has currently contracted (December 2008) at \$365 million. Had the bond markets been intact in October and November, the ITD would have very easily achieved the stated goal by exceeding \$400 million in

contracts issued.

(Slide 22 red dot #3 December 31, 2009) One year from now, what will the next year bring in GARVEE construction? The report is that one year from now (December 31, 2009) should have the ITD holding on the order of \$650 million in contracts. During this period, the Department will quickly complete the contracting for the \$250 million and the \$134 million, and be well into the proposed \$125 million of authorizations.

GARVEE - Safely Navigating the Economy (slide 23): Navigating through today's economic environment with safety and confidence involves balancing some important factors. Primary consideration is given to credit markets, federal revenue, project readiness, and operations maintenance.

For instance, the bond markets have had some challenging times. The Department has seen first-hand the loss of a sustainable bond market, followed by temporary elevation of interest rates. There are now significant differences in the nature of the bonding markets compared to a year ago. These dynamics are very important as the ITD carefully steps through this process. Extreme caution and conservative decisions define its mode of decision making.

GARVEE Federal Funding Concepts (slide 24): Over the last 8 years, the Federal Government has apportioned to the states more highway dollars from the Federal Trust Fund than is being collected. The nation had built up a surplus in the fund. A few months ago, the surplus was depleted. So the ITD is faced with a situation where the revenues into the Trust Fund will not sustain distributions the states are accustomed to receiving.

The formula for defining the federal distribution ratios to the 50 states is defined on a 6-year cycle in the Federal Highway Re-authorizations. This coming October marks the end of the current authorization of SAFETEA-LU (Safe, Accountable, Flexible, Efficient, Transportation Equity Act), and a new 6-year authorization will be needed.

Since income to the Federal Trust Fund is less than historic distributions, and with the opportunity for a national reconsideration of the formulas, the ITD has taken a cautious approach that considers the worst case possibilities. The \$125 million proposal for bonding takes a conservative look at addressing these issues and covers worst case, but yet it moves the Department forward on some of the most key project needs.

GARVEE Projects in FY10 (slide 25):

- Widening of I-84 to 4-lanes each way from Cole to Broadway, including Vista.
- Widening and reconfiguring the bridges at the Garrity Interchange.
- Final design of the SH16 segment from SH44 to Chinden.
- Management of the program.

The Department expects all of these listed activities to be contracted by this fall.

GARVEE November Bond Issuance (slide 26): Last fall, the ITD had planned to issue bonds for \$116 million to cover the contracts on Orchard Interchange

and the US-30 projects. Due to the collapse of the bond market, the ITD was forced to cancel the bidding of the Orchard Interchange and delay the sale of the bonds.

This delay only affected the issuance of the projects awaiting bid. This had no bearing or threat to projects underway.

Other infrastructure bonding projects in portions of the country had serious cash flow problems in making contractor payments. The Department's conservative approach, which includes bonding for the contract value prior to signing construction contracts, worked greatly to its advantage and prevented even the hint of contractor payment concerns, or even worse, the threat of halting progress in a highway work zone.

Yesterday, the Department re-entered the bond markets - seeing that it was safe, prudent, and economical to do so. The ITD was pleased to see good interest rates at 4.48% for this new issue. The Department greatly values its close partnership with Idaho Housing and Finance Association. The Department extends to **Gerald Hunter**, **John Sager**, and **Rick Skinner** its greatest appreciation.

The credit worthiness of Idaho's GARVEE bonds was recently affirmed at the very respectable levels of AA3 by Moody's Investor Services, and A+ by Fitch Ratings. The ITD is confident that this approach has been successful and is pleased that the interest rates are very comparable to past ITD bond sales.

GARVEE CIP Contract (slide 27): The Department reported on the improvements being made to the Contract for Program Management Services. With the original authorization of \$200 million, the ITD contracted with Connecting Idaho Partners (CIP), a joint venture of URS Washington Division and CH2MHill. This contract was initiated back in August of 2006, at the startup of the program.

During the Legislative Session of 2008, it was requested that the new ITD management look for ways to address topics of cost, transparency, delivery schedule, and consultant overhead and fees. In June 2008, the ITD signed a supplemental agreement with Connecting Idaho Partners to address the new authorization.

The theme of the negotiations included primarily - get projects on the ground - and improve these contract specifics.

You can see a comparison of key items of the initial 2006 agreement to the 2008 supplemental. Significant improvement was achieved. Now in 2009, the ITD and Connecting Idaho Partners are looking at a new theme for the coming year called "The Transition Plan." This will investigate the best way to quicken the transition of management components back to the ITD as the work load allows.

GARVEE Job Creation (slide 28): The final topics on GARVEE relate to the positive impacts it has on the economy. An analysis was conducted by Idaho Commerce and Labor Department in 2005. The report states that Idaho is estimated to generate nearly 20 jobs for every million dollars spent. A \$100 million project would generate almost 2,000 jobs. This works out to be estimated at 12,000 jobs, and more for the program depending on your choice

of future bonding levels.

GARVEE Program Overview (slide 29): The GARVEE projects are hitting the ground. Just under \$300 million will go to contract this year including the projects in the new authorization proposal. The ITD's investments now go primarily to the road, and the ITD will accelerate and implement the construction phase of these upcoming projects in accordance with direction it receives from the Legislature.

Director Lowe explained that last year, she reported to the committees on the Department's efficiency efforts. She is pleased to share the progress in 2008 at becoming even more efficient. The Department implemented more than 120 efficiency measures, saving millions of dollars in 2008.

The ITD is improving customer service, cutting red tape, solving problems, and saving money. The largest savings came through the Department's no-frills plan to meet the State's transportation needs while cutting costs - the Practical Design program.

Tom Cole, the ITD's chief engineer, will elaborate on savings in Practical Design and other areas. Each of the division administrators will then report on their efficiency efforts. You have received copies of the report. It is also on the ITD's Web site at itd.idaho.gov.

Director Lowe reviewed two key indicators.

Key Indicator Shrinking Value of a Transportation Dollar (slide 31): Here is one of the primary reasons why efficiencies are not the sole answer to solving the funding problems. This chart shows the shrinking buying power of the transportation dollar. The graph is from an AASHTO's publication called BRIDGING THE GAP.

The ITD has done a lot with efficiencies and will continue to do even more, but it cannot close the funding gap with efficiencies. The Office of Performance Evaluation audit of the ITD confirmed the need for additional revenue. Due to inflation in the construction industry, the purchasing power of the dollar has eroded 50% in the past 15 years.

Key Indicators FTP Growth (slide 32): **Director Lowe** shared one of the key indicators of the Department's efficiency.

One key indication of the Department's efficiency is how many employees it has and whether it is growing.

The red line (on slide 32) is the ITD employees, the blue line is the rest of State government. As you can see from this chart.... the Department added 75 employees over 18 years. That's a 4.2% increase. During that same time period, the rest of State government increased 36%.

Tom Cole, Administrator, Division of Highways, presented accomplishments, efficiencies, and future plans.

Slides 33 and 34: The Division of Highways is the largest of the six divisions within the ITD. It has 1,335 full-time employees to carry out the mission of designing, constructing, and maintaining the State's highway system. These dedicated employees are located from one end of the State to the other,

servicing the public in six operating districts and supported by the headquarters' operations. In support of these operations, the FY2010 budget request totals \$447.9 million.

Pavement Deficiency Rating (slide 35): **Mr. Cole** created an image of the condition of Idaho's roadways. The first core was taken from a newly overlaid road. It shows asphalt that is tightly bound together and rich in color, with a well adhered seal coat to the top. The second core shows a surface that looks very similar to the first core, with one exception: there is a crack. As you follow the crack downward in the core, you see it splits, with one crack continuing vertically and one horizontally. The horizontal crack has delaminated the last overlay from the asphalt below it. This section will cause the surface to break away rapidly. As the crack continues downward, you will see that it has stripped the asphalt from the rock, basically turning it back to gravel. This condition will cause the underlying material to fail, creating potholes and large settlements. Currently, approximately 19% of Idaho's roads are in conditions similar to the second core, and in five years, without additional funding available to do the right thing at the right time in the right place, the number will increase to 36%.

Bridge Inspection and Repairs (slides 36 and 37 and video clip): The division is very concerned for its ability to maintain the bridges. He showed a short video that illustrated the challenges the ITD faces with its bridges.

Idaho Fatalities (slide 38): In 2008, Idaho had 230 highway fatalities. This is down from 252 in 2007, and though this is an improvement, it is still too much. The division will continue to do everything within its power to reduce this number even more. The division will continue its safety education programs dealing with reduction of impaired driving, reduction in aggressive driving, and increasing the seat belt usage throughout the State. Mr. Cole explained that when he was a district engineer, all the fatality reports within the district went across his desk. The first place he would look on all the reports was the box for "protective devices." He estimates that greater than 90% of the reports indicated no device was used. The ITD can only wonder how many people could be alive today if only they had taken the time to buckle-up.

EPA (slide 39): The Department wants to spend taxpayers' dollars as effectively and as efficiently as possible. The Department continues to make improvements where it can; this is an area where it has improved but still has a ways to go. The consent decree from the ITD's violation of the Clean Water Act in 2006 allowed the EPA (Environmental Protection Agency) to fine the ITD \$325,000 in 2006. He emphasized that in no case were any of these fines for the ITD allowing "dirty" water to enter Idaho's streams and rivers. Most were for not filling out a form right, or not checking a box, or not filling the form out in time. Though the ITD has not received a total for fines during 2007, it anticipates there will be fines. The ITD has made numerous changes to its policies and procedures in order to eliminate the fines and relieve the ITD from the consent decree in a timely manner. For example, the decree requires 8 hours of training for inspectors; the ITD has elected to develop training and requires 24 hours of training. The ITD goal is to become an industry leader in environmental concerns.

Practical Design Philosophy (slide 40): In 2007, the ITD adopted the philosophy of "practical design," a philosophy that will design more good jobs

than great jobs, without sacrificing safety or quality. This was projected to save \$5.6 million in the FY08 projects. Now that those projects have actually been developed and bid, the ITD knows what the actual savings was, which was \$18.2 million. All these extra savings were put back into the district that generated the savings where they bid more jobs.

Practical Design Philosophy (Rest Areas) (slide 41): The division recently reviewed its rest area program and applied that practical philosophy to it. The division identified a savings of \$7.8 million, and the savings will be put to other roadway projects within the districts generating the savings.

Materials/Testing Program (slide 42): The Department worked with the Association of General Contractors to identify and implement efficiency improvements to its materials and testing specifications. The improvements reduced manpower requirements, increased contract flexibility, and reduced costs. In 2008, it implemented 23 efficiencies into the spec books and contracts. These changes affect everything from aggregate to concrete to asphalt. The division continues to meet with the AGC and has identified 8 specifications to examine this year.

Using Wing Plows (slides 43 and 44) (Video clip): The division added 16 wing plows in 2008 to the existing fleet of 61 trucks. The division can use a truck with a wing plow to clear a 12-foot lane and shoulder in one pass, rather than requiring two trucks to plow in tandem. A short video of a wing plow in action was viewed.

Future Efficiencies (slides 45 and 46): Lastly, the Division of Highways continues to look for efficiencies. One district is making agreements with property owners to have rows of corn left standing in the fields in strategic locations to create natural snow fences to reduce snow drifting problems. It has a task force looking at pavement design and development on projects to create opportunities to tap into changes in technology and equipment to produce better designs for less, and it is incorporating practical design practices and policies in all the projects. Currently, the division is developing a practical design guide.

Alan Frew, Administrator, Division of Motor Vehicles, presented an overview regarding the division.

FY10 Budget Request (slide 48): Products and services provided by the Department's Division of Motor Vehicles (DMV), directly or indirectly, touch the lives of every Idaho citizen. The division has only one product, Customer Service. Through partnerships with county assessors and sheriffs, the division tests and issues driver licenses to more than one million Idahoans, and it processes/issues more than 10,000 vehicle titles every week.

DMV Print On Demand (slide 49): In the past year, the DMV has implemented a print on demand decal program that has been very well received at county assessor offices. County assessors can now print plate decals when they are needed, rather than having to stockpile large quantities of pre-printed decals. This system also reduces opportunities for fraud, reduces county inventory requirements, has saved \$360,000 in one-time printer replacement costs, and produces an annual savings.

DMV (slide 50): The DMV continues to work in close partnership with the State's Web portal provider, Access Idaho. This past year, the DMV rolled out two additional online services, saving dollars and expanding customer services. The DMV is proud of the new Driver License Reinstatement process, which has been in production since August. Nearly 3,100 customers have used this service, allowing DMV to collect more than \$383,000 in reinstatement fees.

DMV Online Transaction Trend (slide 51): The diagram shows that the DMV has been very successful implementing DMV online services that save resources, improve customer convenience, and expand customer services.

Workload Increase (slide 52): This chart graphically depicts the large workload increases that the DMV has been able to handle without corresponding staff increases. This is attributable to staff's commitment to customer service and partnering to ensure the successful implementation of Web services.

DMV Virtual Ports of Entry (slide 53): Nearly one-half of the DMV is made up of commercial vehicle services. One way this section has improved operational efficiency is through the use of virtual weigh sites. He showed a picture of one installed on US-95, north of Bonners Ferry.

DMV Future Efficiency (slide 54): Commercial Vehicle Services is also improving efficiency through the use of smaller roving vehicles, deployment of kiosks, and expansion of online services to permit customers.

DMV (slide 55): In conclusion, the Department and DMV are committed to serving Idahoans. The DMV is able to meet the service and technology challenges through the efforts of a workforce of dedicated professionals. Our people are wonderful.

John DeThomas, Administrator, Division of Aeronautics, presented a report regarding the division (slide 58 - 62): The Division of Aeronautics is requesting a \$3.4 million appropriation of which \$800,000 will be federal funds. The bulk of these funds will go out as grants to 7 commercial service airports and 30 general aviation NPIAS airports to help them with their local match for FFA funding. The division will also provide most of the funding for six small community airports that are not eligible for FAA funds. It will also maintain 30 State-operated airfields and support Idaho's pilots and aircraft owners.

Division of Aeronautics (slide 58): It has worked hard to increase advertising in the quarterly aviation newsletter, thereby saving publication money.

Improving Idaho's Aviation System (slide 60): Last year, the division received a small increase in dedicated funding, and none of that funding went to internal operations. The bulk of it went as grants to various Idaho airports, mostly to the smaller community airports that are not eligible for FAA funds. The division has also begun efforts to republish the Idaho Aeronautical Chart, and the Idaho Airport Facilities Directory, which have not been published for the last ten years due to a lack of funds. The division has a statutory requirement to coordinate searches for downed or missing aircraft and uses volunteers for that effort. Over the last few years, the division has been unable to train these volunteers for search due to lack of funds. So, a small amount of

the increase has been designated to support the Idaho Airstrip Network, a government and non-government organization that works to maintain and improve back country airstrips in the State.

Future Efficiencies (slides 61 and 62): The division has plans to continue improvement efforts, including an online pilot and aircraft registration system, which will improve services to our customers and streamline our procedures. The division will piggy-back with the Motor Vehicle Division to develop print-on-demand aircraft decals. It is streamlining procedures and is now beta testing an online flight scheduling system that will allow any State employee to check flight schedules to see if one of the planes is flying somewhere that he or she needs to go, thereby saving travel money for the State.

Dave Tolman, Administrator, Division of Administration, reported on the following.

FY10 Budget Request (slide 64): The Division of Administration's FY10 budget of \$26.5 million and 203 FTP (full-time positions) provide central support services to the rest of the Department. These Department-wide services include Idaho Transportation, Finance and Budgeting, Purchasing, Legal, Human Resources, Building program, the Director's office, and the ITD Board.

Practical Design Philosophy (slides 65 through 68): Efficiency and cost effectiveness are what all employees in the division strive for. He highlighted some of those efficiencies.

- Staff accomplished a thorough review of the Board's approved five-year building program and made a recommendation to the Board that was approved in August. This building program change removed \$77 million. A majority of this came from eliminating a future bond request to replace the District 3 location on Chinden to a more favorable location, and a headquarters building replacement to consolidate headquarter sections that are currently housed in rented facilities.
- More consumers are using online map functions and as a result, the ITD is printing maps every two years, saving approximately \$62,500 a year. The division worked with the Department of Commerce in this effort to ensure continuity with that agency.
- The ITD has worked with the Idaho Government portal provider to pass on credit card fees to the consumers that use credit cards to pay for services, saving \$45,000 annually. The division will continue to work on other methods to continue to reduce this cost at the ITD which is consistent with the direction of the Governor.
- The division worked to reduce out of state travel costs by \$32,000 department-wide, cutting 19 trips. This was accomplished by sending fewer employees to national training conferences. Important travel to inspect project specific materials that are necessary to ensure quality were not compromised.

Future Efficiency (slide 69): Future efficiency work efforts will be focused on the following:

- Implementing new electronic tools via the Internet so that employees can be more productive in sharing files and working collaboratively.
- Replacing the aging phone system with a new “voice over Internet” based system that will improve employee efficiency and add needed functionality.
- Implementing a data warehouse that will be initially focused on financial and human resource data to provide necessary information in a much quicker and flexible method than is currently available.

Division of Administration (slide 70): The Division of Administration is focused on delivering the best service possible through great employees.

Randy Kyrias, Administrator, Division of Public Transportation (slide 71): reported on the division.

FY10 Budget Request (slide 72): The division’s FY10 budget request is \$10.3 million, of which approximately \$9.6 million is in the form of “trustee and benefit” payments that flow directly to local service providers.

This past year, the division began collecting performance data to help define the scope of public transportation in Idaho.

- Transportation partners estimate approximately 6.3 million passenger trips per year, which translates into approximately 34 million annual passenger miles traveled.
- Each year, Idaho receives approximately \$15.5 million in federal funding and \$9.6 million in local and fare revenue.

IMAP (slide 73): This last year, the division championed an initiative that redefined its fundamental understanding of public transportation and mobility in Idaho.

Local partnerships across the State are constructing a statewide public transportation system that is coordinated, efficient, and relevant. This system of local networks will ultimately allow a passenger to board a vehicle in Pocatello, for example, and travel to Sandpoint with ease.

With this initiative, local partnerships are also constructing Idaho’s first statewide comprehensive plan for public transportation, helping to reduce costs and generate better mobility options.

The division’s efforts have captured the attention of the Federal Transit Administration in Washington D.C., as they have requested to receive continual program updates, and the State of Alaska is currently considering a system design similar to ours.

This initiative is referred to as “Idaho’s mobility and access pathway” or IMAP.

Consolidated Mobility Planning (slide 74): IMAP operates within a structure of 17 local mobility networks. One benefit of this network structure is that it gives the ability to consolidate the planning process, giving all Idaho communities, regardless of size, equal access to federal funding opportunities.

Mr. Kyrias stated he is proud to announce that the division will be finalizing the first draft of the 17 network plans in 9 days, on February 1st, and are

hoping to have all plans finalized by the end of February.

This approach has also allowed the division to quickly generate and submit a preliminary list of mobility projects to be considered within a possible economic stimulus package.

Rideshare (slide 75): This past summer, when gasoline topped out over \$4 per gallon, the division heard from communities across the State that they were struggling with commuting costs. This concern was even more pronounced in the rural communities as they typically have much longer travel distances. Sharing a ride is the simplest and quickest method to directly reduce commuting costs. Therefore, the division sponsored a Web based ride-match system that is available to all communities in support of rideshare and vanpool programs.

Vehicle Resources (slide 76): The division fully funded the vehicle investment program which has funded 145 vehicles since it began in 1999. These vehicles have helped senior homes and rural communities provide reliable transportation options and are often a lifeline for the delivery of food and supplies.

Future IMAP Efficiencies (slide 77): The division has also generated efficiencies through vehicle-sharing partnerships. As an example, last summer the ITD was notified by the Gem County senior home that their only shuttle van was no longer safe to operate, and they had no funding available to replace that vehicle. This organization did not necessarily put many miles on the vehicle, but they needed it to transport residents to doctor appointments and to make deliveries of food.

Through the IMAP network, the division broadcasted a call for a replacement vehicle. Shortly after, the division was notified by Treasure Valley Transit that they had a used vehicle that was just sitting on their back lot ready for service and was in good condition. Treasure Valley Transit subsequently leased this vehicle to the Gem County senior home for only \$1 a month. This was a win-win situation for both organizations and has significantly improved the safety and level of service provided to that community.

As the full IMAP program rolls out and new partnerships are formed, the division will continue to implement efficiencies and system improvements.

Public Transportation (slide 78): **Matthew Moore**, Administrator, Division of Transportation Planning, presented an update related to the division.

Division of Transportation Planning (slides 79 and 80): The Transportation Planning Division's \$5.5 million budget request allows the division to effectively research, plan, and analyze transportation systems across Idaho. Specifically, the division monitors and assess thousands of miles of pavement condition, counts tens of millions of vehicles, and partners with local and regional governments to ensure effective planning and development.

Partnering (slides 81 through 83): In terms of efficiency efforts, the division has done the following:

- Partnered with local highway jurisdictions to collect traffic data, saving \$120,000.

- Provided the Statewide Transportation Improvement Program, or STIP, on compact disk, saving \$21,000 annually in printing and mailing costs.
- Researched the best options for managing maintenance and pavement improvement projects, alongside financial and geographic information, through the use of management software. Planning anticipated the need to acquire such software for improved applications well ahead of the Office of Performance Evaluations (OPE) audit findings.

Future Efficiencies (slides 84 and 85): As the division moves forward, it will do the following:

- Utilize remote computer technologies to fix or reset traffic counters for a total savings of \$5,000 annually in staff time, travel, and fuel costs.
- In agreement with the OPE audit finding, develop a Statewide Transportation System Plan that unifies all of the business, vision, strategic, and modal plans with the Statewide Transportation Improvement Program over the next 20 years. The new plan, with initial development already underway, will clarify how projects are prioritized and connect to the long-range capital improvement plan (Horizons).

The floor was opened up for questions and answers. The ITD **Director Lowe** made the following points in response to questions:

- Regarding a centralized vs. decentralized structure, the ITD is organized like other departments in the nation. It wants to keep decentralization because districts know what people want and need and can be more responsive. ITD needs to provide centralized guidance on performance measures. Every district should know the measures and should be centrally accountable. How they meet the goals should still be autonomous. Management systems such as project scheduling should also be centralized. District 6 has a pilot project. The ITD is not consistent in every district. Once the pilot is done, the ITD needs revenue to implement a statewide system.
- A year ago, the development team conducted research to identify appropriate performance measures. They looked at hundreds and whittled them down. The Department can implement some right now and can give status reports for some as early as this summer. For some, the Department doesn't know how to get the data right now. After visiting with stakeholders to see if it has what is needed for measures, it can track the measures for a while and then work with the Legislature to set goals. Then the ITD can develop strategies to meet the goals.
- Regarding the stimulus package and potential projects, Director Lowe explained that the ITD, with the Board's guidance, plans to put all resources on operations, preservation, and restoration, for bridges especially. The five-year program includes hundreds of projects, but only 10 are expansion; all others are rehabilitation. The 10 are things like passing lanes and widening shoulders (all safety). While the priority is restoration, sometimes because Idaho is growing so fast, the highways face congestion, which causes safety problems. Also, the ITD does not have money to buy right-of-way corridor projects in high growth areas. It is

going to want to buy some now before something is built on the land. Congress is taking longer to pass the stimulus, so the time frame to deliver is getting shorter. The “expansion” projects also employ multiple trades. Congress wants to know what jobs are made. The Department gets more for the money from expansion projects in terms of jobs.

- While the flow chart showing where federal and State dollars go was not in the slide presentation, the ITD can get this to the Legislature.
- Director Lowe has heard mixed things regarding federal funds. The federal government did a one-time fix by transferring money to the highway trust fund. The Department could be out of money again in late summer or early fall. A more recent forecast says funds might last to October.
- Some GARVEE projects that are ready to go relatively soon include delayed ones, such as the Orchard one, the Vista one, and Garrity.
- A comment was made about needing more safety metrics. Seeing safety vs. on-time would be good for the public. Director Lowe explained that the Department picked a handful of things to start with to avoid massive statistics to report. But other things will roll up into those things.
- A discussion began about costs, and a comment was made that it wasn't possible for costs to be going down in every other industry but not in highway construction. Director Lowe said that the increase was the National AGC's economist forecast. The federal stimulus package could limit competition, which could make things worse in this regard. As others expressed an interest in getting more data, Director Lowe said that the ITD could do this. She gave some examples: asphalt is about \$750 per ton now, which is down from \$1,350, but two years ago it was \$250. Excavation is \$475 per cubic yard, and it was \$250 two years ago.

Mr. Scott Stokes and **Mr. Tom Cole** made the following points in answers to questions:

- Part of the ITD plan is to transfer performance measures in GARVEE into Department-wide measures. The Department has gotten some guidance from CIP about this.
- Regarding how projects are divided out among Idaho workers and other state workers, the ITD wants to package projects in a size better for Idaho workers, but many of the contractors are on the other side of the state line. An example given was gravel in North Idaho. The owners of some of the firms that supply it are not in Idaho, so access to the materials can get complicated. Others have some ideas about how to deal with these things that the Department wants to consider. Also, there are sections of Idaho Code dealing with the percentage of Idahoans that must work on contracts. In the ITD specifications, contractors can see some of this code. It is right in the contracts. But this for Idaho contracts, not federal ones. GARVEE deals with federal funds, so the rules will be different.
- Regarding LHTAC (Local Highway Technical Assistance Council) and local

jurisdictions, the LHTAC role has evolved over the last 10 years. The ITD would like to make projects easier for local jurisdictions. The audit recommended that the locals be able to access the same systems that ITD implements, but to arrive at the level suggested in audit will require more study. LHTAC did a recent needs assessment. A comment was made that the (OPE) audit based recommendations on the ITD, not local jurisdictions, and these are not the same. So we should not entertain discussion on local jurisdictions in terms of the audit.

- Sometimes work among districts is uneven. One engineer is busy but another isn't busy, Recently, the policy has been that if a district is short on design work, it will ask other districts to help. It isn't allowed to hire a consultant until this happens. The ITD is pushing in that direction. The scheduling software will help to foresee varying workload.
- The ITD takes pride in making prompt contractor payments. The relationships with contractors is important. In some other states, some contractors have not been paid on time. A comment was made that this could be used as a tool to bring costs down. If we can guarantee payment, we should get some benefit in terms of costs.

Director Lowe answered more questions resulting in the following points:

- The budget slide takes into account all of the adjustments requested by the Governor. But it doesn't account for recent adjustments made by Doug Benzou (Economics and Research Manager for the ITD).
- Regarding the effect the economic stimulus money may have, the projects on the list to get ready for stimulus make up \$180 million of projects. The ITD has acquired the right of way and the environment is ready. Permits may not be up to date. The ITD started getting things ready when it heard about the stimulus and are advertizing the federal requirements. The crunch will be on the district staff for inspection and materials testing. They might have to bring in consultants, which they have done before. The ITD doesn't know what is going to come from the federal government. It might be staggered. Phasing would be good for Idaho contractors. If it comes out all at once, they might be overwhelmed. One advantage is that a pavement job goes really fast, but an expansion takes longer and requires more people, which may meet stimulus requirements better.

Senate Chairman McGee and **House Chairman Wood** each expressed their appreciation to **Director Lowe** and the ITD staff for a very informative, rapid, and efficient presentation.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: January 26, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Tom Cole, Chief Engineer, ITD; Pam Lowe, Director, ITD; David Tolman, Admin., ITD; Benjamin Davenport, Legis. Adv.; Dustin Kuck, Constituent Svcs. Rep., Governor's Office; Jeff Storti, Bus. Div. Director., URS; Rakesh Mohan, Director, OPE; Clete Edmunson, Special Assist. for Ed. and Transport., Governor's Office; Mollie McCarty, Manager, Office of Gov. Affairs, ITD; John Watts, Legis. Adv.; Colby Cameron, Legis. Adv.; Julie Fanselow, Idaho Democrats; Lance Holmstrom, Administrator; LHTAC

Chairman Wood call the meeting to order at 1:33 p.m.

MOTION: **Rep. Mathews** moved to approve the minutes of January 14, 2009, as written. **Motion approved** by voice vote.

Chairman Wood explained that it was hard to cover everything in our last meeting and ask questions. Some have read the report since the meeting. Therefore, in today's meeting, just our committee will discuss the audit and make some recommendations.

She explained that Rep. Smith created a hand-written document that categorizes some of the audit issues, and everyone has a copy. Along the outside edge are pages that correspond to the report. [A copy of the document is attached to these minutes.] She asked that Rep. Smith lead the committee in discussing the document and that members write down questions that they think of. Then we can present the ITD with a list of questions. She emphasized that now that we've asked for the audit, we need to be sure to understand it and how it will affect the ITD and our constituents as we think about future funding. The Transportation and Defense Committee needs to help the ITD and our constituents understand our expectations.

Rep. Smith explained that the first three pages are facts from the audit, and his conclusions are on the last page.

The first category is maintenance. The auditors presumed a \$240 million revenue stream from the Governor's package. The ITD would get \$137 million, which is the figure the auditors worked with for future revenue. They say this need is understated. It will fall short of needs on maintenance and preservation. Page 6 of the audit report says that the ITD is short \$55 million

per year (and growing).

Maintenance and preservation are chronically underfunded while resources are put into new projects. The recommendation is to put \$137 million toward maintenance and preservation and not let new projects get it.

Idaho roads are in worse shape than peer states. The recommendation is to increase funding now and tie the funds to a plan for the bad roads.

According to a federal study, 35% of roads need rehabilitation. Most years, the ITD gives us a graph showing that 20% of roads are in poor and very poor condition. The rate of deterioration is 8% to 12.5% per year. The annual need for maintenance and preservation is \$153 million.

The needs are immediate. They cannot be put off until next year. And they are continuing.

The next category regards an integrated statewide capital and maintenance plan. This involves three things: asset management, pavement management, and the Grant Anticipation Revenue Vehicle (GARVEE) plan.

The audit indicates that a pavement management system is needed and talks about funding the software at \$4 million, plus \$1.5 million to enable, and \$.5 million to interface and train, for a total of \$6 million. If we spend now, it will save \$180 million over 20 years. The ITD dropped its maintenance management system in 2005. They are putting it back in place. We don't know if it will be to the extent that the auditors recommended.

The ITD is reactive, rather than proactive, with construction projects. They recommend abolishing worst first and adopting preservation first. Rep. Smith stated that he knows from his time at the ITD that the worst first is sometimes needed to make things workable. But better systems would give us more control and help us save with preservation first.

Another recommendation is to adopt policies so that new capacity projects do not take dollars from maintenance and preservation. Maintenance and preservation will save \$6 for every \$1 spent.

District staff members are often engaged in reconsidering pavement condition data. Data is out of date, imprecise, and inaccurate. There is extra time spent manipulating data outside the system. Perhaps that is the reason for the discrepancy between what the ITD says is poor and very poor and the federal 35% deficiency statistic.

Rep. Smith recalled an instance when a machine that measures road conditions was being used, and about 3/4 of the way through the year, the department discovered that the machine didn't work. So, lots of things can happen. We really do need good data and measurements so that we know where the problems are.

According to a statement made during the audit presentation, Idaho is the only state without a pavement management system or an asset management system. According to page 14 of the audit report, "using best practice project management coupled with consultant management techniques" would save \$5.3 during the first 5 years and \$3.1 million each

year thereafter.

The next category is GARVEE. Authority and supervision is not clearly defined. There are conflicts between consulting, the district, and the GARVEE office.

The GARVEE program lacks an adequate financial plan. There is no accounting for the negative arbitrage costs, which are currently estimated at around \$15 million. Bond issues could be changed in timing and amounts. But the ITD is proceeding with a new issue of bonds totaling \$175 million that we've already authorized. They want \$125 million more to be authorized this year with an emergency clause. It isn't clear where the negative arbitrage figure will be then.

In response to a question regarding whether we have to do large bondings at one time or do smaller ones as we need them, Rep. Smith said that he heard from a Transportation Board member that the reason the large amounts are used is that they get a better rate. However, Mr. Hunter has said this really isn't a fact. So this isn't clear.

Rep. Smith then turned back to the audit report. The report indicates that there is no accounting for maintenance of new lane miles and bridges being built by GARVEE. Debt service will consume 30% of federal highway money, and we don't know if we'll get all the money we've been expecting when "reauthorization" occurs in October. We don't know how much Idaho will get in reauthorization money. If we get fewer federal dollars, the rate of GARVEE debt service will increase. Currently, the estimated cost for debt service repayment is \$1.54 billion over 20 years.

The next category is personnel. There are 1833.5 full-time people authorized, of which 1,329 are in construction. There has been a 6% vacancy rate over the last two years. We don't know if this is continuing. There is insufficient staff in the ITD now to finish projects. The turnover rate is high, and the department expects to lose five engineers per year for the next five years due to retirement. Reducing turnover would save \$385,000.

There is a lack of project and consultant management training. There is a difference in staff skills and management tools among districts. The ITD has a 14% staff deficiency for the \$270 million construction program. GARVEE doubles the construction program, yet the department has the same staff. You can see how the 14% deficiency would accelerate.

Remaining engineers can't complete the work. They need to improve their budgets and skills. Turnover and replacement costs are \$1.4 million per year. On page 44 of the audit report is an engineer starting salary graph. Idaho and Nevada are the lowest-paying states.

Responding to a question about the reason for so much turnover and whether this is measured in other states, Rep. Smith said he didn't see an explanation. There is a graph that compares Idaho pay with five other states. It implies that the reason is that Idaho doesn't pay enough.

The audit report indicates that outsourcing is necessary, especially considering GARVEE. If we had more engineers, we would be more cost effective in house. The report also indicates that there is no training or

guidance for overseeing consultants. The ITD needs qualified staff for negotiating with and managing consultants. In 2008, it took an average of about six months to finish a contract and get it signed with a consultant. For each month that the time could be shortened, we could save 2% of project costs.

The ITD lets consultants help prepare contracts regarding the scope of work. Outsourcing is 60% of development and design work. The percentage is significantly higher for GARVEE projects.

Project overruns averaged 108% for 2008, and the industry average is 105%. This 3% difference represents \$3.1 million per year.

A consultant management system could save \$6.1 million for the first five yrs and \$3.1 million per year thereafter. We could have more work done in house with better trained staff.

The conclusion is that the ITD doesn't have the procedures and tools needed to run a cost-effective program.

Some miscellaneous things were outside of the major categories, such as the gas tax comparison graph and the Governor's efficiency plan (practical design). Some practical design things seemed to represent doing "less", which may not necessarily be "practical", such as only pave lanes, not the shoulders. This is not really efficiency. There were, however, some good practical design things that would reduce costs. For example, using design-build would save money. The department already has a design-build bill that they will be presenting. Also, the ITD needs systems to hold local roads accountable for their 38%.

Rep. Smith stated that his personal conclusions were as follows:

1. The most important thing is that we need to put money into the ITD now.
2. We need to insist that the money go only to maintenance and restoration. The department has said they intend to do this—no capital expansion programs, no GARVEE debt paid by it. But to implement the pavement management system would require a capital expenditure.
3. Implement the pavement management system immediately.
4. Hold off on GARVEE funding.
5. Convert the GARVEE office to a project management office and hire an expert to train and manage consultants.
6. The ITD needs to concentrate on hiring engineers and help them with a career path. If pay is an issue, we need to address that.

The time was then given over to discussion.

Chairman Wood stated that we needed to condense the study so that we could think about it and come up with ideas and questions. This is one person's opinion, but everyone is important. She doesn't want the audit to be wasted.

In our Friday meeting, we will allow the local cities and counties to present. They are presenting their own self audit to have alongside the ITD audit. With that addition, the committee will be well informed so that we can go forward to making our state great in the area of transportation.

The first question was whether Rep. Smith thought that the audit results would have been the same if the audit had been done five years ago. Are the issues ongoing? **Rep. Smith** replied that the ITD has been under stress—three directors in a short time, turnover, retirement, many GARVEE issues and projects that were confusing at first. The workload increased, but they haven't been able to increase staff to meet demand. Rep. Smith guessed that the results of the audit would have been better five years ago.

In response to a question about whether the \$3.1 million on page 14 is the same as the \$3.1 million on page 78, Rep. Smith said that they are not the same issue.

As the discussion progressed, the representatives presented the following comments and questions:

- It may be that some of the numbers we have are not accurate because they come from a broken core of functionality. We have a circular argument. Do we spend money to fix the core, or do we focus on the issue of an integrated system to project what the requirements are? It seems that we have a large problem that we can't fix all at once.
- We have been told that the ITD wants to increase fees to raise the \$6 million to get the tools, software, and programs that need to be in place. Do we want to spend \$6 million all at once to meet the recommendations, or see if we can work with the ITD to raise some fees incrementally as they institute things, or do we ask JFAC to give them money out of the budget? Do we raise all the fees and give \$6 million on top of their budget this year? It is hard to think about raising fees and taxes because our people out there are struggling. We need the management things in place. Should those be funded first?
- The needs assessment group came up with \$200 million every year, then the ITD and the Governor's Office added inflation, which resulted in the \$240 million need figure. Some of us question whether some of the projects are necessary. However, on page 61 of the audit report, it says that \$153 million is just for maintenance and preservation, and that doesn't include local roads.
- Some districts put in 30-year needs for sidewalks, bike paths, etc. These may not be urgent. Districts would like to have these done in the future. However, the audit does help with some of those concerns. We need to figure out a goal to aim for.
- Last year we had a number agreed to by majority vote that would net the ITD the amount of GARVEE financing. The audit suggests that all of that was taking away from maintenance. If nothing has changed, we still owe the system the amount of GARVEE financing. If we agree that we need to put new money into the ITD, we need a list of criteria. Whether this comes from the Governor's plan or from us, we need to be sure all the details are in the bill. We need to have a checklist and a stopping place that are audit based and will be both objective and subjective. This committee and the Senate must make the ITD accountable for the money we raise for them. If the criteria are met, then we go to a second instalment. The Governor's plan is 5-year plan, providing approximately \$40 million in the first year and

\$174 million after 5 years. If the ITD needs more money, we must be able, at the end of each year, to ask them how are we doing on things and hold them accountable. I think we are in general agreement that we must maintain our \$68.5 million asset.

- We don't have the luxury now of just making the ITD accountable and not letting them do things if they don't meet our criteria. They have to have a system to run in the meantime, and they have to fix the roads. We need to decide how to use the audit most effectively to create expectations from the ITD. We can use appropriation to communicate what is really needed. We could supply some funds for some of the recommendations, but then increase incrementally as they go along to provide incentive. We'll need to have general agreement as we zero in on the details. We also need to be willing to answer the question of whether we can do what we want to do with the current economics. If not, we need to admit this. If yes, we need to move forward.
- In business management, you get what you measure. If you measure profit, profit goes up. But do we really measure anything for the ITD? We have three branches of government, but not much of this is dedicated to the ITD. We need to find out what other legislatures in peer states are doing in terms of what they have dedicated. In our system, do we even have the resources to hold the ITD accountable to work through some of the issues?
- Looking back about nine years ago, we probably should have dealt with ongoing funding. Do we pay now or later? The State had a pay-as-you-go system until 2001 or 2002 and GARVEE. It wasn't bad because it built things, but we should have added support for maintaining the things we already had and for the new projects. We have delayed the decision, and now it has gotten very large. Last year we said we had to do something. We did the audit, which recommends some very good business management practices.
- Pages 15 and 16 contain key recommendations and talk about decisions that really must be made. There are about 50 of them in the audit. Some would require executive order, some legislation, some policy changes. Which are in the box for legislation? Which are for us?
- We must supply at least the GARVEE debt. Whether to continue GARVEE is a separate question. But we have a measuring system, which is deficient lane miles. Asset management is key in the report. In business, if we invest in a piece of equipment and don't set aside money to maintain it, we get caught by surprise. We have an asset that depreciates due to weather and wear and tear. We have to have a system that pays for the maintenance. The audit states that "Idaho should consider adopting explicit policies which do not allow new capacity projects to siphon funding from basic highway operating, maintenance, and preservation programs." We should implement this if nothing else to maintain what we have. But the ITD has also been given a bunch of money (with GARVEE) and we told them to build a lot of new projects, so some of that problem is ours.
- One thing we didn't recognize was the effect of the edict coming from the federal government for more fuel efficient cars. The source of funding we relied on is shrinking.

- The audit was a good educational tool for us. Now that we own it, we need to maintain it as well. We can look at the specific recommendations for funding and accountability legislation. The way we generate revenue for the ITD is based in the 1960s. We aren't capturing current realities. Some vehicles use resources just as much as others but don't pay their fair share. We have to look at these things.
- There is \$187 million in the general fund that is really transportation related. The Governor has said that the Tax Commission will assess this. Used and new cars, tires, auto parts—they are all transportation related. We will hope that we can get some of that.
- The audit offers 52 measurable findings. Last year, we had a number of revenue generating proposals, such as registration fees on RVs. We could use a benchmark to determine whether to increase funding or pull funding back. We can work with the ITD to create the benchmarks that will be a trigger to increase funding (like license plates or registration) when they are reached. Or money decreases if the benchmark isn't reached. This makes sense for incentives.
- The \$6 million for maintenance and preservation does include training. We don't know if there are any programs out there that would cost less. We should also pursue the savings mentioned in the audit. When we figure out how much we need to raise, we know we have so much in the bank and we'll make some money on our investment. Savings must also be part of the calculation.
- The audit team stated that the \$55 million per year shortfall was based on the status quo, so that's a key issue for determining where we are without raising revenue. But we still need new money. How much and where does it go?
- The Department has said that they need some improvements such as new technology. They use DOS systems in some cases. They need to follow through on what is on page 16. Also, in the past, we've concentrated on safety and road conditions. But if your road is really bad and it isn't in the preservation schedule, what do you do? It seems really bad roads do need to be fixed.
- Some areas may have a gravel road while all the roads around are paved. Paving that road has not become a priority for the county. There are times when you just have to live with the gravel road.
- We need to have public transit in the vision, not just in Boise but in smaller towns too. The issue of how to achieve better public transit is being considered, but we don't have good answers right now.
- One problem is that existing customers are not funding depreciation on infrastructure. The State should tax to a level that is adequate to fix things when they wear out. But we don't do this. There are local options, urban renewal districts, and due bonds. Our tax structure doesn't fund the upgrades. How do local municipalities fund things better? Why do we spend so much on infrastructure? Rather than funding as we go, we wait until later, and this is a problem.

- Of the 52 recommendations, how many of them have been addressed and are being implemented now? Has anything changed since September when the audit was done?
- It would be good to have a list of what could change by policy within the department and by legislation. We need three categories: legislation, executive order, and policy. Then we can decide what we have to do.
- We also should have a list of the recommendations that the ITD or the committee does not agree with and the reasons for the disagreement. If the audit is going to be our guide, we must have agreement on which recommendations we are going to implement and which ones we aren't. We should not just accept the audit team's recommendations without questioning them.

Chairman Wood asked the committee members to write down further questions that they have.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 3:11 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE HART RULES SUBCOMMITTEE

DATE: January 26, 2009

TIME: 3:30 p.m.

PLACE: Room 225

MEMBERS: Hart, Nonini, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: Linda Emry, Management Assistant, Budget, Policy & Intergovernmental Relations, ITD; Marvin Brown, Senior Right of Way Agent, Right of Way Section, ITD; Bob Snyder, Right of Way Supervisor, Right of Way Section, ITD; Bill Statham, Project Manager, Airport Planning and Development Section, Division of Aeronautics, ITD; John DeThomas, Division Administrator, Division of Aeronautics, ITD

Chairman Hart called the meeting to order at 3:30 p.m.

DOCKET NO. 39-0345-0801: **Mr. Marvin Brown** from the Idaho Transportation Department (ITD) presented **Docket No. 39-0345-0801**, Rules Governing Sale of No Longer Useful or Usable Real Property.

Section 301 removes the \$10,000 valuation cap on properties that are first offered to adjoining land owners. Legislation made this change to Idaho Statute 58-335A last term. The legislation also correctly identified the order in which properties are then offered to other tax-supported agencies and finally to a public sale if a sale or exchange does not happen along the way. The rule change reflects this. The rule also reflects the statute change in the definition of an appraiser (Section 10.09).

No public comments were received on this rule.

Mr. Brown responded to a question about why the \$10,000 cap still appears on page 45 and on page 46. These references do not refer to the adjoining landowner value. For example, in paragraph 04 on page 45, the \$10,000 is referring to how they come up with a value. An estimate that is higher than \$10,000 goes to an appraiser. If it is \$10,000 or less, they can value in-house. This is regulated by State statute.

The other reference has to do with financing the amount of sale to a private party. For values less than \$10,000, financing can be over five years. Values over this can be financed longer. This is regulated by a rule that was carried forward. It was mentioned in Section 304, and there was an inconsistency, so they rewrote Section 301 to match up with what was already in Section 304.

When asked what interest rate is used when they carry a note, Mr. Brown yielded to **Mr. Bob Snyder** from the ITD who said that the rate is established by the Controller's office according to current rate. They have a deed of trust, the same as what you would use if you sell a piece of property, so they do have security in the property.

In response to a question about the average number of properties sold under this

rule in a year, Mr. Brown said that it is very few. They might have done two in the last year.

MOTION: **Rep. Ruchti** moved to recommend approval of **Docket No. 39-0345-080** by the full committee. The motion **passed** on a voice vote.

DOCKET NO. 39-0404-0801: **Mr. Bill Statham** from ITD presented **Docket No. 39-0404-0801**, rules Governing Idaho Airport Aid Program. This is a pending rule. No public comments were received. It would have no fiscal impact on the general fund.

The change is in response to a 2007 audit that found they were not in compliance with the rule, which requires a formal written application to the Division of Aeronautics for each project proposal for Idaho Airport Aid grant funds. However, some supply distributions were issued to airports without a formal grant application being completed or approved. The rules did not make provisions for the supply program. The audit recommended that the ITD follow the rule or make rule revisions to include the supply program. The text of audit is after page 54 as item number 9. During revision, other parts of the rule were changed to clarify language and comply with new FAA rules. The changes make no significant change to current practices.

Responding to a question about how often the State funds construction of a new airport on donated land, Mr. Statham said that the majority of funding is to existing airports. Most funding is for maintenance, rather than for new airports.

In response to a question about how many airports qualify for Idaho Airport Aid Program grant funds, Mr. Statham stated the number to be 75 airports. They are usually the 7 commercial service ones, other ones that get federal money, and some much smaller community airports. But others, such as forest service airports, don't qualify.

No questions.

MOTION: **Rep. Nonini** moved to recommend approval of **Docket No. 39-0404-0801** by the full committee. The motion **passed** on a voice vote.

ADJOURN: There being no further business before the subcommittee, **Chairman Hart** adjourned the meeting at 3:44 p.m.

Representative Hart
Chairman

Cindy Williams
Secretary

MINUTES

**HOUSE TRANSPORTATION AND DEFENSE COMMITTEE
WOOD RULES SUB-COMMITTEE**

DATE: January 26, 2009

TIME: 3:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Representatives Labrador, King

**ABSENT/
EXCUSED:** None

GUESTS: Ted Spangler, ID State Tax Commission, Randy Nilson, ID State Tax Commission

**DOCKET NO.
35-0105-0801** **Randy Nilson** presented the Tax Commission Pending **Rules 130, 135, and 185.**

Rule 130 **Rule 130** is being amended to add annual gaseous fuels permit fees to biodiesel and biodiesel blends to the fuels. The payment of annual gaseous fuels permit fees is also required on the fuel distributor report and to show that biodiesel and biodiesel blends are also received by a distributor subject to the fuels tax and transfer fee. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules. The distributor must keep detailed inventory records.

MOTION: **Representative King** made a motion to recommend **Rule 130** to the full committee. The motion passed on a voice vote.

Rule 135 **Rule 135** is being amended to add biodiesel producer to the appropriate sections of this rule and to add to the definition of a “qualified consumer” a person who produces biodiesel for his own use. These changes would allow this type of biodiesel producer to file his report annually instead of monthly.

MOTION: **Representative Labrador** made a motion to recommend **Rule 135** to the full committee. The motion passed on a voice vote

Rule 185 **Rule 185** requires all Idaho Fuel Distributor License Applications be signed by an individual with the authority to give consent to the jurisdiction of Idaho courts on behalf of the applicant and to waive the sovereign immunity of certain entities with a separate authorization by its governing authority.

MOTION: **Representative Labrador** made a motion to recommend **Rule 185** to the full committee. The motion passed on a voice vote.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 3:55 p.m.

Representative
Chairman Wood

Shirley Scott
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: January 28, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Thomas J. Eggum, American Society of Civil Engineers, Peer Review Co-leader; David Tolman, Administrator, ITD; Pamela Lowe, Director, ITD; Tom Cole, Chief Engineer, ITD

Chairman Wood called the meeting to order at 1:30 p.m.

Today we are looking at the American Society of Civil Engineers (ASCE) Peer Review. **Rep. Wood** introduced **Mr. Tom Cole**, Chief Engineer at the Idaho Transportation Department (ITD).

Mr. Cole introduced **Mr. Thomas Eggum**, who was the lead on the peer review, and read some of Mr. Eggum's credentials. Other people who helped with the report have similar credentials.

Mr. Eggum's presentation included slides and a copy of the peer review report. A hard copy of the slides and the report are attached to these minutes.

Mr. Eggum explained that he worked on the review as a volunteer as well as an engineer. The 12 colleagues who worked on the review are also volunteers and worked at the invitation of the ITD Highway Division. The team presents results confidentially to clients, then clients can do what they want with the results. Their goal is to find out how well management policies and practices are carried out.

Using the Overview of Process slide, Mr. Eggum explained that they reviewed documents, sent out surveys, and spoke with division managers and other staff. Close to 200 surveys were returned. They also did a visit that totaled 57 person-days on site and conducted over 200 interviews. They ended with seven close out reports.

They then produced a written report at the request of the ITD and conducted two return visits to talk with the Transportation Board. These all led to their recommendations. They covered these in depth with the ITD staff.

Mr. Eggum showed the Findings slide, then the What is Going Well slide. Management structure is sound and similar to other states. Staff attitude

was competent and cooperative. Reviewers often spend a lot of time winning over the staff. In this case, however, they were able to get into significant discussion early.

The ITD has missions and goals. Many improvements are planned. They have a management team that is "new " for an engineering organization. This encourages a fresh perspective. Relationship with the board is open and mutually respectful. The review team was impressed with the engineering standards. Staff members take pride in their public image. The team believes the public is confident in the department so far. They see some threats ahead. Specialty professional groups share information across districts.

Mr. Eggum then showed the Looming Transportation Service Crisis slide and said that this is a critical area. Flat operating budgets, lack of capital budgets, population growth requiring system expansion, inflation of costs, and aging systems all combine to create the crisis.

Other areas that aren't as critical are on the Key Opportunities for Improvement slide. Leadership can improve by taking time to do team building guided by a facilitator to help reduce the high turnover.

A planning process should be used to integrate new initiatives that leadership is planning and communicate them with staff and others.

It is hard to judge the effect of decentralization because it is still somewhat early in this process. Some core functions need to be centralized with accountability and responsibility for results. Delegation has been tried before with mistakes. Decision makers should find out what went wrong from senior members.

Staff resources are a major concern. Senior staff experience is invaluable, but many senior members are leaving. At lower salary levels, recruitment is difficult. They found that at if those at the lower salary levels are in a one-income-earner family, the family is eligible for food stamps.

The ITD is doing much toward professional development. They should focus on leadership and management development. There are many ways to do this. Document and require this kind of training especially as people are promoted to management positions. Idaho may be adopting mandatory continuing education for engineers.

Maintenance is related to the crisis. The department is being reactive and doing the worst roads first.

Management information systems take energy and budgets but are needed to stop being reactive. Systems such as pavement management, project management, maintenance management, and geographic information are difficult to do well, but help make better, more cost effective decisions regarding replacement vs. rehabilitation.

Communications is an area almost always suggested for improvement in reviews. This deals with the flow of projects from planning to design to construction to maintenance. As decentralization occurs, communicating becomes even more important. They saw no fatal flaws.

Practical design requires a change in habits, so much communication is needed. As they left, they saw a plan to begin education and communication in this area.

Regarding innovation, the department should keep looking for ideas from multiple sources and encourage and reward employees who innovate.

The Influence Drivers slide represents things not under the control of the ITD. The legislature is fiscally conservative and controls budgets and compensation. The national economy has declined; the stimulus money may provide some help. Climate dominates in Idaho. Snow operations control the need for staffing and weather limits the construction season. Mountains and other natural resources make Idaho an attractive place to work, but size and accessibility of terrain mandate decentralization of highway services. The Transportation Board also affects leadership and budgets.

Using the Other Things to Consider slide, Mr. Eggum spoke about district organization. Different districts organize their construction and maintenance differently. The review team does not think one structure clearly works better. District management should decide.

The review team did not give top priority to GARVEE, but they looked at it. GARVEE is controversial, but it has helped innovation. GARVEE will eventually go away, and they liked the plans to absorb the innovation as the work gets transferred to staff.

Regarding bridge inspection, they suggest integrating things more.

Emergency management is controlled well but could be communicated better. It could be located higher up in the command structure.

Use of consultants seemed balanced to augment limited staff. They recommend continued use as staff deems necessary.

The next slide summarized the findings. One critical item is a flat budget vs. increasing system needs.

The team appreciated the cooperation of ITD. And they have been very willing to share the results of the review. The reviewers believe that the department is competent. They are open to sharing the good, bad, and otherwise with bosses.

Chairman Wood then opened the floor for discussion.

In response to a question about the three perspectives on practical design from page 11 of the report, **Mr. Eggum** explained that the team heard different staff interpretations about why practical design was used. Some thought it could encourage professionals to use standards as a guide, but there would still be room for professional judgment. Engineering standards are critical but not absolute. Where an exception is needed, it could be used.

Another view is that practical design is just an attempt to stretch dollars by lowering quality. Do some things differently just to save dollars.

The third view is that is intended to control costs because some project engineers may be estimating low up front to get projects on the program, which causes problems later when bids come in. Some thought that managers were anticipating this.

The review team thinks it is intended to let designers know that they need to keep quality, and if they can do it better cheaper, and faster, they can do this.

When asked for his opinion of the Office of Performance Evaluation audit and whether it matched with his experience, Mr. Eggum said he found that OPE looked at things differently and drilled deeper than the ASCE review did. He agreed with most of what he read. He learned some about GARVEE, and saw some things he didn't agree with. He thinks controlling things centrally should be only for consistency. Delegate when possible.

Mr. Eggum then answered a question about when it is most appropriate to use consultants rather than in-house staff and which is more fiscally conservative. Based on the review and personal experience, it is good to use consultants for peak work, for very special work, and sometimes just to get a new perspective. He has a bias toward in-house staff. But if you increase staff for big programs and then the programs are completed or cut, you can end up with too much staff.

In response to a question about whether practical design can be used for federally funded projects, Mr. Eggum said that there are more limits for federal projects and he isn't sure how much leeway there is. For a major innovation, the federal government may be cooperative. When he was a city engineer, he found that the federal highway people wanted to support the transportation department people, rather than control them, and they indicated some openness to negotiate. The ITD people may be able to better answer this.

One representative expressed concern about restraints on staff. Sometimes consultants have higher paid negotiators that make the playing field uneven for the ITD when negotiating. The ITD may be at a disadvantage because they don't have the high-powered people to do the negotiations.

In response to a question about team building, **Mr. Eggum** explained that unlike auditors, peer reviewers can use judgment in the absence of clear fact. Their consensus was that while there are capable people managing the ITD with plans to begin initiatives like practical design, working together is even more critical. Engineers have strengths, and owning what they do is one. However, working together with others isn't. Engineers aren't uncooperative, but they are individualistic. The team believes that using a more formal format that encourages them to listen and consider other viewpoints would be useful. It was just an opinion, but it was a consensus.

When asked if there were problems specific to the ITD, Mr. Eggum said that the team heard several people mention things like "communication" and "we hear what's going on but we aren't asked." However, this was different when they talked with senior managers. They didn't see problems with things at the top, but they think things can be done better.

When asked about whether the department could improve efficiency without having more money to move away from the worst-first strategy, Mr. Eggum said the willingness of staff to make do may be hiding the problem. They make do for a long time, and they've been creative, but eventually, you can't pull any more rabbits out of the hat. Things like a management information system would help them make decisions. Also senior employees and succession planning is important because they could lose a lot of institutional memory in a short time.

Mr. Eggum was asked about the life cycle of a project and how it moves through a plan. Stakeholders are disappointed when a project slips backward in the plan. Mr. Eggum said that if funding were more predictable, project flow would be too. Higher capital funding would be good way to change some things.

Mr. Eggum was asked whether improving project management systems while still having a flat income source would create a net gain in available capital to use on maintenance. He answered that if you obtain the best project management systems, you might not get a better of flow of projects, but you will know more. If a lack of consistency doesn't cause problems, then people are compensating, which works as long as those people are there. Having a good system reduces reliance on this compensation.

Rep. Wood opened the floor for questions not specifically directed to Mr. Eggum.

A question was asked about technicians being eligible for food stamps. What is the scope of this? What is a technician's responsibility? Why is the pay so low?

Mr. Tom Cole from the ITD explained that technicians are entry-level engineers who do inspections for projects. If they don't have the proper certifications, the federal administration will not accept the testing they do for a project and the State will not get reimbursed. If some parts of a project don't get federally funded, the cost of the project goes up. Having the right person on the job is important so that the ITD receives maximum reimbursement.

Technicians are also snow plow operators. The equipment they operate costs about \$175,000 to \$180,000. And the way they operate it not only determines the road condition but also the safety of other drivers around them. The operators must be very competent.

The pay scale starts at an apprentice level. Technicians come in at a certain level and then they can later qualify for a higher pay level with licensing. It takes about a year. Then they are in a full technician position. The pay scale then is about \$10.40 an hour. This is at the end of the first year. Then according to a matrix of performance ratings and where they are on the pay scale, they can get increases.

To answer whether there much turnover and if private industry frequently takes the trained personnel, Mr. Cole said that the problem isn't very big right now because of our low economy. But in the last 10 years or so, the technicians do get taken away. Some of the services are in outlying areas

and not everyone wants to live in those areas. Some employees have gone to work in neighboring areas for a \$3 per hour increase and subsidized housing. The ITD can't match that. In Teton Valley, they pay truck drivers better than our skilled people.

The floor was yielded to **Ms. Pam Lowe** to comment on this issue. Ms. Lowe said that the ITD has an employee survey in which 60% said they will look for another job if the economy changes. These are snow plow drivers and people who are the backbone of the department. Salaries are a recruiting issue. The turnover data is that they lost eight technicians in January, and seven got better jobs and higher salaries..

One remedy is that they are doing a job classification survey. The job of a snow plow driver has changed over the years. Equipment is complicated. Once they are put into the right classification, the department will need more money to pay them.

When asked to describe the job and some of the dangers more, **Mr. Cole** said that the work is often at night when it is hard to see, especially during a storm. They sometimes work more than eight hours. Sometimes they have a hard time opening their hands after a shift because they have been gripping the wheel so firmly. The ITD has a snow plow simulator used for training. It is very lifelike— the way the controls work, the vibration in the chair, everything. He invited committee members to come and see it.

Mr. Cole also stated that in 2006, turnover was 42%, and in 2009, it is down to 21%. So even in harder economic times, they do have some significant turnover.

Chairman Wood asked for other questions, but there were none.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:39 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE WOOD RULES SUBCOMMITTEE

DATE: January 28, 2009

TIME: 1:00 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Representatives Labrador, King

**ABSENT/
EXCUSED:** None

GUESTS: Linda Emry, Management Assistant, Budget, Policy & Intergovernmental Relations, ITD; David Metcalf, Commercial Vehicle Service Program Supervisor, ITD; Tom Cole, Chief Engineer, ITD; Darrell Manning, Chairman, Idaho Transportation Board; Regina Phipps, Vehicle Size and Weight Specialist, ITD; James Dorman

Chairman Wood called the meeting to order at 1:05 p.m.

**DOCKET NO.
39-0317-0801**

Ms. Regina (Reggie) Phipps from the ITD presented **Docket No. 39-0317-0801**, Permits for Manufactured Homes, Modular Buildings, and Office Trailers. Ms. Phipps explained that the rule has applied only to structures towed on their own axles. If they were hauled on a semi-truck trailer, it didn't apply. The changed rule would remove this exemption. Also, the changed rule would raise the wind speed allowed for moving. Structures are heavier now than when the rule was originally made. They are very similar to houses and are very sturdy.

When asked if people are moving used structures, Ms. Phipps said that most older, lighter ones, because of county and city ordinances, cannot be moved or relocated. For example, in Ada County, if the structure is older than 1970, you cannot relocate it.

When asked about hauling vs. towing procedures, Ms. Phipps said that there is a fine line between what is hauled and what is towed. Some companies are building trailers that they are reusing. Some methods don't use a semi-truck, but there are hybrid situations also.

In response to a question about whether movers must obtain a permit ahead of time, Ms. Phipps said that yes, they must if the move is on a State highway. For Ada County, the permit comes from ITD; from other counties, the mover must contact the local jurisdiction.

In response to a question about whether any research supports saying that 30 miles per hour is just as safe as 20 miles per hour, Ms. Phipps said that the 30 miles per hour is based on what other states are doing. Most states do not have any wind speed limits at all. The department does not think that is safe. They have heard of older homes being blown over. They have not had any reports of problems since the temporary change has been in place for the past year.

The request to raise the allowable wind speed came from the industry. The ITD reasoned that if structures are heavier now and surrounding states are not having problems, then the current 20 mile per hour restriction seems too low.

Regarding a comment about crossing state lines, Ms. Phipps explained that movers must get permits from the other states, so if a structure is built here and then taken to another state, having our rules more in line with other states makes things easier.

A concern was raised about aiming the rule at new homes, but not really addressing issues in moving older ones. At driving speeds of up to 80 miles per hour, higher wind speeds could create an accident waiting to happen.

To answer a question about whether counties comply with the rules or if they are even stricter, Ms. Phipps said that some counties comply with the permit for State highways and don't issue additional permits. These rules apply only to state highways. Counties can set up their own rules. They can restrict at an even lower wind speed. Ada county has agreed to adopt all of the ITD State rules.

To explain how movers can know before they get permit what the conditions are, Ms. Phipps said they can quickly communicate now and State highway patrols can find out conditions before permits are issued. The permit says that the mover cannot travel in wind speeds over 30 miles per hour. Sometimes the mover starts out, but then in a corridor an official knows that someplace down the road there are wind gusts. The official is supposed to make the mover wait. Carriers are good with that and are responsible for looking for that information.

MOTION: **Rep. Labrador** moved to recommend approval of **Docket No. 39-0317-0801** by the full committee. The motion **passed** on a voice vote. **Rep. King** asked to go on record as voting **Nay**.

ADJOURN: There being no further business before the subcommittee, **Chairman Wood** adjourned the meeting at 1:22 p.m.

Representative Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: January 30, 2009

TIME: 11:00 a.m.

PLACE: Room 145

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Representatives Wills, Jarvis

GUESTS: See Committee Sign-In Sheet attached to these minutes.

Chairman Wood called the meeting to order at 11:09 a.m.

RS 18236 **Mr. Scot Campbell**, Deputy Attorney General for the Idaho Transportation Department (ITD), presented **RS 18236**.

The purpose of this legislation would be to amend Section 7-711, Idaho Code, to require that only the property owner and qualified appraisers give property valuation in eminent domain trials.

Mr. Campbell stated that this legislation would result in significant trial preparation cost savings. Currently, appraisers, owners, real estate brokers, planners, and engineers can testify at the trials. The only person who is really trained is the appraiser, and the appraiser is required to testify. The others are not allowed to offer value opinions. The appraiser can use others' input to formulate his or her own value opinion and defend why the input is being used. The appraiser's purpose is to establish value, while testimony from the others, other than the owner, just drives up costs. The owner can always testify.

In response to a question, Mr. Campbell stated that more than one appraiser can offer testimony for a "second opinion" if the judge allows. If you have several appraisers testify, the testimony can get redundant. But that is up to the judge.

In response to another question, Mr. Campbell said that the main group of people that this legislation would exclude from testifying is the brokers. Their testimony is redundant to the appraiser's. The appraiser should be the only one relied upon.

Responding to another question, Mr. Campbell said that nothing in the legislation would restrict having a proxy testify if the owner is incapable for some reason of testifying on his or her own behalf or if the owner is a minor. The main purpose of the legislation is to limit other testimony (besides the owner) to the person who can actually establish value, and that is the appraiser.

Mr. Campbell also explained that currently, judges allow any and all evidence that provides information to the jury or the judge. The legislation would limit judge discretion. When the witness pool gets big, this drives up preparation and trial costs. The ITD would like the law to limit testimony to the person who establishes the value, which is the appraiser. He or she can still use others' opinions to establish the value, but he or she would be the only one who testifies, other than the owner.

Responding to a question about who hires the appraiser, Mr. Campbell said that the property owner can hire one, or the State. Usually, the property owner hires an attorney who hires the appraiser.

Responding to a question about whether the owner would be restricted from using any other witnesses for their claim except for the appraiser, Mr. Campbell said that yes, this would be the restriction for testimony about the value of the property. For the cost of relocating something or other construction costs, engineers could discuss those things. But the appraiser would be required to support the opinion of value.

Responding to questions about how big of a problem this is and how much money would be saved, Mr. Campbell explained that appraisers are subject to certain disciplines, rules, and restrictions about establishing value. Brokers establish value based on sales and aren't subject to the same restrictions as appraisers. Whether brokers are above the appraiser's value or below it, there is no mechanism to challenge their opinions because they are just opinions. The jury often looks at the different values they are given and sort of averages them. Because all the testimony is not based on the same rules, the time involved in opposition and giving evidence goes up. Brokers can offer opinions, which bankers and others use. It is cheaper than getting an appraisal. But at trial, it is redundant to an appraisal.

Mr. Campbell said that all cases going to trial involve broker price opinions. He could not say what the real costs are because with jury trials you don't always know. But dealing with all the different value opinions desensitizes the jury and the numbers move up.

When asked about who would likely oppose this legislation, Mr. Campbell answered that it would be property owner attorneys who do not want limits placed on them.

In response to a question about whether it is ITD's job to explain to the jury the difference between a broker and an appraiser, Mr. Campbell said that by the time they get to that point, a great deal of time and costs are already involved.

Responding to a question about why multiple witnesses are redundant when they are actually providing different opinions, Mr. Campbell said that having multiple appraisers would be okay, but you might also have multiple brokers. The appraisers are the only ones who can actually establish value.

Responding to questions about the jury, Mr. Campbell said that the jury is usually the normal size of 12 members. Jury trials involve costs for preparation, depositions, and trial time. Under federal rules for federal

money, the property value has to be determined by an appraiser. Because for eminent domain there must be an appraiser, time and money would be saved if testimony were limited to just appraisers. Also, when juries have to interpret appraisals and broker (and other) evaluations, they tend to become desensitized and skew the value results higher. The upper end numbers seem more reasonable. But appraisers are held to standards that the others are not. The State could have a broker that supports the State numbers. But if they are both supporting the appraiser opinion, it make sense to just rely on the appraiser.

In response to a question about who pays owner expenses, Mr. Campbell said that if the owner wins, the costs and fees are paid. The owner is paid the value of the property plus fees. Offers of settlement change this.

When asked about the standards land owners would be held to, Mr. Campbell said none, except case law says that when owners try to appraise their properties by comparing them to other properties, the courts have said this is not appropriate. The owner can only consider plans for development and costs based upon knowledge of his or her own property. The ITD is not seeking to change this.

When asked why courts can't limit brokers in the same way, Mr. Campbell said that while they can limit testimony, they don't. The court tends to let in all testimony. Appraiser testimony should have a greater weight, but juries aren't told that.

MOTION

Rep. King moved to **return RS 18236 to the sponsor**, stating that we do not want to limit testimony.
The motion **carried on voice vote**.

RS 18238

Mr. Campbell explained that Idaho case law and jury instructions restrict consideration of comparable sales when determining the fair market value. Federal rule also limits the influence of a project on compensation. This legislation would formalize the case law.

When asked if passing this legislation would address some of the issues from the previous RS, Mr. Campbell said that they are different issues. This legislation addresses the situation that occurs when the ITD wants to build a project like an interchange that requires acquisition of property and the owner then says that the property isn't a farm anymore. But case law says you can't take the project into consideration. They try to educate the owner about this, even if the neighboring property is worth more.

When asked whether an assessor takes potential value into account in his or her evaluation, Mr. Campbell said that he is not sure how they evaluate the property. For condemnation, the ITD must pay the minimum assessed.

It was commented that the value of the property at December 31 is used, rather than any future values.

MOTION:

Rep. Wills moved to **send RS 18238 to print**.

The motion **carried on voice vote.**

RS 18239

Mr. Campbell explained that this legislation would allow condemnors to develop more accurate values. Currently, the condemnor can make a settlement offer 90 days before trial. But if the owner doesn't obtain 110% of the offer, the ITD does not recover attorney fees and court costs. This legislation would allow Offers of Judgment to occur 30 or more days before trial. This would provide incentive for the condemnor to make a good offer and for the owner to accept the offer. If the case goes to trial, the ITD may not recover costs.

The legislation deals with two issues: Offer to settle, and inverse condemnation.

For inverse condemnation cases, the legislation would encourage reasonable offers to settle and put the burden of going to trial on the owner. Currently, there is no incentive to settle. If owners go to trial, they'll do no worse than what is being offered, so they might as well go to trial. This legislation allows the ITD to make better offers in both regular and inverse cases.

MOTION:

Rep. Hart moved to **send RS 18239 to print.**
The motion **carried by voice vote.**

Chairman Wood introduced **Mr. Stuart Davis**, Executive Director, Idaho Association of Highway Districts. Mr. Davis introduced the Idaho Local Highway Financial Needs Summary. It is the first study of its kind done for a local system and was done in response to the Lieutenant Governor's statement during an annual report presentation that the local jurisdictions should let their needs be known. This report helps them articulate their needs.

He stated that the ITD finding about lack of accountability for local jurisdictions was surprising. Local funds go through many safeguards. Local jurisdictions are required to send reports to the ITD before they can receive any funds. The reports show every expenditure and all revenues, and their budgets must go through a public hearing. There is also an audit to be sure everything is in line with the statues. Accountability also occurs through elections.

Mr. Davis introduced **Mr. Lance Holmstrom**, Administrator of the Local Highway Technical Assistance Council (LHTAC). Mr. Holmstrom is a transportation planner.

Mr. Holmstrom introduced **Mr. Dan Shirilla**, Deputy Administrator, LHTAC, who ran the slide presentation.

Mr. Holmstrom first showed a sample of the Annual Road and Street Finance Report, an electronic workbook that contains spreadsheets of figures broken down by cities, counties, and districts. For example, for Aberdeen, every dollar they received shows, and every dollar of highway funds also shows. Federal funds are shown if they are available. Every

type of expenditure activity is itemized. Every county and highway district must submit this information. Otherwise, they don't get funds from the highway distribution account.

Mr. Holmstrom then showed a spreadsheet that summarizes the Road and Street Finance Report. The report does show some closing balances. Some funds are reserved for future projects. They need a two-month reserve. Also, some projects are planned for three years, and it may take more than three years to save for them.

Next shown was a comparison of the percentage of fuel tax and percentage of federal aid that local jurisdictions from surrounding states receive. Idaho receives 38% of the fuel tax. Utah receives the least at 30%, and Nevada receives the most at 44%.

The Federal Highway Administration funds are apportioned to each state through various categories. The graph shows that Idaho receives 9.4% of the federal funds. Secure Schools money is not included.

In response to a question, Mr. Holmstrom said that the miles of paved roads figure is not part of the funding formula.

In response to a questions about federal matching funds, Mr. Holmstrom said that they have to spend federal funds on 6,000 miles of eligible roadways.

When asked about the difference between the ITD figure of 38% and the LHTAC figure of 9%, Mr. Holmstrom said that the 38% is what they receive from fuel tax. Of the 25 cent tax, they send 18 cents of federal aid tax to Washington D.C. They get some back, usually more than what they pay as a donee state.

Mr. Holmstrom then began showing slides of the Idaho Local Highway Financial Needs Summary report. The full report is available at www.lhtac.org. (A brochure that summarizes the report is attached to these minutes.)

Mr. Holmstrom explained that local highways are needed as well as the state system. Most user's don't care whether a road is state or local. Both are needed to operate effectively.

The following information was given to supplement the information on the slides:

- Some of the graphs (such as the Local vs. State graph shown on the brochure) compare using center line road miles. Both the State and the local jurisdictions have multilane highways. But sometimes only center line miles were used for comparison.
- The historical changes are driven by new growth.
- Regarding vehicle miles traveled, when there is congestion on a State highway, people find alternatives, which often means they travel on

local roads.

- Most of the commercial travel happens on local roads.
- The Impacts of Truck Traffic information shows how truck traffic on arterial roads exceeds the truck traffic on the State system.
- Property taxes are paying more and more of local road costs and maintenance. About 30% of highway costs should be by nonusers (property tax). You benefit from the system even if you don't use it very much.
- In response to a question, Mr. Holmstrom said that registration fees are part of the Highway District account. Local roads get 30%.
- It takes more resources to maintain gravel than asphalt. More activity is involved, such as grading, and wear means that the source (gravel) gets lost so you have to replace it.
- Responding to a question about what standards are used to decide which projects to pursue, Mr. Holmstrom said that since 1999, they have spent \$8 million to help local jurisdictions use pavement management systems and make priorities and capital improvement plans. About 60% of this went to districts and counties, and 25% went to cities. They are moving toward using best practices, but the practices still vary because some jurisdictions have mostly paved roads, some have a great deal of snow, there are geographical differences, etc.
- Responding to a question about how local jurisdictions might benefit if the ITD implements a \$6 million software system, Mr. Holmstrom said that there is not a special system dictated to districts. They are hoping to coordinate with any new ITD system, however.
- Responding to a question regarding the difference between the 20-year need numbers in the brochure and the numbers on the slide, Mr. Holmstrom stated that for the 20-year shortfall, 75% comes from maintenance of bridges and roads. The difference comes from other expenses such as administration, equipment, and so on.
- When asked about reconstruction and maintenance funding needs, Mr. Holmstrom said that the annual funding shortfall is starting at \$50 million and moves up because of inflation. They want to be able to preserve the best roads, because they don't want to have to spend to bring them back up with major rehabilitation.
- When asked whether it is true that some rural roads have had the asphalt removed due to lack of maintenance funds, Mr. Holmstrom said that this does happen sometimes. It is less expensive to let them go back to gravel, but it isn't cost effective. Over time, it costs more to maintain gravel. Pavement, as long as you maintain it with seal coat and so on, will last a very long time.

The time was then opened up for questions.

Chairman Wood said that the committee would need time to digest this. The local information has to walk hand in hand with the ITD audit report. LHTAC and ITD reflect on one another. Connection between the local roads and State highways are important.

Mr. Davis answered a question regarding the Governor's proposal. While they are agreeing to what is being proposed, they really need more. But at least this is something. The \$50 million shortfall includes no new projects. Capacity increases are not included. They want to bring 80% of the pavement roads up to good or better.

Chairman Wood then turned the time over to business regarding the pending rules.

The Hart Subcommittee requested that **Docket No. 39-0222-0801**, Rules Governing Registration and Permit Fee Administration be heard by the full committee. A public hearing for that will be scheduled. The reports from the Hart and the Wood Subcommittees recommended approving all other pending rules.

- MOTION:** **Rep. Wills** moved to approve the following:
From the Idaho Tax Commission:
Docket No. 35-0105-0801, Rules 130, 135, and 185
From the Idaho Transportation Department:
The following Docket Numbers: **39-0207-0801, 39-0260-080, 39-0306-0801, 39-0317-0801, 39-0322-0801, 39-0345-0801, 39-0404-0801**
Motion **carried on voice vote.**
- MOTION:** **Rep. Hagedorn** moved to **approve the committee minutes for January 20, 2009**, as written.
Motion **carried on voice vote.**
- ADJOURN:** There being no further business before the committee, **Chairman Wood** adjourned the meeting at 12:42 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 2, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Rep. Bedke

GUESTS: Bob Wells, Special Assistant, Idaho Bureau of Homeland Security; Mary Halverson, Hazardous Materials Program Manager, Idaho Bureau of Homeland Security; David Metcalf, Commercial Vehicle Services Program Supervisor, Idaho Transportation Department; Linda Emry, Management Assistant, Governmental Affairs, Idaho Transportation Department; Scot Campbell, Deputy Attorney General, Idaho Transportation Department; Dave Brasuell, Administrator, Idaho Division of Veterans Services; Jeremy Pisca, Attorney; Suzanne Budge, Legislative Advisor; James Dorman

Chairman Wood called the meeting to order at 1:33 p.m.

MOTION **Rep. King** moved to **accept the minutes of the January 26, 2009, Wood Rules Subcommittee** as written. Motion **passed on voice vote**.

RS 18225 **Mr. Bob Wells** presented **RS 18225**, explaining that it represents a language change. Currently, if first responders are asked to respond to, for example, a sighting of dynamite, they cannot do that because it has not been "released." In this case, it would mean that it has to explode first. This legislation would also allow responders to recover the costs incurred from the spiller or other person responsible for the threat.

Responding to questions about what happens if responders are on the scene before the Incident Command is set up, **Mr. Wells and Ms. Mary Halverson** explained that today, they cannot bill for responses that occur before the Incident Command is set up and declared. The first agency on site is considered in command until the Incident Command arrives. This legislation would allow these first people to be protected.

Responding to a question about explosives and weapons of mass destruction, **Mr. Wells** explained that the term "hazardous materials" covers these as well as material spills.

A question was raised about a hypothetical situation in which a disgruntled neighbor calls the fire department out of spite, but the department determines that the situation is actually not dangerous. Would this legislation hold the innocent neighbor accountable for the cost? **Mr. Wells** explained that if the material is in the original container with no

threat of an eminent leak, it would be a nonevent, which incurs no billing. However, if the container is in an accident and seems about to rupture, and the police respond, then a billing is made.

When a private citizen sees something suspicious and calls it in, the Bureau responds. If it is determined to be a nonevent, there is no billing. They responded to 348 billable incidents last year, and probably twice that many that were nonevents.

MOTION: **Rep. King** moved to **introduce RS 18225 to print**. Motion **carried by voice vote**.

RS 18233 **Mr. Scot Campbell** explained that this legislation would reduce the pre-judgment interest rate for condemnation.

The State pays the property owner or the court. If the State has to pay more after trial, it pays more interest. The pre-judgment interest rate is 12%, not set by law or contract. They want set it by law at 8%.

When asked why they don't want to have the interest be whatever the rate is at the service date, Mr. Campbell said that they looked at trying to establish an interest rate of prime plus, but they don't know what the plus would be. Post-judgment interest is established annually by the Supreme Court. They also looked at tying pre- and post-judgment together. The 8% was chosen because the State currently pays 8% on goods and services. Laws in neighboring states like Utah are set at 8%. They thought that 12% was high and 8% is being used elsewhere. But an adjustable rate determined each time is also a possibility.

In response to a question, Mr. Campbell said that in current law, no improvements on the property are considered in assessment of compensation.

Responding to questions about when the State deposits the funds, Mr. Campbell explained that prior to acquiring property, they get an appraisal. The agents go out and talk with the owner. Sometimes the owner wants to wait and have the value determined in court. Then the ITD can pay a pre-judgment value into the court, and the owner can sign a possession agreement. Then when it goes to trial, the jury decides the worth. The interest accrues between the time the deposit is made and the time the trial value judgment is made.

When asked if they could tighten up the process so that they don't have to pay even 8%, Mr. Campbell said that the only way is to have an adjustable rate based on prime plus an index.

Responding to a question about summons dates and possession dates, Mr. Campbell explained that sometimes a valuation agreement cannot be reached and ITD files a condemnation. The first date is the summons. Other times, they can negotiate a possession agreement, and then that is the date of valuation. Sometimes possession occurs first, sometimes summons occurs first.

Responding to another question, Mr. Campbell said that the 8% interest

accrues for the landowner from the earliest date money is paid to the court until the final settlement date.

A question was asked about what happens if they file to condemn but then they can't serve the defendant for several months. Mr. Campbell explained that they used the date of summons or the date of possession whichever is earliest. If they have, for example, three different owners for a piece of property and they serve them at various times, what is the date for valuing the property? The statute says that it is the day they get the summons. As a government entity, they give the benefit of the doubt to the citizen. They have to be sure that service is timely.

MOTION **Rep. Smith** moved to **send RS 18233 to print**. The motion **carried by voice vote**.

H 22 **Mr. Dave Brasuell** presented **H 22** and explained that it was to correct wording to establish the proper chain of command. It removes administrators in charge of State veterans' homes from the Department of Health and Welfare Director's powers and duties.

MOTION: **Rep. Mathews** moved to **send HB 22 to the Floor with a DO PASS recommendation**. Motion **carried on voice vote**. **Rep. Mathews will sponsor the bill on the House Floor**.

Docket No. **Mr. David Metcalf** explained the change that **Docket No. 39-022-0801**
39-0222-0801 would bring about. "This rule change will clearly state that motor carriers shall not participate in future registration installment payment plans as allowed in Idaho Code 49-434(10) and 49-434(11), if previous registration installment payment plans have been suspended due to non-payment or payment with an insufficient funds check."

Mr. Metcalf explained that currently, if carriers are suspended multiple times in a year, they can't participate in the plan in the future. But some are suspended each year, rather than multiple times in one year.

A question was asked whether all trucks in a fleet would be affected if the carrier has, for example, 30 trucks and a payment is missed on just one. Mr. Metcalf said that carriers pay a 1/4 payment for all of the vehicles. So if the carrier is late with a 1/4 payment, the ITD sends a reminder and gives a grace period.

When asked what the Senate decision was, Mr. Metcalf said that they voted 5 to 4 against the rule and requested more information. The ITD gave them the handout that is provided today (the handout is attached to these minutes). One Senate concern was that accounts would be quickly suspended. But there is a grace period. The ITD sends a reminder 30 days before payment, then if the account is not paid on time, they give an additional two weeks to pay. If the carrier contacts them prior to the two weeks, they try to work with the carrier.

Mr. Metcalf responded to the comment that the way the rule is written doesn't spell out any of what is in the handout. The rule says that if you miss payment, you can't get back into the program. Mr. Metcalf said that some of the material is in the rule, but some of the process is not there.

He said that if the carrier is late with a payment, they do review things with the carrier.

When asked if the process as outlined in the handout could change and still meet the requirements of the rule, Mr. Metcalf said that the process written out is how they handle the current rule. With a new rule, they would adjust accordingly to implement the rule change. The number of letters and reminders they send could change. Their emphasis is to do everything they can to avoid suspension. About 400 to 500 reminders are sent each year, and about 300 ignore these. Then after they follow multiple steps, they suspend offenders. They could add more steps in there to prevent suspension.

When asked if the suspended carriers usually ask to go back on the payment schedule another year, Mr. Metcalf said yes. The majority that they suspend will repeat. Carriers know that the law allows them to be suspended once per year, so the ITD finds that they reinstate them each year.

In response to questions about fleets that rotate their trucks or bring new trucks in and how that works with the 1/4 payment, Mr. Metcalf said that when carriers set up their plans, and when they renew the fleet for the year, then it applies to that group. New or transfer vehicles do not become part of that installment payment plan. Then when they renew the agreement the next year, they set it up for a new group. Ones that start out separate stay separate.

He gave an example. Assume that 10 trucks qualify at the beginning of a year and there is a \$1,000 payment for all of them; the payment would be 1/4 of that. Then they insert another vehicle that costs \$300 to register. They pay that in full. They can't add that to the plan.

Intrastate vehicles and interstate trucks would be in two separate plans. Most customers have the bulk of their vehicles in one plan and make an initial payment and then make 1/4 payments throughout the year.

When asked if a grace period was included in the Senate version of the legislation, Mr. Metcalf said he didn't include it because he wasn't aware of the process. When asked to clarify the conditions that make a carrier ineligible for the plan, Mr. Metcalf said that a late payment incurs interest and penalties, but they can still participate in future plans or continue with current plan. But if their account is suspended, which is only after a grace period and after every attempt is made to work with them, then they can't continue.

Comments were voiced that the process written out (see handout) is very good. However, in the rule change itself, that process is not reflected. Because the procedures are not part of the law, they could be changed later into something that would not be as good. The rule should perhaps be clarified and resubmitted next year.

Another issue raised was that some carriers could fail in one year, but then over several years, could prove themselves. There should be something in the rule that allows for restoration of privileges.

The concern was stated that we should not make things harder for people

to stay in business. Many trucking companies are going out of business, and so many things can go wrong. The rule needs to be more balanced so that it helps the Department without hurting business.

MOTION: **Rep. Wills** moved that the committee **reject Docket No. 39-022-0801** with hopes of working out details next year.
Motion **carried on voice vote.**

MOTION: **Rep. King** moved to **approve the minutes of the Wood Rules Subcommittee dated January 26, 2009, as written.**
Motion **carried on voice vote.**

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:30 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 4, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Rep. Wills

GUESTS: Darrell Manning, Chairman, ITD Board; Dan John, Idaho State Tax Commission; Dave Carlson, Public Affairs Director, AAA Idaho; Tom Cole, Chief Engineer, ITD; Colby Cameron, Legis. Adv.; Jeff Storti, Bus. Div. Director, URS; Russ Hendricks, Idaho Farm Bureau, Member Services Division, Regional Manager, Southwest Idaho; Kathleen Kreller, Reporter, Idaho Statesman; Pat Armstrong, Idaho Sand and Gravel; Mollie McCarty, Manager, Office of Gov. Affairs, ITD; Nick Draper, Reporter, Post Register

Chairman Wood called the meeting to order at 1:36 p.m.

**BILL NO.
H 0009** **Mr. Dan John** from the Idaho State Tax Commission presented this bill. It is intended for individuals who produce biodiesel for their own use. Those who use small amounts still have to get a motor fuels license and then pay a transfer fee. With this legislation, if they produce less than 5,000 gallons for personal use, they don't have to get a license and pay the fee. They still do have to pay the tax.

When asked how we know who is producing for their own consumption, Mr. John said they contact the Department to ask how to pay the tax. Or their names appear in the newspaper.

MOTION: **Rep. Ringo** moved to **send H 0009 to the Floor with a DO PASS recommendation.**
Motion **carried on voice vote.**
Rep. Ringo will sponsor the bill on the House Floor.

Ms. Pam Lowe, Director of the Idaho Transportation Department (ITD) then presented the ITD response to the Office of Performance Evaluations (OPE) audit report. She handed out copies of the ITD response (attached to these minutes).

Page 1 of the audit response says that transportation funding is not sufficient. Auditors said the ITD is fixing the worst roads first. This is true. They have been forced into this because of lack of funds. Currently, 19% of roads are falling apart; this will increase to 36% without an increase in revenue. They would like to spend time doing maintenance, but they

would have to ignore unsafe roads while chip sealing others. They need revenue to repair and then they can spend money to maintain. They used to be able to do this.

Page 2 of the response acknowledges that the audit said the ITD lacks a capital improvement strategy. They started one last year. Director Lowe passed out a draft that they worked on this summer to go in the statewide plan (attached to these minutes). In November of last year, they reorganized the Department to allow resources to be on planning and to give guidance to the districts.

Page 3 of the response deals with strengthening performance measures. They do have some measures that they submit to DFM each year, including the deficient pavement percentage. They could be stronger and more widely reported. They have formed a team to see which measures they should use. They created a Performance Management Office under Dave Tolman to track what they are doing and spending. They looked at performance measures across the country. They compiled 24 potential measures in a report that Director Lowe handed out (attached to these minutes). They identified 11 top measures. They need to get stakeholder input on those. This summer, they will tie the measures to the appropriate areas of the Department and fully staff the Office of Performance Management. They will make a publication that is easy to understand and will distribute it.

The OPE audit says that they don't have the systems and tools they need (in particular, a maintenance and pavement management system), and the ITD agrees. They have started to evaluate a new pavement management system. And in September of 2007, they looked at a maintenance management system. In 2006, they had to stop using their older system, but they've taken steps to get it going again. It should be up in July. But they still need more tools to do proper analyses.

Director Lowe then handed out a research report regarding maintenance management and pavement management software tools (attached to these minutes). She said that the report taught them many things. They've conducted a pilot project that taught them much also. They now need revenue to get the systems.

District 6 began a pilot project scheduling system that they are still testing. They will be ready later this year to implement if they have the money to buy one.

The cost for maintenance and pavement management systems will be \$6 million. For all the systems that the audit recommends, the cost would be \$10 million.

Their financial planning system meets state and federal requirements, but the audit recommended a more elaborate one. This is a lower priority than the maintenance, pavement, and project management systems. They have asked the auditors to tell them which states have some of these systems.

The audit said that they should change the GARVEE planning process and use more short-term bond financing. But this is more risky. The

recent sale got 4.54% which is very good. In the future, the audit recommendation may make sense.

Director Lowe then handed out a three-year plan that was issued this morning.

Year 1 would be based on the outline provided earlier. For performance measures, they will get stakeholder input, have training sessions, staff the Performance Management Office, develop strategies for implementing the top measures, and then develop a strategy to get data and report on the measures. Bullet points explain the plan for acquiring the management system and tools. The financial planning depends on funds being appropriated.

In Year 2, the ITD would complete the statewide plan. They will select projects for the STIP using the maintenance management and pavement management systems. They will load in the data that they obtained in Year 1.

Regarding the Geographic Information System (GIS), this helps track and implement data. For example, on a computer, ITD staff can find out where all the high accident areas are for a given district. This helps make decisions. They have a system now that they have spent time improving, and it could be better.

In Year 2, financial planning will involve installing and testing the system.

Year 3 involves setting goals for the performance measures and integrating the measures, the statewide plan, the maintenance and pavement management systems, and the project scheduling systems into the financial planning system. The audit suggests integrating all the plans together. You have to have them up and running first.

The floor was opened for questions and answers. **Director Lowe** provided the following information in response to questions:

- The ITD learns from other states, and other states learn from Idaho. For example, Director Lowe has spoken with some consultants from Washington state. The ITD has learned practical design ideas from Missouri and have looked at a pavement management system from Utah. Alaska is looking at Idaho's GARVEE funding and public transportation ideas. Director Lowe believes in looking at all 50 states and using the best ideas from all of them.
- The ITD wants to be transparent with processes and progress. They will have a Web site that provides more information this year.
- The ITD would like to get more feedback from contractors. Director Lowe doesn't know of any bottlenecks that the stimulus might cause with them. She doesn't think that the ITD will get so much that contractors can't deliver, especially expansion projects. One issue that comes up is environmental processes and federal requirements. They can track how quickly they get projects out the door, but this is only part of the picture. You have to track environmental data collection that feeds into that. All the pieces that they put into the main project have

to be tracked also.

- The ITD agrees that preservation must be first, to an extent. The Board has directed staff that preservation is a high priority. STIP has many preservation projects. But you don't want to remove the engineering judgment piece. Sometimes there are safety issues. You might need to put in a signal or put in a guardrail because of safety. There has to be flexibility.
- About 15 expansion projects are in the five-year program right now. But things have changed. They got a new federal revenue program, but revenue has dropped. With what they work with now, they heavily focus on maintenance.
- Director Lowe spoke about the "shark fin chart." A preventative maintenance philosophy is the way to operate when you have the money to work with. But they don't have the revenue to work that chart that way.

Mr. Tom Cole, Chief Engineer for the ITD, provided the following information in response to questions:

- The best practice has always been shark fin. But right now they can't fund this. They have stripped everything they can and put resources into maintenance, but there is no more to strip from expansion. They need systems to be able to do "what if" scenarios to make better decisions. They need to collect data using a maintenance management system. For example, what is the long-term impact of doing crack sealing? They need this sort of data.
- The question was raised regarding what went wrong so that the Department got off track in setting money aside for maintenance and doing too much expansion, and what could be done to avoid repeating the mistake. Mr. Cole explained that in 1995 or so, they established a program for updates, and \$31.4 million was to do that type of work. That minimum is up to \$85 million now. The problem is that funds aren't available because of cost increases, and eventually you have to do more expensive reconstruction. They keep reducing expansion, but it still isn't freeing up enough to keep up with maintenance. They agree that they need processes and standards that will not let this problem happen again. They are asking for revenue and have set the priorities as maintenance and restoration, then expansion. But they don't have the funds now to implement this.

Director Lowe took the floor again and made the following points in answers to questions:

- Preservation is definitely the current priority for pavement and bridges. If you codify, you might tie engineering hands so that they cannot do critical projects. An example is I-84. There is so much traffic, and it has some of the worst pavement. They could not figure how to replace the pavement with current traffic. This turned into a big project as new capacity, but it would have been inefficient to put in temporary lanes.
- The statistic that Idaho ranks 14th for infrastructure came from the

Hartgen report, which is affiliated with University of North Carolina. It is a nationwide report that goes to all the states and is available on the Web. Director Lowe believes the data from the report is quite unbiased. It uses the same statistics for all of the states. While this doesn't seem that bad, some states spend significantly more on administration costs. Also, Idaho last year was 10th. Now because of a deteriorating infrastructure, Idaho is 14th. A 19% deficient pavement isn't so bad. But they skew to the worst. Idaho has more in mediocre pavement heading toward bad than other states.

- The Department funding and priorities have evolved over time as conditions have changed. In 1995 or so, they got revenue that helped. Idaho received a lot of money from the Federal Highway Act, and the ITD was able to use this to do lots of projects. Then State money got smaller, so the Department began living off of federal dollars. Then, a couple of years ago, they anticipated increases in federal revenue. But it has become apparent that this isn't going to happen. So, they changed the forecast to be flat. When that happened, the Board said to focus on preservation.
- Some comments ensued regarding funding. When funding began to deteriorate, the Board could have come to the Legislature to ask for the sales tax money that is related to transportation so that the committee could have begun to try to get those funds. It was also commented that federal dollars can go to maintaining the shark chart, but they cannot be spent on maintenance. They can use federal dollars to do some projects for repair, but not things like crack sealing.
- Regarding the cities and districts that represent 38% of the picture, Director Lowe said that locals are tied in to some extent. They submit an annual report to the ITD. Administration could add another column for planning for new revenue. Or they could get other types of information from them.
- Regarding timing, the date for year one is a calendar year. So year one is now.
- The Department has been audited 33 times, yet this last audit still found 52 issues. Director Lowe explained that every federal agency that gives money does an audit— Federal Transit Administration, FAA, etc. Many of them find nothing. Once in a while they make a suggestion that the ITD implements.
- Regarding ways to improve communication between the Department and Legislature, Director Lowe said that these kinds of sessions are helpful. They can do this as often as the Legislature desires. They will set up an accountability site to track how they are doing. They do want to be transparent. The Web site should be done this summer.
- The status of the performance management office is that they moved the office under Dave Tolman and the structure is in place. They will get performance measures identified. Then they can staff up the office to integrate the measures throughout the Department and get reports on them going.

Chairman Wood announced that the committee would not meet on Friday. The Governor's plan will be introduced on Tuesday.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:43 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 10, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached committee sign-in sheet

Chairman Wood called the meeting to order at 1:31 p.m.

Rep. Labrador moved to **approve the minutes of the Wood Subcommittee meeting from Jan. 28th** as written.
Motion **carried on voice vote.**

Rep. Smith moved to **approve the committee minutes Jan. 26th as written.**
Motion **carried on voice vote.**

RS 18519 **Representative Jaquet** presented **RS 18519**. There is currently no provision for high-occupancy vehicles. Any provision must be designed by the ITD. A high-occupancy vehicle must have two people including the driver, except motorcycles and public transit. Law enforcement can issue an infraction of \$200. This legislation is modeled after Arizona legislation.

Wood River Valley is gridlocked, and this legislation is an attempt to help. Widening could take 20 years. The community wants an impact statement at some point. About 79% of vehicles are autos, and the rest are trucks. Trucks should be included if they have two people in the vehicle.

MOTION: **Rep. Bedke** moved to **introduce RS 18519 to print.**
Motion **carried on voice vote.**

RS 18546 **Rep. Wood** explained that we rejected a rule, which is what this RS deals with. We talked about the difficulty with fleets. We felt the rule could be better worded.

MOTION: **Rep. Roberts** moved to **introduce RS 18546 and sent it directly to the Second Reading Calendar.**
Motion **carried on voice vote.**

S 1009 **Mr. Dave Brasuell**, Administrator, Idaho Division of Veterans Services, presented **S 1009**. This bill modifies Idaho Code and allows them to do the veteran education program in the Division Of Veterans' Affairs.

MOTION: **Rep. Mathews** moved to **send S 1009 to the floor with a DO PASS recommendation.**
Motion **carried on voice vote.**
Rep. Hart will be the floor sponsor.

Mr. Jason Kreizenbeck, Chief of Staff, Office of the Governor, provided a brief overview of the legislation he was there to present. The legislation was developed by the Governor after meeting with citizens. The legislation is to help improve the accountability and efficiency of the Idaho Transportation Department (ITD) and improve the transportation system. It focuses on generating revenue for maintenance. It would spread out the financial impact over five years.

RS 18531C1 **Mr. Kreizenbeck** explained that **RS 18531C1** shifts the current portion of funding for the Idaho State Police (ISP) that is funded by gas tax. One percent (1%) of the Highway Distribution Account (HDA) currently going to the ISP would instead go to the ITD for five years, and the General Fund would make up the difference to the ISP. The total of the shift is \$16.9 million over five years.

RS 18532 **Mr. Kreizenbeck** explained that **RS 18532** imposes a 6% fee on daily rental cars. This is a new fee that will generate \$2 million per year for the Highway, Bridge and Railroad Crossing fund.

RS 18537C2 **Mr. Kreizenbeck** explained that **RS 18537C2** increases the State tax on motor fuel. It implements a two cent increase per gallon per year over five years.

Mr. Clete Edmunson, Special Assistant for Education and Transportation, Office of the Governor, answered a question about the decrease in the fiscal note regarding ethanol. RS 18580C1 explains what we are losing with the exemption. This RS18537C2 indicates how the numbers will change by removing the exemption.

A comment was made that the Committee would like to hear if this legislation would affect tribes. **Mr. Kreizenbeck** said he would need to research this.

In response to a several questions about how the Highway, Bridge and Railroad Crossing Fund is used, **Ms. Pam Lowe**, Director of the Idaho Transportation Department, said that the intent is to put the money to operations, restoration, and preservation, including snow plows, chip seals, etc. **Mr. Kreizenbeck** said that it provides accountability, allowing the Legislature to keep track of how the funds are being used. **Director Lowe** explained that the HDA is used throughout the Department for things like the DMV, or public transportation for a senior center. But the Highway, Bridge and Railroad Crossing Fund would be restricted for preservation of highways and bridges. Regarding financial stability for the HDA, the remainder of money would be sufficient if we raise ITD fees also in other legislation. **Mr. Edmunson** said that new money would be shared with local jurisdictions (locals). The ITD's portion will go to the restricted account. **Mr. Kreizenbeck** explained that the money goes through a distribution formula in which 62% goes to the State and then goes into the fund, and the other 38% goes to locals first.

A comment was made that you need to read RS 18531C1 and RS 18537C2 together to see the percentage of fuel tax going to the State.

Mr. David Tolman, Administrator, ITD, said that the 35 cent per gallon tax would be competitive. Washington is at 35 or 36 cents now. They could get a chart for all 50 states.

Some concerns were raised about the Idaho State Patrol's loss of money, and some believed that what they lose would be replaced from the General Fund. **Mr. Kreizenbeck** said that this is true, though it would not be in the Code. He also replied to a question about whether something could be put into the legislation so that we could wait and not start the increase this year. He said that this could be discussed, but they wanted to get the Governor's plan out in public for discussion.

Regarding gaseous fuels, **Mr. Tolman** said that in Code, some like propane are assessed a fee. They will update the fees and implement the increases to correspond to the schedule proposed for gas and diesel. The fuel tax increase in 1996 did not raise the tax for gaseous fuels at that time.

RS 18555

Mr. Kreizenbeck explained that **RS 18555** regards registration fees for cars and trucks. This proposal is the most extensive in the packet. The increase is over five years and includes light trucks. The increase for heavy trucks would be 5% one time.

Mr. Edmunson said that they have worked with the trucking industry and have agreed to discuss more with an intrastate and interstate task force. They are asking for the increases before that task force meets, however.

Mr. Alan Frew, Division Administrator, Motor Vehicles Division, ITD, answered questions about school buses. He said that there is an exemption if the buses are owned or operated by a school. Buses are charged only if operated by a private contractor for profit that contracts with the school district.

A question was asked about the new language on line 3 on page 3. Nothing is stricken, so we have never charged these groups before? **Mr. Frew** said yes.

RS 18580C1

Mr. Kreizenbeck explained that **RS 18580C1** eliminates the ethanol exemption from ID code.

A concern was raised because the bill says ethanol tax would go like all gas taxes into the HDA. The ethanol distributor currently gets a rebate, so they keep track of the amount. If the tax is taken off, there would be no incentive to keep track of the inventory. **Mr. Kreizenbeck** said he could research and then discuss this. He had not yet heard this particular concern.

After hearing the presentations for the five RS documents from the Governor's Office, the committee began the voting process.

MOTION

Rep. Smith moved to introduce **RS 18531C1** to print.

RS 18531C1 Motion **carried on voice vote.**

MOTION
RS 18532 **Rep. Wills** moved to **introduce RS 18532 to print.**
Motion **carried on voice vote.**

MOTION
RS 18537C2 **Rep. Ruchti** moved to **introduce RS 18537C2 to print.**

Rep. King said she will vote to print, but in these tough times, it is not an easy vote.

Motion **carried on voice vote.**

MOTION
RS 18555 **Rep. Hagedorn** moved to **introduce RS 18555 to print.**
Motion **carried on voice vote.**

MOTION
RS 18580C1 **Rep. King** moved to **introduce RS 18580C1 to print.**
Motion **carried on voice vote.**

A comment was made that the intent today was to get bills out there, but there will be some other good ideas that come up.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:30 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 12, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: See attached committee sign-in sheet.

Chairman Wood called the meeting to order at 1:32 p.m.

MOTION: **Rep. King** moved to **approve the committee meeting minutes of January 28, 2009, as written.**
Motion **carried on voice vote.**

MOTION: **Rep. Ringo** moved to **approve the committee meeting minutes of January 30, 2009, as written.**
Motion **carried on voice vote.**

RS 18557 **Rep. Smith** presented **RS 18557.** It increases the gas tax from 25 to 30 cents. The additional income goes into a special fund for maintenance of roads: the highway maintenance, preservation and restoration fund. Forty percent will go to local jurisdictions (locals) without restrictions, but the ITD must have in place a management plan for pavement throughout the state, per the audit recommendation.

In response to questions, Rep. Smith made the following points:

- This is only for maintenance. It does not disturb the Highway Distribution Account (HDA). It is only for the additional over the current 25 cents.
- The increase would go into effect July 1, 2009.
- Even though the STIP has mostly restoration projects on the list, putting the money into the highway maintenance, preservation and restoration fund helps follow the audit recommendation. The audit says every year we are falling behind in maintenance and restoration. To catch up, we need \$158 million per year in maintenance without new capacity construction. Even that will be short of what we need; \$158 million is less than the ITD request for \$240 million.
- Regarding the tools that the ITD needs, the audit suggested \$6 million. The Director indicated that the \$6 million could include asset management, pavement, and financial systems. That may be too

much. But that would have to be appropriated by JFAC in the budget for the ITD.

MOTION: **Rep. Labrador** moved to **introduce RS 18557 to print.**

Rep. King said that she would support printing but may not vote for it later.

Motion **carried on voice vote.**

RS 18600 **Chairman Wood** allowed Rep. Hart to take over so that she could present **RS 18600.**

This is just like Rep. Smith's bill, but it raises the gas tax by two cents rather than five cents. It follows the Governor's plan. It does not bother the HDA account. If we do the two cents for one year, that would give the ITD the ability to start implementing the audit. Then we could see if savings come from that in the first year.

In response to questions, Rep. Wood made the following points:

- The idea of not raising the tax until the audit recommendations are implemented has been discussed. But we could give the ITD something to start with in good faith. Money appropriated from JFAC could allow them to implement their technology needs, and we can give them something to help them get started using those tools.
- A concern was raised about one-year fixes. We could support these, but we got into the problem because we sat by while all this happened. We need to fix the problem to the extent that we were the problem. If we demand long-term planning, we have to plan long-term revenue also. We need to have longer terms woven into the hearing processes.
- Rep. Wood stated that her intention is to lay all of the bills in front of the committee so that we can discuss the merits of all of them. We can compare and ask questions and express our feelings.

MOTION: **Rep. Roberts** moved to **introduce RS 18600 to print.**

Motion **carried on voice vote.**

RS 18570 **Chairman Wood** resumed chairmanship of the meeting. **Rep. Roberts** presented **RS 18570.** This legislation proposes a different approach to transportation funding. Revenue would not be generated for the ITD, but it changes Idaho Code.

This legislation removes the cap on county registration fees so that local jurisdictions can let voters decide an amount they want to raise.

In response to questions, Rep. Roberts made the following points:

- A proposal would be placed on the ballot and a simple majority would decide.
- There has been discussion about locals being able to use local option

taxes. This gives them a tool to address transportation funding on a local level. If Ada County or Kootenai County wants to provide additional infrastructure for transportation, they can go to voters and raise registration fees currently two times the amount. This lifts the cap and lets voters decide the rate at which they want to tax themselves.

MOTION: **Rep. Smith** moved to **introduce RS 18570 to print.**
Motion **carried on voice vote.**

RS 18630 **Rep. Smith** presented **RS 18630.** This is similar to another bill from the Governor's Office for a rental car tax of 6%. But in this legislation, the money goes into the special highway maintenance, preservation and restoration fund, whereas in the Governor's proposal, it didn't. The section that creates the special fund is in RS 18557. It is also in RS 18600.

In response to questions, Rep. Smith made the following points:

- In the definition of motor vehicles, there is a size restriction that defines the rental category.
- Regarding the change on the bottom of page 2 referring to Chapter 46 Title 63, the same change was in the Governor's bill.

MOTION: Rep. Hagedorn moved to **introduce RS 18630 to print.**
Motion **carried on voice vote.**

RS 18658 **Rep. Roberts** presented **RS 18658** and read the Statement of Purpose.

MOTION: **Rep. Mathews** moved to **introduce RS 18658 to print.**

A question was asked about the definition of an "uncommon tour of duty." **Ms. Paula Edmiston** from Human Resources at the Military Division provided a definition to Chairman Wood, which comes from the federal regulations CFR Title 5 - Administrative Personnel, Chapter 1 - Office of Personnel Management, Part 630 - Absence and Leave, Section 630-201 Definitions. A copy of the definition is attached to these minutes. Usually, there are 80 hours in a two-week period, except firefighters usually have 100 hours in a two-week period. Military leave is prorated for part-time employees. The regulations dealing with proration can be provided if we want them.

The motion to introduce to print **passed on voice vote.**

RS 18507 **Rep. Mathews** presented **RS 18507.** If enacted, this will provide a voluntary source of funding for transportation projects. All money will go directly to the State Highway Account.

All transactions involving the sale of the medallions would be requested and paid for in advance. If enacted, it would be effective immediately.

It is funded in advance, it is voluntary, and it is up to the free market.

In response to questions, Rep. Mathews made the following points:

- Buyers would order the medallions in lots of 10,000. The setup charge would involve the die and artwork and would be a few thousand dollars

but could be included in the cost of the lot. For example, a \$3,000 setup fee would be one-time only and could do 100,000 coins.

- Silver metals costs would be around \$13, then making the medallion would be about \$1.78. The wholesale price would be \$15.

MOTION

Rep. Bedke moved to **introduce RS 18507 to print.**

Further questions were asked and **Rep. Mathews** addressed them as follows:

- The silver wholesale price is \$15, but if costs changed, you could mark this up. The price would be whatever the market would bear.
- The mints that produce the medallions require to be paid in advance, and in order to get the best wholesale pricing per medallion, orders need to be in 10,000 unit lots.
- A comment was made that if this is printed to a bill, the committee would like to know more about the income tax implications during the bill hearing.
- The bill amends the Code language that talks about the medallions that support the Veterans' Hospital. This bill provides a tax exemption. This language would amend the other medallions and make them tax deductible as well.
- When you have people buying medallions as a tax deduction, it will lower other kinds of taxes that go to the General Fund. It could be a wash. But Rep. Mathews stated that he hopes the Treasurer will market them in a way that they realize a gain.
- The 10,000 per lot provides the best pricing.
- People who buy would pay the State Treasurer in advance.
- The Treasurer will need to promote the sale with public service announcements, through the Governor, and through the Department of Commerce and the Transportation Department. The hope is that they would get the word out with as little overhead as possible.
- The comment was made that the committee needs to spend some more time on the "offset" issues raised by lines 11 and 12 on page 4.

The motion to introduce to print **passed on voice vote.**

RS 18673

Rep. Hagedorn presented **RS18673**. Many of us have commented on how great it would be to run government like a business. This is an opportunity. Unique to Idaho is our license plates. We can sell them and put money into the HDA. This opportunity could raise \$627 million if we market it properly. Per Code, we can have trailers purchase a permanent license plate with no annual sticker. But we require a retitle and they then have to pay a sales tax. So, for example, a company like Walmart may pay sales tax in Utah, and they don't want to pay again in Idaho. Some states offer plates without having to retitle. Oklahoma licenses the whole fleet of Walmart trailers. This is largest fleet in the world and is headquartered in Arkansas.

As long as we can get a title that is valid in another state, this should work. The fee is \$112 dollars. There are thousands of trailers. Someone could market our plates to carriers outside the state and bring the money into our state. This could put in three times what we put into the HDA from gas taxes and registration. This might entice carriers, corporations, and individuals to come to Idaho to register their trailers. The legislation removes the requirement for a retitle and for paying sales tax if they have a valid title in another state.

Another bill would allow the Department some flexibility in building the plates for the customers they want to attract.

In response to questions, Rep. Hagedorn made the following points:

- The State has invested a great deal of money into creating graphical, rather than embossed, license plates. They are easier to produce, and that would be an advantage.
- The reason that more states aren't doing this is that many states do not want to get into the business of selling license plates. The processes of marketing and management have to be set up. We can manage the plates for these companies with a good process, and we have to have good partners. The ITD and Rep. Hagedorn have talked and believe they can overcome the roadblocks. Idaho needs to go after the market share. Oklahoma charges \$45 for the initial setup fee, then they charge \$4 dollars every year to revalidate. From their point of view, that pays for their time. From a customer point of view, they have thousands of trailers and they have to get a sticker for every one of them all over the U.S. We can go to Walmart and say that you pay more initially, but you don't have to pay the management. We'll send you a letter each year to see if you still have the plates on the trailers, and if so, no change will be necessary.

We already have a marketing organization, which is Corrections. They take things created at prisons and market them. So we already have some infrastructure. The question is, do we want to leverage this and bring business from outside our state?

- We will still register trailers in state. The target for this is outside of Idaho. The federal rules allow this, but our State code does not allow it.

MOTION

Rep. Bedke moved to introduce **RS18673** to print.

Motion **carried on voice vote**.

H 0008

Rep. Wood explained that this bill is being redone.

MOTION: Rep. Hart **moved to hold H 0008 in committee.**
Motion **carried on voice vote.**

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:32 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 16, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Rep. Bedke

GUESTS: Rep. Jeff Thompson; Ted Spangler, Deputy Attorney General, Idaho Tax Commission; Mollie McCarty, Manager, Office of Gov. Affairs, ITD; Amy Smith, Vehicle Services Manager, ITD; Benjamin Davenport, Legis. Adv.; Mark Dunham, Executive Director, Idaho AGC; Ed Pemble, Driver Services Manager, ITD; Cole Pepper, Legis. Adv.; Russ Hendricks, Idaho Farm Bureau, Member Services Division, Regional Manager, Southwest Idaho; Julie Pipal, Director of Legislative Affairs, Boise Metro Chamber of Commerce; Dave Carlson, Public Affairs Director, AAA Idaho; Skip Smyser, Legis. Adv.; Mark Bathrick, Legis. Adv.

Chairman Wood called the meeting to order at 1:31 p.m.

RS 18230C3 **Mr. Ed Pemble** of the ITD presented **RS 18230C3**. This codifies penalties that occur when an out-of-service order that is issued to a driver or a company is ignored or disregarded. In 2006, there were no such violations, and in 2007 through 2008, there were four. While this doesn't affect many, it is needed to ensure that there isn't a temptation to violate out-of-service orders. Previous minimum penalties were \$1,000 for a first and second conviction, and this increases them to \$2,500 for a first, and \$5,000 for a second. The maximum penalties and disqualification times are outlined in the Statement of Purpose. The fiscal impact is significant. If we don't bring the CDL (commercial driver's license) program up to federal standards, the Department will suffer a permanent loss of \$6.5 million in the first year, then \$13 million per year thereafter. July 1, 2009, is the proposed starting date.

Mr. Pemble made the following points by answering questions:

- The dollar amounts in the bill come from the standards that are in the federal SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act). The figures are what the Department must comply with in order to get the federal money.
- Regarding the "fatality" verbiage on line 26, this is in existing law. It is just being moved to a different location because it is more accurate to be here. The details are on page 3 of the legislation.

MOTION:

Rep. Smith moved to introduce **RS 18230C3** to print.

In response to a question about whether the four people who had the out-of-service violations were still working and had their CDLs, **Mr. Pemble** said that he was not sure of the stories behind the violations. The violations may not have resulted in convictions. The court may not have imposed fees.

The motion to print was carried on voice vote.

RS 18715

Chairman Wood gave **Rep. Smith** permission to speak for both **RS 18715** and **RS 18712** because they are so similar. **Rep. Smith** explained that **RS 18715** changes registration fees and age categories on automobiles and motorcycles for one year. A vehicle that is one or two years old was in that first category. Now that first category includes one-, two-, three-, and four-year-old vehicles and the price is \$72. The second category includes vehicles five through eight years old and the fee goes up to \$60. In the third category are vehicles over eight years old, and the fee goes up to \$40 in this bill. In **RS 18712**, it goes up to \$30. Both bills put all additional money into the dedicated fund for maintenance only (the highway maintenance, preservation and restoration fund).

The following points were made and addressed during questions:

- The ITD has seen the bill, so the fact that the fee for older vehicles is not evenly divisible by 12 may not be an issue. **Ms. Amy Smith** from the ITD said that people can register for more or less than 12 months, so having the numbers evenly divisible is an advantage. However, the Department can add cents to fees if the numbers are not evenly divisible. The idea was raised that perhaps some changes could be made in the bill; for example, the fee for older vehicles could be \$42.
- The fee increase for motorcycles is in the bill at \$5.50 because this was the figure in the Governor's bill. The \$72 for the first age category was also in the Governor's bill, and \$60 was in that bill. **Rep. Smith's** bill and the Governor's bill did part ways regarding the age categories.
- **Rep. Smith** did not believe that determining the ITD's compliance with the pavement management system implementation requirement in the Statement of Purpose would be an issue. The ITD has already initiated steps to get the system in place. It will take a little after July 1 to accumulate any money in the fund.
- The Governor's bills have a separate account for funds also, but it has a different name.
- A concern was raised that at least one district has an operating management program. But the wording of the bill and of Idaho Code makes it unclear whether that district could draw from the statewide account or whether it would not be able to until all of the other districts comply with the requirement to have an operating management system. This needs to be more clearly defined. **Rep. Smith** said that he believes H136 requires that a statewide maintenance program be implemented. The point was made that if either H136 or H135 passes,

that requirement would also apply to this current proposal (RS 18715). If we want to pass this registration change but not the requirement for getting money from the special fund that is in the two House bills, the House bills would have to be amended.

- **Chairman Wood** authorized voting on **both RS 18715 and RS 18712**. She clarified that the fees they contain are over what is already being paid.
- **Rep. King** stated that she thinks that people driving older cars need a more affordable rate, so she favors RS 18712. **Rep. Ringo** stated that she thought a good compromise would be \$36 for the older cars. **Rep. Smith** said he hoped both bills could be printed, then we could devise a plan from both of them.

MOTION: **Rep. Hart** moved to **introduce RS 18715 to print**.
Motion **carried on voice vote**. **Rep. King** requested to be recorded as voting Nay.

MOTION: **Rep. Labrador** moved to **introduce RS 18712 to print**.
Motion **carried on voice vote**.

RS 18714 **Mr. Clete Edmunson** from the Governor's Office presented **RS 18714**. At the Governor's Office, they decided to pull the registration and plate language out to simplify things, which created this RS. They had something similar last year. The original 33-page bill is now a one-page bill. It adds \$20 to all specialty plates. The money would go to roads and bridges in the State.

The following points were made and addressed during questions:

- There will be some decrease in demand. The fiscal note may be high, but it is hard to tell. There is a threshold of pain, but they don't know what it is.
- **Ms. Amy Smith** explained that payment now depends on the plate. For some, the first issue is \$35, then \$25 is for renewal each year. Some are \$25 with a \$15 renewal.
- **Ms. Smith** explained that a \$3 loss per plate is figured when you take every plate plus the disabled placards, and then you figure in the operating costs. Some of the individual plates like the disability ones provide no extra funds.
- **Rep. Nonini** said that he would like to see the information on how our charges relate to what other states charge so that we can see if we have moved in relation to other states.
- **Rep. Ringo** said that she purchases these plates to contribute the money to something. If we are losing \$3, she would pay that much more, but she doesn't want to take on this responsibility more than others. She would not vote to introduce.

MOTION: **Rep. Wills** moved to **introduce RS 18714 to print**.

Rep. Hagedorn said he would like more data on where we are losing the money.

Rep. Ruchti said he would like more information on where the \$4 million in revenue shown in the Statement of Purpose would come from.

Motion to introduce carried on voice vote.

RS 18688

Mr. Ted Spangler from the Idaho Tax Commission presented **RS 18688**. This comes as a substitute for H 8. It deals with the illegal use of dyed diesel fuel on the highways by those prohibited by law from using it. No motor fuels tax is made on it.

The enforcement in H 8 was too much for some. This RS provides a civil penalty, whereas the other one involved the court system. The civil penalty can be enforced by the Tax Commission.

The following points were made and addressed during questions:

- They have considered the case where hired people might do the wrong thing. That would be a \$250 first mistake, but if the “mistake” were made several times, it would get very expensive.
- This does not give the Tax Commission the authority to stop vehicles or conduct inspections. This is done by others like law enforcement, and the Tax Commission receives information from those sources. Or sometimes, violations are reported by retailers who call the Tax Commission, and sometimes information comes from the IRS. None of this would change. But once the evidence comes to the Tax Commission, it could assert the penalty as a civil penalty.

MOTION:

Rep. King moved to introduce **RS 18688 to print**.
Motion carried on voice vote.

RS 18444

Rep. Thompson presented **RS 18444** and read the Statement of Purpose. He said that it allows the Department of Agriculture to have more than one grant per year but only if surplus interest funds are available.

Chairman Wood said that seed money administered by the Department of Agriculture is not touched, only interest.

MOTION:

Rep. Smith moved to introduce **RS 18444 to print**.
Motion carried by voice vote.

RS 18671

Rep. Wood explained that the bill sponsor requested to withdraw this legislation.

MOTION:

Rep. Hart moved to return the bill to the sponsor.
Motion carried on voice vote.

RS 18636

Rep. Andrus presented **RS 18636**. The idea comes from the City of Pocatello. When they send a garbage truck to the landfill, they use a

double axle truck. There is an exemption to use a single axle truck. They want the same exemption to apply to double axle trucks with the weight limit shown on page 11. Often when they go to the landfill, especially in spring, they can go only partially loaded. It would be more efficient and would cause no more wear on the road to have the exemption apply. The ITD has reviewed this, and they have no problem with it.

In response to a question, **Ms. Smith** said that this increases the weight limits for commercial vehicles operating on local jurisdiction roads. It does not change things for operating on State highways.

Rep. Labrador moved to **send RS 18636 to print.**

MOTION:

In response to a question, **Ms. Smith** said that local jurisdictions could make a law to change weight limits if this ends up being a problem for them.

The comment was made that the legislation increases the weight limit by three tons for roads that are having a hard time being maintained. Also, Pocatello is likely not the only area affected. This is a difficult thing. The fact that local jurisdictions are able to dictate weight may be a remedy.

Rep. Andrus said that Pocatello's reasoning is that it will cut down on usage if they don't have to make another trip. In answer to a question, he said that there is not an increase in PSI (pounds per square inch) for ground per tire. Some say that there is less PSI for rubber on the road than for even an automobile, but there is debate on this.

Motion to introduce carried on voice vote.

RS 18304

Rep Jarvis explained that **RS 18304** strikes four words from code: with a white top. The requirement for a white top on State Police vehicles was put into law before air conditioning. The estimated savings is \$300 per vehicle.

In answers to questions, Rep. Jarvis said that the intent is to remove the requirement for new vehicles, not repaint current vehicles with a black top. Even though some say that air conditioning does not work well when policemen roll down their windows to use radar, the belief is that the savings are more important than having the white top.

Rep. Mathews moved to introduce **RS 18304** to print.
Motion passed on voice vote.

MOTION:

RS 18644C1

Rep. Labrador presented **RS 18644C1** and explained that it adds a new section to Idaho Code. He explained that he traveled throughout the State last year while campaigning. Different parts of the State expressed different needs. In this Boise area, they wanted new roads, but in Pocatello, only one person mentioned new roads. North Idaho has other needs. He thought that local option registration fees might address the disparate needs. Rep. Roberts has introduced a similar bill, but this doesn't compete. That bill would allow local municipalities to remove a registration cap, and proceeds would go to the General Fund by a percentage. This bill would be for funding specific projects only. For

example, the community could impose a registration fee to add turning lanes and expand capacity for Eagle Road.

The following points were made and addressed during questions:

- A vote would be decided by a simple majority.
- The current proposed bill would allow new fees to be placed on all vehicles, including commercial vehicles and vehicles over 8,000 pounds.
- The intent is that the project for which fees are raised should be big enough to benefit the entire county. A highway district might benefit, but the intent is not to allow highway districts to raise fees. On line 24, the bill states that “the voters of any county may authorize the board of county commissioners to adopt an ordinance...” So, it only authorizes counties to use the process.
- This proposal is better than the local option method proposed a couple of years ago because the earlier proposal had a nexus problem. What we pay for milk should not go for roads. This is specific to car registrations.
- When a proposal is put to voters, there would be a specific price of the project and the fee would be in effect until that price is met. If cost overruns occur, a new vote would be needed to obtain more funds.
- A hypothetical issue was raised about STIP (Statewide Transportation Improvement Program) projects. What if a county didn’t want to wait for a project that was scheduled for the future in the STIP. Could they use this mechanism to move the project date up? Then, what would happen to the STIP funds? **Rep. Labrador** said that this legislation intends to cover projects not even in the STIP. But even in the example case, county commissioners could negotiate with the ITD. The county and state highways people could all come to the table to work on the project together.
- **Rep. Roberts** explained that a key difference between his bill (H 134) and this RS is on page 2 lines 38 - 41. This RS allows local counties and the ITD to do joint projects. If there is a project that should go faster than being in the STIP, they could negotiate for this.

MOTION:

Rep. Roberts moved to **introduce RS 18644C1 to print.**

A question was raised about page 2 line 39: “...may also enter into agreements...” You may have an election that says what the people want and they are willing to pay, but what if it can’t be done by the ITD? **Rep. Labrador** said that “shall” might be better than “may.” Some projects may not require negotiation, but some might.

Motion to introduce carried on voice vote.

RS 18657C1

Rep. Wills presented **RS 18657C1**. This is an attempt to help the ITD without affecting the General Fund too much. It allows a change for one

year. The Governor's bill wants to take 5% out completely over 5 years. But the money is important to the ISP (Idaho State Police), so there is reluctance to do that. Fiscally speaking, we don't know where we will be a year from now. We might be in crisis mode, but we know that right now, it is difficult to find General Fund money. JFAC (Joint Finance-Appropriations Committee) has said they might be able to find the money for one year for this.

The following points were made and addressed during questions:

- Doubts were expressed about taking from the General Fund. Rep. Wills replied that the ISP has lost \$2 million over the last few years. They can't cut more programs.
- This proposal is more cautious than the Governor's because it proposes a change for just one year.
- A concern was raised that we would be codifying \$12,960,000 for the ISP, which would take the flexibility out of JFAC. Rep. Wills replied that for one year only, \$3.2 million comes from the General Fund, and the remainder comes out of the HDA.
- The question was raised whether the ISP had experienced the 6% holdback. Rep. Wills said that they did this voluntarily before it was asked for by the Governor.
- The ISP is short \$750,000 in the 2009 budget because \$400,000 and then later \$350,000 were taken out due to the lack of fuel sales.

MOTION: **Rep. Smith** moved to **send RS 18657C1 to print.**
Motion **carried on voice vote.**

Chairman Wood stated that she hoped everyone could start forming opinions so that when we look at all of the bills, we can group similar ones and choose from among them.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:45 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 18, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached committee sign-in sheet.

H 152 **Rep. Thompson** presented **H 152**. It amends the planning and development grant sections in the Rural Economic Development and Integrated Freight Transportation (REDIFIT) Program. It allows grants from accumulated interest money that is available and administered by the Department of Agriculture.

Mr. John Watts, Legislative Advisor, explained that the legislation is intended to help with transporting things to market, using short-line railroads especially. Mr. Watts introduced **Mr. Mark Blaser**, a senior officer at Watco Railroad Companies headquartered in Kansas. They have railroads in 14 states. There are eight short-line railroads in Idaho. Watco owns four of them. They want to operate as efficiently as possible.

MOTION **Rep. Nonini** moved to **send H0152 to the floor with a DO PASS recommendation.**

Motion **carried on voice vote.**

Rep. Thompson will be the floor sponsor.

H 47 **Ms. Mollie McCarty**, Manager, Office of Government Affairs, Idaho Transportation Department (ITD), presented **H 47**. She explained that this year's theme is to make the most of resources and help taxpayers. The ITD presents this legislation with that thought.

They want to have fair and just compensation for property owners. This first bill is housekeeping. It helps the ITD communicate with land owners. Case law and jury instructions restrict project influence in property value. The value is supposed to be when the land is taken, not what it could be worth in the future when other things happen. This legislation formalizes current practice. The condemnor has to notify owners of their rights. Rather than having to cite case law, the ITD could use this legislation to provide complete disclosure to the owner. Owners do want to take benefits from the project into account. It is difficult and confusing to owners to explain the limitations by using just case history. The ITD wants to do what other states and the federal authorities do.

Mr. Scot Campbell, Deputy Attorney General at ITD, and **Ms. McCarty** answered questions and comments as follows:

- A question was raised about a pending lawsuit. **Mr. Campbell** said that there is a case in Twin Falls that is on appeal for eminent domain and many other issues. Eminent domain is always an issue, but the appraisers all know the rules. This legislation won't change that; it is only to make it easier to explain the rules to owners. This legislation was not a result of that Twin Falls case, which has been briefed and submitted to the Supreme Court. He doesn't believe this legislation would influence that case.

A comment was made that at another time when legislation was presented and the ITD was involved in court proceedings, the ITD spoke against it and said that it should not happen in the middle of a suit. It seems that now the "card is being played the other way."

- While there are three pieces of eminent domain legislation being proposed, each can stand alone. The outcome of one would not affect the others.
- Answering a question about why this is needed if the rule (of not taking future value into consideration) is already being followed, **Ms. McCarty** said to imagine a property owner receiving information that refers to multiple cases like Smith vs. Jardine. Property owners don't understand this kind of jargon.

Mr. Campbell explained that the owner may have plans for his property and thinks it is worth some amount. But value is established at the time of taking. Before the trial, neighbors could sell knowing what is going to happen. The value of the owner's property was established at time of take. But the owner doesn't understand why he can't get the same as his neighbor.

Federal law states that you can't take project influence into consideration for valuation, and Idaho case law says the same thing. We (the ITD) submit jury instructions based on case law. It would be clearer if we had a statute to which we could refer for juries and property owners.

Communication problems arise because the right-of-way agents are not trained attorneys. They use an advice-of-rights form that tells the owner some things. They say that the owners still don't understand why they can't get the benefit of the project. Rather than having to quote Supreme Court opinions and jury instructions, they need to be able to just present a law.

- The legislation would affect acquisitions by any condemning authority. **Mr. Campbell** said that he is concerned with that. Determining before and after values for eminent domain is his concern and why the law is proposed for eminent domain.
- Appraisers would say that comparable property valuations are not influenced by the project, but that is difficult. Appraisers are required to

not take project influence into consideration.

- Mr. Campbell said that this legislation may not make a huge difference during a trial. Jury instructions are based on State law rather than on citing cases. He also said that he didn't think it would make much of a difference regarding more or less money for the landowners. It just makes it easier for agents to explain the issues. He is not trying to change the rule, just codify it.
- Some questions were raised about whether land owners have attorney representation and whether this legislation would help either the landowners or the attorneys. It seemed to some that a law would be just as confusing to owners as the instructions they are getting now. And unless the law clarifies differing opinions among attorneys, it might not help them either.

Mr. Campbell said that when agents approach owners, only a small number are represented by an attorney. The advice-of-rights form says that they can seek council. Attorneys already know about the rule, and appraisers understand it also. It is the property owner that doesn't understand why he cannot get the benefit of the project. It is not the intent of this legislation to solidify anything for the attorneys. It is just to codify the understanding of what is in the jury instructions and what is in case law. It would make things easier for the owner and the right-of-way agents.

Ms. McCarty stated that she has had many conversations with property owners. A common thing to hear is, "Show me the code." Then she has to say, "Well there is this court case called Smith vs. Jardine..." etc. This is what the agents are dealing with.

A comment was made that just because you put the rule in code, the landowner may still not accept it. At least the case law gives context. It has facts around it to say how it applies. This will eliminate whatever case law has been developed. It won't be as full of an explanation.

Mr. Campbell replied that he didn't think it will affect case law. This similar language is in Arizona law. It may not convince property owners of the rules, but when you have to cite case law and circumstances, owners can say that their situation is different. But when determining values, you just can't take the project influence into consideration.

- A hypothetical case was presented in which a road had been planned for 20 years and the owner bought the property when he knew about the road plan. Then the ITD comes and offers them less than what they paid. Does that happen?

Mr. Campbell said that he couldn't cite such a case, but things happen that raise and lower values. Valuations consider comparable properties around the area. If a property two miles away is one price, and property next to the project is another price, you might see project influence happening. They want to make it easier to explain that you have to adjust property values around the project to remove project influence.

Ms. Heather Cunningham, attorney from Davison, Copple, Copple & Cox, took the podium to speak about H 47. She stated that she disagreed with Mr. Campbell. She has never had difficulty in understanding or explaining the rule about project influence, and property owners have not asked her to explain it. The way to communicate with landowners is for the ITD to give them the right of way manual. The project influence rule should be there if it isn't already.

She drafted the advice-of-rights legislation. The government must now give out a form to explain owner rights.

People know the rule that practices condemnation. Property owners don't care where the law comes from. There is a case on appeal in which project influence is the main issue, and the legislature was right to question this. A statute will trump case law.

She stated that the government wants to limit the value of a property by using things such as flood zone regulations or not granting an application to the owner. They know that they want the property in the future. Even in some written documents, this is apparent. The Constitution does not say that you can depress property value and then get it.

She researched the law of project influence in 50 states. Why did the ITD pick Arizona law? Why not use the language of the jury instruction?

We can modify the right of way book. But project influence is not a problem unless the government wants to cover up a burden of proof issue.

This law is not very well crafted. People won't understand the law any better than they understand the information being given now.

Ms. Cunningham and **Mr. Campbell** answered questions and comments as follows:

- Regarding whether this codification is an accurate reflection of the law, **Ms. Cunningham** said that it probably is. However, she has some problems with it. For example, on page 3, line 2, section (c) says "...the condemnation action..." and it should say "...the condemnation project..." She also said that the ITD is taking a different position in the appeal, and this legislation may be helping them, so she is not comfortable with it. If the Supreme Court comes out with a decision that helps property owners, this will trump that. They may be trying to defeat the decision before it happens.

If (b) and (c) were removed from page 3, though, it would make things worse. There are nuances in the rule, and (b) and (c) cover some things that (a) doesn't. That's why we should not rush. If Idaho adopts a statute, it should be the best one and be consistent with what we have. She is not comfortable that this legislation achieves that.

- Ms. Cunningham said that similar to Idaho, many states have just case law to go by. There are 26 states that have statutes. She said that the Supreme court has a lot of information to determine the course of this,

rather than a statute from another state. They have a lot more information than the legislature has to develop case law.

- Regarding whether this legislation might shorten the time that the ITD uses for getting condemnation action, Ms. Cunningham said that it won't if it just restates existing law. But she doesn't think it does. It takes the law of another state.
- A comment was made that it seems if the ITD makes an interchange or road where people and traffic flow is disturbed and commerce will happen, whoever doesn't get condemned is the winner. What do other states do? If developers get value, can states capitalized on that value and help get paid for the project? Ms. Cunningham answered no. Other states get ahead in acquiring the right of way. If the State got the benefit, it would create a Constitutional problem
- Some questions were raised about the jury instructions and why they could not be used rather than another state's law, since they are what is currently given to a jury who ultimately decides. **Mr. Campbell** showed a copy of the instructions to some of the committee members. He said that the Department was not picking Arizona's or any other state's law. Arizona is an example of a neighboring state that has a statute, but this statute doesn't follow theirs word for word. Arizona and Wyoming have statutes similar to what the ITD wants. Arizona is cited so that the legislature knows that they are not doing this in a vacuum.

It doesn't follow the jury instructions word for word either because those don't necessarily lend themselves to a statute. The intent was to capture the jury instructions without quoting them.

Rep. Labrador said that some of the wording in the jury instructions and in the legislation is different, but he didn't feel qualified to say more. (A copy of the jury instructions are attached to these minutes.)

Mr. John Eaton from the Association of Realtors took the podium to speak about H 47. He said that a committee from the association reviewed all of the eminent domain bills and his comments apply to all of them. He said that the ITD wants to make it easier to take your property at a cheaper rate, faster. That is what they believe, and they ask that the legislation be rejected.

Chairman Wood asked if anyone else wished to speak for H 47. No one came forward.

MOTION

Rep. Roberts moved to hold H 47 in committee.

Several representatives made further points as follows:

- These bills, especially H 47, might be warranted at some point. But property owners have to be compensated. The court system is working for that process. We should not make it very easy for any government agency to take property. The citizens should decide what is right through the judicial system if necessary.

- More work needs to be done on the bill. The jury instructions and the law were equally confusing.
- If the main reason is to help communicate to landowners, it seems that is a process issue, rather than a statute issue. If a federal statute and cases clearly delineate the issue, then we need to execute the process better. We don't need to clutter the statutes.
- The ITD was on one side of this issue last year, then this year they are on the flip side, which is inconsistent.

In support of the bill, some representatives made the following points:

- The Department is trying to do what the audit said to do. This is a step to firm up the way they do business. We need to help them work it out if it needs more work
- Trying to explain things better is commendable. The statute would not be that difficult to understand. The Department should not give up and should come back with something that is in line with what the Supreme Court decides.

The **motion to hold in committee passed on voice vote. Reps. Smith and Wood** asked to be recorded as voting Nay.

H 48

Ms. McCarty presented **H 48**. She explained that it includes inverse condemnation and would help the agency make timely offers. A government entity could make offers 30 days before trial rather than 90 days. In other states, it can be 14 days. Current case law is 90 days to limit attorney fees and trial costs. But discovery is not complete then, and the government does not have enough information to benefit both parties. If the property owner wins, then all costs are covered. If the government can offer 30 days before and the property owner doesn't accept, then the owner must get 110% of the offer to get costs covered. This helps property owners decide if they want to take the risk.

The ITD has a proposed amendment to the bill. (The proposed amendment is attached to these minutes.)

The original bill focused on the final jury verdict, which is the judgment to the owner. The amendment focuses only on the compensation, which is smaller than the judgment. It could lower the 110% that the owner must beat to have costs covered.

The other change is to use condemning authority and condemnee language, which makes it more universal.

Ms. McCarty and **Mr. Campbell** answered questions and comments as follows:

- **Mr. Campbell** explained that the legislation provides three changes. The first two allow necessary costs and attorney fees for inverse and condemnation proceedings, but only if the award is 110%. The last

one allows an offer to be made 30 days prior to trial. By shorting the time (from 90 days), a better offer can come from the State because it would understand the case better. The risk of going to court would be less.

- A comment was made that the owner may have already paid quite a bit in attorney fees before a jury provides the real value. The question was asked as to why 90 days has been allowed. **Mr. Campbell** said that the 90 days came from case law that established that if an offer were made much closer to trial than 30 days, this would not be fair. The judge said that 90 days was fair.
- The compensation to property owners would not change because they would still get fees and costs paid. But the owner can get expert opinions that are disclosed on the 90th day.
- If the owner does not take the State's offer and then the jury awards the owner less than 110% of the State's offer, the owner's costs don't get covered.
- An offer by the State could be made earlier than 30 days before trial. But the way things are now, disclosure from the owner comes and then we (the State) are supposed to put out our offer on the same day. Our appraisals are good, but sometimes issues are raised that we didn't consider. If we have to make the offer 90 days out, we may not know everything we need to know. If we disclose our offer, say, 120 days out and then the appraisal comes in 90 days out, we had incomplete information when we made our offer.
- A question was asked about line 12: "... the highest written offer of settlement..." Is it possible to have a couple of offers and the most recent one is a lower offer than an earlier one? **Mr. Campbell** said this could happen as a result of discussions with the property owner or if the project has changed. However, the State has to pay at least the appraised value.

The comment was made that to be fair, it seems the language should say the most recent offer. The way it is written could be applied in a way that hurts the owner.

- A question was asked regarding the risk to the owner of not having attorney costs covered. There seems to be a significant difference between verbiage in the Statement of Purpose (SOP) and in the bill. In the SOP, as a result of *Smith vs. Jardine*, the jury must award the property owner 110% of the State's offer or the owner risks not having costs covered. The verbiage says "risk", but it doesn't say for sure they won't be covered. But the bill says costs may be covered only if judgment exceeds 110%. Does the judge ever decide to give attorney fees anyway? **Mr. Campbell** answered that the judge may grant costs based on a number of factors. Per Idaho Code, the owner can consult an attorney, and if just compensation exceeds the offer by 110%, then the court can determine how fees are or are not awarded. The bill language may be making the requirement stronger, but the judge can still decide. Lines 11 and 12 of the bill do not remove the judge's discretion. Mr. Campbell also said that he has never heard of any

condemnation case in which the attorney fees were awarded to the government.

- Regarding who the plaintiff is in condemnation cases, Mr. Campbell said the plaintiff is the party bringing the action, which is the State. The State is suing the owner. In an inverse case, the property owner is suing, saying the government used the land but didn't give compensation.
- A concern was raised by using a hypothetical case. It is 30 days before trial and I've got what I believe to be a \$50,000 piece of property. I've spent \$20,000 in attorney fees. Now the State looks at its information and agrees that the property is worth \$50,000 and offers me \$51,000. I was right, but in order to prove I was right, I just spent \$20,000 for an attorney. But under the statute, if I go to court and prove the worth and get awarded the \$50,000, I can't collect my costs.

Mr. Campbell replied that if the offer was made 30 days before trial and the owner doesn't take the offer, goes to trial, and receives that outcome, the owner would not collect costs. We (the State) make an offer that we anticipate will include attorney fees and costs. A case can be filed on January 1, and the court calendar is out a year, so it doesn't go to court until the following year. The State pays an amount based on appraisal, then interest accrues. The owner gets an appraisal too. Ours may be \$50,000 and theirs may be \$100,000. We don't know that until right before trial, for example, 90 days. We don't know their appraisals. We make an offer based on what we know.

The argument was made that the amendment strikes out "judgment" and says "just compensation." It seems that as the State, you could make a lowball offer that doesn't include costs and attorney fees. You could offer the \$50,000 because you know that at trial, you could prove it is worth that, so I don't get my fees. **Mr. Campbell** said this was drafted because judgment is what is awarded at trial. In discussions with Ada County Highway District, the just compensation term may be closer to what is in current law.

- A question was raised about where the 110% reward requirement comes from and if this legislation changes it. **Mr. Campbell** said that the percentage is in the statute for the last timely offer. He said there is no change in the eminent domain portion of this. The change is applying it to inverse condemnation. Also, the 90 days is being changed to 30 days. Eminent domain cases are treated differently than other cases. The Offer of Judgment happens at 14 days (before trial). The 30 days seems like a good compromise.

The comment was made that you don't always get attorney fees in Offer of Judgment cases. Fees are a big deal. In personal injury cases, you can't get fees, as well as in many other cases. Sometimes, the code effectively says that the big entity cannot "hardball" the little guy. For example, insurance law requires that in cases under \$25,000, the company must make a good faith offer to a person. If the company doesn't prove its case, the person gets attorney fees.

- The concern was raised about timing. If you move closer to trial, you

put the owner in a harder place. **Mr. Campbell** said that he perceives just the opposite. We (the State) can make an offer 90 days out. If we triple the value, then they have to beat that by an amount. The risk at 90 days out is that everyone incurs all the trial preparation costs, and if the owner isn't awarded 110% of the offer, then they don't get costs covered. If we make the offer closer to trial, then only from that shorter time can fees accrue.

- Mr. Campbell said that the Department does not offer less than the appraised value; it almost always offers more.
- A point was raised that the discussion was focusing on the ITD. But the statutes involve cities and counties and others that condemn property. We need input from those entities too. **Mr. Campbell** and **Ms. McCarty** said that the initial bill was put together by the ITD and the amendment had input from the Ada County Highway District. The Department has also talked to the Local Highway Technical Assistance Council and the Association of Cities, and they support the legislation.

MOTION: **Rep. Nonini** moved to **hold H 48 in committee**. He stated that the committee didn't seem comfortable with the legislation.

SUBSTITUTE MOTION: **Rep. Smith** made a **Substitute Motion to send H 48 to General Orders with amendments**.

A comment was made that "the last written offer" would be better wording than "the highest written offer."

The committee agreed that it needed to hear testimony of others who wanted to speak. **Ms. Heather Cunningham** took the podium.

Ms. Cunningham said that the bill makes six major changes, and the amendment is bad. Attorney fees are now at the discretion of the court regarding whether the owner gets reimbursed. The owner almost never gets reimbursed 100%; the judge decides reimbursement. Three primary cases are feeding into this; Jardine is the most recent. The Constitution says the owner must be made whole. The present system works well. It should not be made more complicated.

An existing statute 58-1103 deals with inverse cases in which the government has taken your property and you have to sue. Your costs and fees are covered if you win. This legislation would do away with that.

Another problem is what is included in the amount of the offer. There are four things to consider: interest, costs, fees, and compensation. The legislation should say "just compensation." The government waits until 90 days before trial and it doesn't spell out what compensation is for. The property owner doesn't know the breakout. The Constitution says it is the government's burden. They shouldn't shift the burden to the owner to prove worth. Owners have to pay many things—appraisers, etc.—to do this. Then the government offers them less. Ninety days before trial, they give an offer and the court has to beat it by 110%. This law will make things worse. They are trying to shift the burden to the property owner.

The 90 days is not hard and fast. The government can roll in at the last minute, and the owner doesn't want to go to the pain of litigation. If you let the government wait until 30 days before trial, the citizen has less time to respond. It is the government's job to know what they are doing.

The government can give a full offer at any time, but they don't. Offers of Judgment do not apply in condemnation cases. We are not assessing a liability that may or may not be there. The government must pay for what they are taking. The owner should not have to pay for the government's fees. That isn't spelled out here. They are making a judgment-like case where it doesn't apply.

This legislation does remove the discretion of the court. Other factors come into play that this bill doesn't address. The part on line 10 that talks about "reasonable and necessary costs and attorney fees" should say that this is allowed to the property owner.

They should delete "inverse condemnation" on line 11, and it should be "just compensation" instead of "settlement" on line 12.

Ms. Cunningham said that the committee should reject the legislation.

Rep. Roberts said he wanted the original motion to hold the bill in committee. The Department can bring back another version.

Rep. Smith said that if we amend, we should strike "and necessary" and add "to the defendant" in condemnation and inverse proceedings.

Rep. Mathews said he liked the original motion. There are some potential Constitutional questions. He didn't think it would be appropriate to send to amending orders. The Department can bring another bill.

**VOTE ON
SUBSTITUTE
MOTION:**

The Substitute Motion to **send H 48 to General Orders with amendments failed for lack of a second.**

**VOTE ON
ORIGINAL
MOTION:**

The motion to **hold H 48 in committee carried on voice vote.**

H 132

Rep. Wills presented **H 132**. It deals with those outside a regular tour of duty, with an exception for firefighters' hours. For those on an uncommon tour of duty, their leave is consistent with their hours. Uncommon duty is defined as duty over and above the 80 hour pay period that someone usually works, or whatever is above the usual work pay period.

MOTION:

Rep. Ruchti moved to **send H 132 to the floor with a DO PASS recommendation.**

The **motion carried on voice vote.**

H 154

Rep. Jarvis introduced **Captain Bill Gardiner** from the Idaho State Police (ISP), who was there to answer questions about **H 154**. The bill is about not having to paint ISP vehicles with a white top.

The following points were made during questions:

- This legislation is for new vehicles that are purchased by the ISP. They currently repaint the tops of their vehicles white and will no longer have to repaint them. Current white tops will not be painted black
- The question was raised about savings when they have to paint a white stripe anyway and then have to paint across the hood. **Captain Gardiner** explained that the stripes are a nylon material that is placed on the vehicle. The painting on top is done by someone else, and it costs \$300 per vehicles. The last time the painting was done in 2009, it cost \$12,000 just to paint the tops of 40 new vehicles.

A comment was made that the law says stripes are “painted” around the vehicle. **Captain Gardiner** stated that the new technology is the overlay.

- Regarding air conditioning in vehicles with the window down, Captain Gardiner said that the ISP currently has some unmarked vehicles, and they have had no problem with this issue. The initial purpose of the white tops was to reflect heat, but they haven’t run into any problems with the unmarked vehicles.

MOTION: **Rep. Smith** moved to **send H 154 to the floor with a DO PASS recommendation.**

Motion **carried on voice vote.**

Rep. Jarvis will be the floor sponsor.

H 54 **Mr. Campbell** introduced **H 54.**

This legislation would provide a direct savings to the government by lowering its interest from 12% to 8%. Interest is currently at 8% to 12% for funds paid in excess of what was paid at the time of possession based upon negotiations. Accrual starts at date of possession or date of summons. The 8% is a reasonable rate of return for the property owner. It is the current rate in Utah. We can ensure the owners are getting a fair and just rate, but Idaho taxpayers cannot afford 12%. They deserve the right to be heard.

The Department’s discussions with the Ada County Highway District and other highway districts indicate that this is significant. We are losing money that is not going to the roads. We want all taxpayer dollars to go to roads as much as possible.

Mr. Campbell answered questions and comments as follows:

- When the question came up about where the 12% is in code, **Mr. Bill Gigray**, attorney, answered and said that it is in Idaho Code 28-22-104. **Mr. Campbell** explained that the 12% rate applies if no other rate is established by contract or statute. It is the default rate. The Department wants to make the rate 8%, instead of using the default. They believe the default is too high. However, if they try to change the default, that would affect many areas. If they establish a

rate for condemnation, they avoid the default just for condemnation.

- A comment was made that if the county or highway district has to pay out tax dollars and then be a good steward, they should speed up their processes. It seems that the higher rate is an incentive to close the deal. **Mr. Campbell** replied that many things are outside their ability to close the deal, like getting on the court calendar. They would like to pay less interest for that. The 8% is a reasonable rate of return.

Mr. Campbell said that the Department has been asked to save money. A higher rate punishes the government for not moving quickly, but they are not always at fault. There is no Constitutional guarantee on an interest rate; the guarantee is to be reasonable. This reduction produces an immediate savings.

- The property owners are the people who collect the interest. When we (the State) get the property on the date of summons or when we take the property, we pay money. The interest is paid on the difference between what is paid then and what the court awards. Or if we don't pay when we take the property, interest is paid on the entire amount awarded.

The court has no incentive to make things faster because they don't get the interest money. The calendar is the cause of some of this interest, and this is outside the control of the ITD. Sometimes the lag time is necessary, but we want a more reasonable number for taxpayers.

- A suggestion was made to use an IDAPA rule that gets changed annually because of fluctuating interest rates. Instead of having to change the statute each year, we could change things to a variable rate. **Mr. Campbell** said he would not object to that. The post-judgment rate is even less and is established each year. The 8% was something that was a direct savings that we could see and it is in Utah. But he would entertain tying it to the IDAPA Code.

A comment was made that a solid number allows the ITD to know what they will be getting.

- We (the State) do not have to post a bond. When we do a "quick take", we pay the appraised value. There is no interest paid on that money. The interest is paid on any additional funds that have to be paid through settlement. We do quick takes almost all the time. When we need the property for a project, we must have the right of way to get the funding, and we always seem to need it yesterday. We can't plan very far ahead because we can't purchase very far in advance. So we have to justify things when we go to purchase. We almost always pay the owner, then fight over things at judgment.
- The post-judgment rate is 5% of the base rate. This legislation (the 8%) is for pre-judgment.

Ms. Heather Cunningham took the podium. She stated that the government only pays interest on an amount when they are wrong, not if they are right at judgment. They only pay when just compensation is off.

They can control that and save money by paying more up front. Or they can deposit more with the court. There are ways to solve the problem without lowering the rate paid to the owner.

The Supreme Court has said that it is part of the owner's Constitutional right. This is about how wrong they are, not how long it takes. They are wrong much of the time, and the citizen should get just compensation.

The only person that goes to court without doing anything wrong is the owner. This brief (attached to these minutes) presents my arguments. The government may think that 12% is too high, but several years ago, that would be low. The 12% is a State rate, and it should be changed for everyone if it changes for condemnation.

Mr. Bill Gigray took the podium. The Highway District supports the bill. If the rate changes every year and that is a concern, then this could be amended. Pre-judgment could be tied to post-judgment and change according to what the State Treasurer calculates every year. The property owner would have the benefit and the State would benefit, and the interest rate would follow what is going on in the economy. This would avoid having to change the law every year.

Fair compensation should not be punitive. The Highway Department is directed to build and maintain highways. Eminent domain is a recognized process that may be necessary. There are circumstances with reasonable differences of opinion that may protract a case. Pre-judgment interest is okay, but it should be realistic.

Currently, other entities also exercise eminent domain; for example, a school district is doing this right now. A bond was passed, but because a developer had the site, they could not proceed. Now they are having to exercise eminent domain to get the project through. The point is that the government isn't acting out of malice. It has a legal responsibility as directed by the legislature to improve roads in the public trust. There are many fees used for those purposes that should be fair and reasonable. Perhaps 8% is not the proper amount, but 12% is punitive.

Mr. Gigray answered the following questions and comments:

- A comment was made that the Code section for post-judgment interest is 28-22-104 in a subsection. That statute used to read that it was calculated every year. **Mr. Gigray** said he did not know when they changed the statute to lock in the rate.
- In pre-judgment, an owner argument is that they've lost value in the property or the property has been taken, so they should be entitled to money until the final judgment. If there is fluctuation, and reasonable compensation is always based on the economy, then there could be more flexibility in the pre-judgment value. Then the government is not penalized for doing their job. The compensation should be reasonable and fair, which is subjective. So it may take time to resolve. **Mr. Gigray** said that he would be willing to sit down with objectors and work something out.

- Mr. Gigray explained that there could be several different scenarios. The statute says that pre-judgment interest starts at summons. There may be a take or may not be. The owner still owns the property, though an action has started. For quick take, an appraisal has to be approved by the court, then that money has to be paid. Then if the judgment is more, the pre-judgment interest is paid. If they don't take the property, then they just go to court, and the interest is on the entire value.

A citizen, **Diane Bagley**, took the podium. She stated that she was in opposition to H 54. She is a citizen and a property owner that was condemned.

Regardless of the law, condemnation never feels fair. You are having your property taken without your consent and you look to a lawyer to help you. It is terribly stressful and it keeps you up at night. You do not know what will happen. If you lose it will you get paid? Can you recuperate the income producing value? She said that she could not think of any business situation that feels like eminent domain. She urged the committee to do everything to protect the property owner.

The state agencies are not being punished by having to pay 12%. The court has said their value was not right. However, the owner can be punished by losing the income from his or her property.

The condemnor can largely avoid the problem by putting up enough money to prevent it. It is important that the State takes enough time and does a good enough job to make the property owner whole. If it is difficult for them to educate, they should get better. At the end of the process, the owner wants to use the land or the money for it to provide for his or her family, rather than losing the investment. She doesn't think it is the nature of the court that lengthens the process; rather, it is the way the condemnor looks at the property value. Her experience was with Ada County. The first offer was low, the second one was better, and the next one was better. If they had come up with the last offer first, she probably would have sold.

During questions, **Ms. Bagley** made the following points:

- She did not receive interest because the condemning authority determined that it did not want to proceed. She never lost her property or any money, but the negotiation process took about nine months. She had hoped to earn some interest during that time, but it didn't happen.

MOTION:

Rep. Wills moved to **hold H 54 in committee** and have the ITD work out a new bill with stakeholders. He said that it is refreshing to put a face to what happens out there, and he believes some good things can come out of the bill.

SUBSTITUTE MOTION:

Rep. Smith made a **substitute motion to send H 54 to General Orders with an amendment to incorporate a sliding scale.**

**AMENDED
SUBSTITUTE
MOTION:**

Rep. Ruchti made an **amended substitute motion to hold H 54 in committee**. He stated that Mr. Gigray said it should not be punitive, but he thinks the nature of eminent domain is punitive and we have to protect property owners. He doesn't think this committee should look at sliding scales, etc. That would be more suited to State Affairs. They should look at the germane sections.

The Amended Substitute Motion carried on voice vote. Reps. **Smith, Wood,** and **Wills** requested to be recorded as voting Nay.

ADJOURN:

There being no further business before the committee, **Chairman Wood** adjourned the meeting at 4:52 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 24, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See committee sign-in sheet

Chairman Wood called the meeting to order at 1:33 p.m.

MOTION: **Rep. King** moved to **approve the minutes of February 2 as written.**
Motion **carried on voice vote.**

MOTION: **Rep. Ringo** moved to **approve the minutes of February 4 as written.**
Motion **carried on voice vote.**

H 96 **Mr. Clete Edmunson**, Special Assistant for Education and Transportation, Governor's Office, presented **H 96**. The Governor talked to people around the state and put together a plan for transportation funding. The result was a huge 170-page bill. They have since broken it down into six categories to address one at a time. This bill is one.

People said that transportation is a top priority. They want the roads to be maintained and they want all dollars to be used efficiently. We need to plug all holes that are losing money, and the ethanol exemption is one place where we lose money.

Mr. Doug Benzon, Economics and Research Manager, Idaho Transportation Department (ITD), took the podium. He explained that this bill eliminates the exemption on ethanol in gasohol. When one gallon of ethanol is mixed with nine gallons of gas, the nine gallons of gas is taxed at 25 cents, and the one gallon of ethanol is not taxed. The same happens with biodiesel. This reduces the tax to 22.5 cents for 10 gallons. There has been an increase in ethanol (gasohol) being used in the State. Most service stations do mix fuel. In Idaho, if 25% of gas were mixed, we would lose \$24 million per year. Up to 90% of fuel in some areas is an ethanol blend. If we assume 50% of fuel is blended, the loss is \$8.2 million, and if 75% is blended, the loss could be \$12.3 million annually. There are four states that give an exemption: Idaho, Iowa, Maine, and South Dakota. They are all around 2 cents per gallon on blends. He found that there were two ethanol producing sites: Paul near Burley, and one near Caldwell. These have been shut down. He doesn't know if more will open up. The federal government used to allow a sliding scale of tax breaks on ethanol for a 10% blend, 5 % blend, etc. This has been

eliminated on the federal level. Other states have production credits on income tax for purchasing new equipment and other things.

During questions, the following issues were addressed:

- **Mr. Benzon** said that a knowledgeable Tax Commission person has said that approximately 90% of Idaho fuel is blended. New revenue from eliminating the exemption would be approximately \$14.8 million.
- **Mr. Edmunson** said that they have shared this plan with all agencies including the Department of Environmental Quality (DEQ). They have not raised any concerns regarding air quality.

Mr. John Watts, Legislative Advisor, took the podium. He said that the most modern ethanol facility in Idaho has been Pacific Ethanol in Burley for which the Governor did the groundbreaking. Mr. Watts said that the family who make up the primaries of the company thank the legislature for creating the exemption. However, the company stands today in support of eliminating the exemption. The company believes that it makes more sense to have safer roads and bridges than to have the little money that comes from the exemption. They hope that market conditions turn and they can go back to doing the blends and finishing the plant.

Mr. Neil Parker, a private citizen took the podium. He explained that he did not represent the industry, just himself. (His letter distributed at the meeting is attached to these minutes). He read from the letter, saying that bill would "add an estimated \$4.1 to \$12.3 million annually to Idaho's Highway Distribution Account."

Mr. Parker believes that education is skewed by pro ethanol groups. One of the things he previously distributed was a CD ROM that has 80 articles telling the other side of ethanol. Pro ethanol lobbyists tell only the good side, but there is another side. In the next to last paragraph of the letter is what he believes many Idahoans would express if they were informed of this other side: "I think they would express their displeasure that ethanol has taken over 95% of the market without their input even once being solicited. I think they'd complain about the 5% or more reduction in gas mileage their vehicles get because of ethanol and the worries they have about its effects on their small engines. And I have to think that they'd strongly disapprove of their tax dollars being perpetually used to prop up an inviable industry that couldn't survive five minutes in a free, unfettered market that honored the principles of consumer preference and profit & loss."

Mr. Dave Carlson, Public Affairs Director, AAA Idaho, took the podium and expressed support for the bill. It corrects policies that lose money for transportation funding. Ethanol fits with EISA (Energy Independence and Security Act) renewable energy standards. EISA is not a mandate, but it sets limits. The ethanol industry has met and exceeded some of these. By 2022, it is expected that the industry will be producing 31 million gallons. Some say it will make up 10% of all products in the country by 2015. In Idaho, the switch to ethanol was promoted by mandates out of Washington and Oregon. North Idaho gets the product from Spokane. Almost all distributors in North Idaho sell a blend. We have a 45 cent

blenders' credit, which is an incentive. AAA is involved because folks want to know where to buy ethanol-free gas. There are only a handful of places that provide this in the southern part of the State. Ethanol is an octane enhancer, which means cheaper gas can be used. But with this legislation, it will put additional money into the transportation account, which they support.

MOTION: **Rep. Wills** moved to **send H 96 to the floor with a DO PASS recommendation.**
Motion **carried on voice vote.**
Rep. Nonini will be the **floor sponsor.**

H 150 **Mr. Edmunson** presented **H 150.** He explained that personal plates are pulled aside into this bill. Regular license plates are in another piece of legislation.

Mr. Alan Frew, Division Administrator, Motor Vehicles Division, ITD, took the podium and explained that he was in favor of this bill. Fee increases create an imposition to customers, but the Department must connect the State safely and effectively and increase fees when necessary.

These license plates are all voluntary. This would increase fees by \$20 at issuance and then again at renewal each year. There is an exemption for old timer or classic plates, which would have a one-time increase. The ITD receives \$10 - \$15 from specialty and personalized plates. They receive nothing for some, such as disability placards, medal of honor plates, etc. Sales have been constant over the last three years. Participants believe they are helping the highway system, but this doesn't always happen. Of the 53,500 transactions in the Department of Motor Vehicles (DMV), only 1/4 of those brought revenue. The Department must administer the remaining per Idaho Code, for example, the disability plates. The court says they have to provide these for no charge to participants. The net effect is that after factoring in program costs, the Department loses about \$3 per transaction. The State Highway Account subsidizes this. The fee increases will generate \$ 2.8 million. Many other states are considering increases as they struggle with needs, and the ITD thinks these increases are reasonable.

During questions, the following issues were addressed:

- **Mr. Frew** said that fiscal statement in the Statement of Purpose (SOP) is off. The \$2.8 million figure is more correct. However, Reps. Ringo and Roberts calculated it to be \$1.84 million (\$20 x 92,000).

The 92,000 does not include placards and disability plates. It does include the 57,000 personalized plates, however.

The fiscal note will need to be corrected.

- The increase in fees may decrease demand for the special plates, but they don't know by how much. They are basing their numbers on the average of the last three years.
- Confusion was expressed regarding what the costs have been for the

initial and renewal fees for special plates, and what these will be with the proposed increases. The current and proposed costs are outlined in a "Comparison of Specialty Plate Fees" handout (attached to these minutes). The Idaho current and proposed fees are in the last two rows.

Mr. Frew explained that specialty plates are ones such as the Centennial plates or the Bluebird plates. A personalized plate is different. It is personalized by the owner and is outside of the normal numbered sequence. These can be combined; a person can have a specialty plate that is personalized. The fees have to be added up in that case.

- A question was raised about whether the DMV charges enough for services to be self sufficient and how much the DMV draws from the account each year for support. **Mr. Frew** estimated that about \$6 million is used each year from highway operations and restoration. They are also subsidizing the many thousands of disability plates and placards that they are required to do. He said he could provide the figures on that if requested.
- The account on line 19 of the bill is not the Highway Distribution Account (HDA). It is the State Highway Account (SHA). This is where the fee increase dollars would go. **Mr. Frew** said all the money would go to highway construction.
- **Mr. Frew** explained that from the money provided by the fee increase, the DMV would pull out administrative costs, such as the \$3 loss on transactions. The balance would go to the highways. When asked if the Department could bring a bill that would cover just their costs if this bill does not pass, **Mr. Frew** said that he thought they could.
- **Mr. Frew** stated that **Mr. Benzon** reminded him that much of the revenue from the special license plates goes to the county. However, he later stated that on line 19 of the bill, it states that all money goes to the State Highway Account. The money does not flow through the Highway Distribution Account. So regarding the increase, none of the increase would go to the locals.

MOTION:

Rep. Roberts said he figured that if you have a 10% reduction in people who use the special plates, and if 11% of the HDA actually ends up for roads, you'd have maybe \$200,000 going to roads. The specialty fees need to cover the costs of the programs. But due to the low number of dollars being raised, **he moved to hold H 150 in committee.**

Other concerns were raised as follows:

- The State Highway Account is a dedicated account that takes in penalties, fines, donations, and federal funds, and it provides for construction and improvement in state highways. But it is unclear what the purpose of this fund is.
- The Committee would like another bill placed alongside this to look at before we vote.

- In economics, there is a formula used to find out what the best price is, given demand. We need to find out at what price people will stop buying these plates. It seems we could lose, rather than gain, revenue.
- We need more definition about what the SHA and the HDA are for.
- If this is about recouping costs within DMV for what they lose with handicap plates, it isn't proper policy to pick this segment of license plate purchasers to bear the cost. If the function of DMV is not handled by all license plate purchasers, then we need a global restructuring of that. When we approved specialty plates, we made sure that costs were covered. We didn't want them to cost the Department extra.

On the other hand, regular plates are required by law. That isn't true with specialty plates. We could see what the Department is requesting for regular ones as an increase.

Mr. Edmunson said that because of all the questions, putting these plates into a separate bill may have not clarified things. If you look at the increases to regular plate fees, then you would need to look at all of them, such as dealer plate fees, etc. They don't want to single specialty plates out, but they don't put them in with the others either. They can answer questions about who has regular or special or both and can give a history of increases.

- If every license plate holder in the State were raised by \$20, assuming the extra paid for specialty plates, and this covered the costs at DMV, then all the people would pay for the gap, not just this class of holder.

Mr. Edmunson said that this is what the intent is. They want to bring all users to the table. The original bill had all users in it. They just pulled these users out to make the bill easier. The registration bill they printed a couple of weeks ago has the others in there and shows a percentage increase similar to this.

- Some things are associated with affluence, and some believe we should tax affluence. We should see what needs to happen to keep the program going and then raise things by that much.
- The new system of graphic, rather than embossed, plates was supposed to be less costly. What happened?

The motion to **hold H 150 in committee carried on voice vote.**

H 134

Rep. Roberts presented **H 134** and explained that it changes existing Code 40-827. The system being proposed is being used in one county, which is Ada County. They passed a vote in November to renew an additional registration fee for transportation funding. It was attempted in Northern Idaho, but was not successful. The change is in line 12.

Rep. Roberts said that when he toured with the Governor about transportation issues, he heard inconsistent requests. In the Treasure Valley, people said to expand capacity to alleviate congestion. But in Lewiston, there were not so many comments about congestion. In

Northern Idaho, there were different issues. Idaho Falls didn't want an increase in funding for transportation except on the local level. This bill presents a tool to allow the people in counties to vote on transportation funding increases. It removes the cap of two times the current registration fee and lets people decide by vote how much to charge for registration fees.

Rep Labrador's bill (H 155) does not compete; they accomplish different things. His deals with specific projects. This expands the current language for broader purposes.

MOTION: **Rep. Hart** moved to **send H 134 to the floor with a DO PASS recommendation.**

Other concerns and questions were raised as follows:

- With regard to the breakout of funds to the cities and the highway department, the bill makes no changes. It just allows voters in a county to go to the polls and by simple majority raise revenue for highways. It does not include public transit.
- We would have to change the constitution in order to use gas taxes and registration fees for public transit.
- This may or may not be used in small counties. They may have only 5,000 to 10,000 vehicles. It may be most useful to larger counties, but smaller counties could use it if they want to.
- Kootenai County had a ballot measure to double fees, and it was defeated three to one. **Rep. Roberts** said that this is the gist of the bill. It allows counties to decide what they want. Opinions may be influenced by other states' fees. Idaho has fairly low fees. If some people in a more populous part of the State want to raise fees to pay for the infrastructure they need to relieve congestion, they can do it without affecting the rest of the State.
- Regarding the voting criteria, there are two votes. One is the voters at a general election, then per line 11, the county commissioners vote also. A simple majority is the current law. Some talk has been about a super majority, etc. This depends on your tax philosophy. Line 17 deals with the rate of the fee and the duration of the fee. If it is a permanent tax, the threshold should probably be higher. But in other parts of Idaho Code, a simple majority is allowed, for example, for school supplementary levies.
- Some people may register in another county to keep from having an increase. However, people are supposed to register where they have their homeowner's exemption. Some could also be "mobile" with their registration because of air quality requirements.
- A vote would need to be taken at a general election, not just any time.

Dave Carlson, Public Affairs Director, AAA Idaho, took the podium. He explained that they (AAA) support the concept of local option authority.

However, regarding Code 49-402, voted increases would not apply to vehicles over 8,000 pounds. There are many vehicles in the 8,000 pound to 16,000 pound category. People should pay based on the use, benefit, and damage. Doing anything less does not allow districts to address costs of roads and bridges.

Because the 8,000 pound or less rule is in effect, thousands of users are dropped. Therefore, he asked that the bill be held in committee.

During questions, the following issues were addressed:

- **Mr. Tom Fry**, Registration Program Supervisor, DMV, ITD, clarified that the Ada County registration fee that was voter approved applied to passenger cars, motorcycles, and noncommercial buses, not to vehicles over 8,000 pounds.
- **Mr. Carlson** said that AAA did not oppose the bill during the November election in Ada County, but when the issue of the heavier vehicles came up, they issued a position statement.
- **Mr. Fry** said that the 8,000 pounds refers to gross combined weight.
- Many pickups are over the 8,000 pound gross vehicle weight but are being registered as passenger cars. Mr. Carlson was asked where AAA believes is the right place to put these. **Mr. Carlson** replied that he didn't know. There is a big category of 8,000 pound to 16,000 pound vehicles, commonly called 3/4 ton or larger. This category includes 5,000 or more vehicles that are registered as part of the pickup class. While statewide, cars are more numerous than trucks, the category of vehicles over 8,000 pounds is still very large.

SUBSTITUTE MOTION:

Rep. King made a **substitute motion to hold H 134 in committee** and look at all the bills dealing with registration fee increases at once to see all the different categories.

Rep. Roberts said that this bill does not deal with State registration fee increases. This bill is not the same as revenue enhancement. If we weren't dealing with registration in this session, it could stand alone on its own merit. It is only a tool.

- A comment was made that we should perhaps not strike the wisdom of past legislation (with regard to the cap).
- A question was asked regarding whether you could end up with three times the original amount of registration once the surcharge is added. **Mr. Frew** said he did not know but he could find out.

AMENDED SUBSTITUTE MOTION:

Rep. Nonini moved to hold **H 134 in committee at the call of the chair**. Motion **carried on voice vote**.

H 155

Rep. Labrador presented **H 155** and read the SOP.

He said that he also traveled around the State and saw differences

among people in local jurisdictions (locals) regarding the desire for higher registration fees. In Rep. Nonini's district, they defeated a measure to raise them, but in his (Rep. Labrador's) district, they voted for an increase.

He said that if he opposes something, he believes in providing an alternative to improve the situation. He sees a need in Ada County for more roads. It is best to let voters decide on specific projects. They can decide if they want to increase registration fees to provide revenues for those projects.

H 155 is different from Rep. Roberts' bill (H 134). H 134 would raise the cap on funding for all roads and bridges, while H155 would raise funding for specific projects (not just roads and bridges), which would be spelled out when placed on the ballot. H 134 raises registration fees to put funding into three separate places, not to fund specific projects. In H 155, the revenue goes to specific projects. The legislation allows locals and the ITD to work together as well. For example, if the ITD has an idea about expanding a corridor, they can work with locals to get a measure on the ballot.

During questions, the following issues were addressed:

- For Ada County, new increases would be on top of the registration increases they voted on last year.
- Rep. Labrador explained that the project should be big enough that the entire county approves it. If you have seven highway districts, the entire county must approve. He did not want each individual highway district to have a vote just within the district. The seven districts would not have to get together to develop one item, but it would be smarter for them to come up with one bigger plan than to have seven smaller ones rejected.
- A question was asked about levying a surcharge. Do people have to vote first and then the surcharge is levied? Rep. Labrador said that the process is the same that is in current law (40-827). The counties had an objection, but then they realized it is the same as the current statute.

MOTION:

Rep. Mathews said that this bill would help the ITD with STIP projects as well as the counties and **moved to send H 155 to the floor with a DO PASS recommendation.**

Other issues were raised as follows:

- There could be a problem with a simple majority. Would you entertain the thought of putting it even at 60%? Rep. Labrador said that he could. Currently, the existing language is used.
- This bill could not be used for public transit.

The motion to send to the floor with a DO PASS recommendation carried on voice vote.

Rep. Labrador will be the **floor sponsor**.

H 130

Rep. Hagedorn presented **H 130**. He said that we often want government to run like a business, and this would be a first step. Under current law, the ITD sells semitrailer plates that can be purchased annually at \$20 to \$30, or a permanent plate can be purchased for \$112. Semitrailers are ones that carry bulk goods. To register a semitrailer in Idaho, you have to title it in Idaho. The State has few non-Idaho trailers registered because the carriers must have the trailers titled here and must pay sales tax. If they buy outside of ID and pay sales tax, they don't drive here to register and pay sales tax again. This legislation removes the problem. A carrier in Salt Lake could register in Idaho with a Utah title or he could get the permanent plate for \$112.

We printed another bill that defines what the plates look like.

Walmart registers all of their trailers in Oklahoma even though they are in Arkansas. It is cheaper for them. This seems like a good deal for Oklahoma, but it may not cover their costs. From Walmart's point of view, they must have an organization that tracks the trailers and sends the check in for each tag, and then they must have someone find the trailer and put the tag on every year. Our permanent plate doesn't require a tag. The carrier pays one \$112 fee and that is it. The ITD would have to correspond with the trailer owner; frequency and other issues would be determined by rule. If the carrier still has the trailer, everything is okay. If the Department doesn't hear back within a certain time, they cancel the plate.

We can enable the ITD to go out and market our plates to corporations and carriers outside of Idaho. That market represents \$627,000,000 of potential revenue. We may not get all of that, but we could try.

During questions, the following issues were addressed:

- A question was raised about the long-term reflectability of the permanent plates. The 3M Company has said that the reflectability is good for seven years, which might create a problem. Rep. Hagedorn replied that the permanent plates are sold now for local commercial carriers. So, that issue must have been answered at some time by the ITD.
- Several questions were raised about covering costs and how fees might be affected by the proposed increases in other bills. The \$112 fee for the permanent plate should cover the \$3 loss that the ITD has been referring to. This bill uses current fees; any changes would be outside of this bill.
- Titling is a separate procedure. If a trailer already has a valid title in another state, the carrier could register the trailer for a license in the State.
- All registration money would still go to the HDA. Currently, from all fuel taxes and registrations, approximately \$230 million goes into the HDA. This opportunity could provide \$627 million if marketed correctly. Even

a third of that would cover the other fees that are contributing.

- Some questions were raised about procedure and what the ITD is currently doing or suggests should be done. **Rep. Hagedorn** said that much comes from current code but there are challenges. The Department focuses on maintaining and building the transportation system. They are not in the business of selling things and have expressed concerns about this. There are organizations that we can contract with to help with the business things. This just opens an opportunity.

Mr. Frew said that many of the concerns revolve around how we (the ITD) would be able to confirm that a vehicle is truly titled. When a titled vehicle comes into Idaho, title transfer documents are exchanged. With this bill's process, we aren't sure how to ensure the safety of law enforcement. "Permanent" is a long time. WalMart, for example, could trade a trailer and not pull the plate, but it would still be out there as a valid registration. We aren't sure how to get around this and want law enforcement's input.

Rep. Hagedorn said that the procedural steps would have to be set down in rules. We (the State) currently do all the steps, but we don't do them in a single process. We do check titles to be sure they are valid. We have a process to collect and track the permanent plates that we currently issue. Though we don't have them all pulled together to one project, it seems we could pull them together. Rep. Hagedorn said he would be pleased to help with the process of doing that.

MOTION:

Rep. Ruchti moved to **send H 130 to the floor with a DO PASS recommendation.**

Rep. Wills said that he applauded this idea but believed there are some things that need to be tightened. You need to have a title search. If a law officer sees the plate and it isn't valid, the current owner is liable as is the previous owner. Many trailers are stolen temporarily. People can easily switch plates.

SUBSTITUTE MOTION:

Rep. Wills made a substitute motion to hold **H 130** in committee.

The following issues were addressed in discussion:

- A point was made that the procedural issues could be addressed by rules. The ITD can come up with a way to validate on an annual basis regarding who has the plates and if they are the original owners.
- **Mr. Reymundo Rodriguez**, Commercial Vehicle Services Manager, ITD, stated that there are currently 13,700 permanent plates that are in use. He also said that while they are permanent, there is technically a seven year life. The owners are instructed that if the plate becomes unreadable, they need to get a new one.

Rep. Hagedorn said that the price is approximately \$11 to replace a set of permanent plates. **Mr. Fry** stated that this does cover the

Department's costs.

- **Rep. Hagedorn** said that the current 13,000 permanent plates present enforcement and fraud problems, but law enforcement manages this. The only procedure this bill skips is the title search, which has been completed in another state. That is the only thing Idaho would not do in this legislation. Also, this program is strictly voluntary. It is only for those corporations who want the permanent plate.
- **Rep. Hagedorn** answered a concern about marketing by saying that the experience of some entities such as Buy Idaho and Correctional Industries could be leveraged. They market the things they make outside the State and they share marketing information. Other marketers could be involved also.

Rep. Hagedorn said that he didn't want to restrict things too much through legislation. Creative minds could try things and see how they work. One example of creativity is when people buy specialty plates for advertising reasons. They can write the cost off as an advertising expense.

Some entities, such as the lottery, use a certain percentage as outlined in Code for marketing. The liquor dispensary has some restrictions as well. He doesn't want to restrict too much, but there should be rules that don't allow the Department to do just anything.

- A concern was raised about title searches. Line 12 stipulates no title transfer, but the Department must be able to validate an out of state title. How can they set a rule if the statute says they can't? They can't do a title search if a title isn't required.

Rep. Hagedorn replied that the bill doesn't say they can't do a title search. When the Department gets a title from, for example, Utah, a rule could require an \$8 title search, and that cost would be covered by the \$112 fee.

- The 13,000 current permanent plates would need to be subtracted from the 5.6 million potential plates.
- Regarding page 2 line 4, \$105 is the price for the plates. There is a documentation fee and a registration fee, and that all adds up to \$112.
- Regarding implementation of the bill, **Mr. Rodriguez** and **Mr. Fry** explained that there really is no definition of a national plate, but the Department does have a permanent trailer plate. They weren't sure how they would go about verifying another state's title. The concern is that if they don't really know, they could title one that doesn't really belong to the right person. Currently, they physically see an actual title document and put the information into the Idaho database and convert it to an Idaho title. There is no national system. They eventually hope to have one, but it is far from being a reality now. They do not have access to other states' databases to confirm title either.
- Explaining more about the current system for the permanent plates,

Mr. Frew said that for a current trailer plate, they have an Idaho title to look at, and they trade in the Idaho title for a permanent plate. They would not have that if the trailer comes from another state. Also, the process to verify that the trailer is still owned by the same person is annua. Mailing costs for thousands of plates is pricey and will diminish the \$112.

Idaho law says that the person who registers in Idaho must have an Idaho address. They have a problem with some of the current plates because many of the people don't maintain their addresses. If you mail something to verify that they are still here and they aren't, where do you go?

- A comment was made that the bill presents a good idea. The concerns being raised don't seem to be resolvable by statute. The ITD could focus marketing on large corporations that are easier than individuals to track. A lot of reasons are being given as to why this can't be successful, but it doesn't seem the solutions can be in legislation.
- **Mr. Frew** said that the people in the ITD do not think that the idea cannot be done. But as currently described, they think perhaps it should not be done. He said that they would be willing to meet with Committee members to add some better language. When asked whether procedures are better dictated by rules or by code, Mr. Frew said that as convoluted as rule making is, they would like to have as much in statute as possible, then clarify internal steps with rules.

**AMENDED
SUBSTITUTE
MOTION:**

Rep. Smith made an **amended substitute motion to hold H 130 in committee until the call of the chair** to allow time for the sponsor and the Department to meet and talk about different language.

**WITHDRAWAL
OF MOTION:**

Rep. Wills stated that he wanted to **withdraw his substitute motion**. This left Rep. Smith's motion as the substitute motion.

**VOTE ON
SUBSTITUTE
MOTION:**

The **substitute motion to hold H 130 in committee until the call of the chair passed on voice vote**.

Chairman Wood stated that the committee would hear the gas bills on Thursday in the J. R. Williams building.

ADJOURN:

There being no further business before the committee, **Chairman Wood** adjourned the meeting at 4:30 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: February 26, 2009

TIME: 1:30 p.m.

PLACE: West Conference Room, J.R. Williams Building

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See the attached committee sign-in sheets.

Chairman Wood called the meeting to order at 1:37 p.m.

MOTION: **Rep. King** moved to **approve the committee meeting minutes of January 22, 2009, as written.**
Motion **carried on voice vote.**

MOTION: **Rep. Hart** moved to **approve the minutes of the January 26 Hart Rules Subcommittee as written.**
Motion **carried on voice vote.**

Chairman Wood explained that **Rep. Smith** put a worksheet together regarding the things we are looking at today. The worksheet is attached to these minutes.

H 94 **Mr. Jason Kreizenbeck**, Chief of Staff for the Governor's Office, presented **H 94.**

The Governor's comprehensive plan, developed after traveling the state and meeting with citizens and legislators, focuses on 1) improving the accountability and efficiency of the Idaho Transportation Department (ITD), 2) generating new revenue to maintain roads and bridges, and 3) improving the State's transportation system.

We (the State) need to maintain our \$16 billion investment in the transportation infrastructure that includes 67,000 miles of roads and 4,000 bridges. Maintenance is funded primarily through two user fees: the gas tax and registration fees. This bill, H 94, deals with increasing the fuel tax.

One in five miles of Idaho of roads are rated as deficient, and over half of the bridges will be past their 50-year design life within the next five years.

The Governor heard people say that they expect safe roads and bridges. We are a "user-pay" State. The current gas tax of 25 cents per gallon has not been raised since 1996, and vehicle registration has not been raised since 1997. Approximately 70% of the revenue used for building and maintaining roads and bridges comes from the gas tax. Each penny

brings approximately \$9 million in revenue. The 25 cents per gallon set in 1996 is worth only about 13 cents today. To achieve the same value that the 1996 amount achieved, you would have to adjust the rate today to 36 cents per gallon.

Governor Otter believes that people will be willing to pay more if 1) we ensure that we are accountable, 2) the fees are spread across all users, and 3) the fee increases are spread over multiple years.

The following is feedback that the Governor received from constituents at meetings about the gas tax when gas was over \$4 per gallon:

- Fuel tax is a pure user fee.
- It does not penalize those who drive limited miles.
- It doesn't overburden recreational vehicle use or those with multiple vehicles.
- It is a fee that people have control over. They can change their driving habits.

H 94 would raise Idaho's fuel tax by 2 cents per year over the next five years and generate \$17.6 million per year, \$88 million by the end of the five-year plan. The ITD's portion of this revenue would go into a restricted account that could only be spent on maintenance and operations of the State highways and bridges.

We must as a State take care of our roads and bridges; federal funds can't be counted on. They have strings attached. Any stimulus money we get will be one-time only. Our problems cannot be fixed that way. We must have ongoing revenue. This was confirmed by the recent Office of Performance Evaluations (OPE) audit.

To do nothing will cost us 6 to 10 times more for rebuilding in the future. Raising fees is difficult, especially in economic hard times. But we do have to act. If we can't, we'll have a great deal of backlog, unsafe conditions, and gridlocks. These can lead to a higher cost of doing business and a loss of opportunities.

We must have a plan that includes, if not this proposal, a different proposal. We are ready to work with all of you.

Addressing a question that was raised in the introduction hearing about the impact to tribes, each tribal agreement requires the tribes to increase their gas taxes by the same amount that the State does.

Mr. Doug Benzon, Economics and Research Manager, ITD, took the podium. In response to a question, **Mr. Benzon** asked **Pamela Lowe**, Director, ITD, what ITD's budget is for 2009. **Ms. Lowe** said it is about \$665 million, which includes the GARVEE request.

Mr. Benzon said he would step through the bill, section by section.

Section 1 contains a correction for the definition of duties and powers for the Fish and Game Commission.

Section 2, which starts on page 4, updates definitions in Idaho Code to include the definition of highway systems and operations. This was acceptable to the Governor's Office.

Section 3 deals with the Highway Distribution Account (HDA). As explained on page 5 of the bill starting on line 24, after money goes into the HDA, an amount would be taken out that is equivalent to the increase in the tax revenue above the current 25 cents. That money would go to the restricted account established in Section 4 of the bill.

Section 4 on page 6 establishes the Idaho Highway, Bridge and Railroad Crossing fund and says what it can be used for and the accountability required from the ITD and the Transportation Board. There are reporting requirements. The funds will be monitored and kept track of.

Section 5 on page 6 and 7 deals with the increase in the fuel tax over 5 years and establishes dates for the increases. The increases begin on the first of April each year because there is a two-month lag between the tax and the money being deposited. To get a full year of revenue, you have to start April 1. That is established on page 7.

Section 6 increases the annual permit fee for gaseous fuels. Instead of a dealer or distributor being taxed for gaseous fuel by the gallon, they can purchase an annual permit based on the weight of the vehicle, and the bill increases the permit amount. In the first year of increase on page 8, there is an increase that seems higher. This is because when we increased the fuel tax in 1996 from 21 to 25 cents, gaseous fuels were overlooked. So we are increasing the fee from 21 to 27 cents to be comparable to the other fuels. Then it increases by the same proportions as the other fuels for the rest of the time. Increases are in April.

The following issues were addressed during questions to **Mr. Kreizenbeck** and **Mr. Benzon**:

- The revenue generation figures in the Statement of Purpose (SOP) are based on a January forecast for 2009. The forecast assumes that it will be 2013 before consumption returns to the 2007 levels.
- In response to some questions about timing, **Mr. Dan John**, Idaho Tax Commission, said that an emergency clause is needed because the tax would go into effect (April 1, 2009) before the law would.
- Regarding the effect a tax might have on consumption, **Mr. Benzon** said that in his forecast, the elasticity was addressed. In Idaho, there are not many substitutes for using gas. There is mass transit in some urban areas and carpooling. But in much of the State, there are not many alternatives, so elasticity is difficult to forecast. When gas was \$4 per gallon, consumption went down, but not as much as he expected. In late 1970's when gas got to \$1 per gallon, consumption dropped quite a bit during a four-year period.
- **Mr. Benzon** said that gaseous fuels make up very small amount of gas consumed. The equivalent to anything over the 25 cents will be deposited into the special account.

- Concern was expressed that on page 6, construction is included for using the funds that come from the tax increase. But the reason for the increase is to collect funds for maintenance, per the audit. In response, **Ms. Lowe** said that construction can take many guises. Sometimes maintenance procedures are also used in construction, for example, seal coats and crack sealing. She said that all money used from the restricted fund would be for maintenance. The Department is committed to the priority of preserving existing roadways.
- Regarding any income from electric cars and biofuels, **Mr. Kreizenbeck** said that these are not addressed in the bill. However, at the recent National Governor's Association conference, it was apparent that all states are thinking about this, as well as the federal government. The Governor wants to examine many ideas, from basing things on vehicle miles traveled to coming up with an average that is electrical based. He wants to look at how to deal with these things in the long term and then come back with a presentation later, but not in this legislative session.
- Regarding rural Idahoans, Mr. Kreizenbeck said that the Governor will consider their unique needs in the long-term plan. Other states are thinking of taxing for vehicle miles traveled, which would be bad for rural Idahoans.

Mr. Tom Dale, Mayor of Nampa, took the podium as a representative for the Association of Idaho Cities. The Association began an initiative in 2004 to study transportation funding needs, and a report was delivered in 2006. It presented many options for raising revenue. The State has been falling further behind in keeping up with maintenance. The Association applauds the efforts toward an increase that is needed. The need is for a dependable, longer-term revenue source, not just one-time money. A gas tax increase, while not popular, is a necessary step in finding a solution.

Mr. Alex LaBeau, President of the Idaho Association of Commerce and Industry, took the podium. He said that there is a serious backlog of work for road maintenance. The Governor has taken the issue to the public and has listened, and we (the Association) appreciate this. We support the compromise legislation he has put here. It comes from many sources and has a long-term view. The committee has been wise in getting an audit and ensuring that money is being used efficiently. The executive and legislative branches are making it clear that 1) there must be increased revenue for maintenance, 2) there must be renewed accountability for putting the money into roads, and 3) the problems cannot all be solved in one year. We must have a long-term view and not manage by crisis. This is how business works, and policy should be developed this way.

When businesses look for expansion opportunities, transportation is one factor. They have to be close to customers or materials. We must have a good transportation system to get products to market and for employers to travel safely.

Another benefit of investing in transportation is the creation of work. We support job creation, and the Governor's plan to make it happen includes this bill.

Ms. Jane Wittmeyer, a legislative advisor representing the forest products business, took the podium.

We (forest industry) agree that the State of Idaho transportation infrastructure needs to improve. It needs expansion and preservation. We support GARVEE funding, as well as revenue enhancements to improve roads and bridges for safety and commerce.

Commerce runs on good roads, and Idaho roads need to be improved. In 2005, we looked to the legislature for solutions to a revenue shortage that was keeping some things from being maintained. We are supporting the Governor's efforts, including H 94. We hope you will make proposals that will help Idaho create a first class infrastructure.

We participated in some of the Governor's meetings and are of one mind in this issue. This is the worst market for lumber since the 1940s. Solutions are critical to the industry.

A question was asked of Ms. Wittmeyer about how people who drive large trucks feel about the miles driven formula for taxes. **Ms. Wittmeyer** said that the folks she represents don't own many trucks, but they utilize the goods and services of those who do. She said they are broadly supportive of anything that makes revenue better, but she can't be more specific about the trucking issue.

Mr. Mark Dunham, Executive Director of the Idaho Association of General Contractors (IAGC), took the podium. He said that we (the IAGC) are in favor of the Governor's package.

The AGC was created during the Great Depression, and our mission of helping members weather the economic times and advocating for responsible policies is the same today. On our 75th anniversary, we have over 1000 member companies that include contractors and subcontractors, and that employ thousands of Idahoans. The IAGC health plan insures 6000 people. We are actively engaged in the political process.

I've been on the road for over four weeks recently visiting with members, and I attended the transportation funding conferences last summer throughout Idaho. From my perspective, the main issue is about jobs. My members are laying off scores of workers for the first time in generations and are eliminating healthcare. Some are leaving the state or going bankrupt. This is about jobs for people in your towns. For this reason, we are here supporting the Governor's multi-year plan.

What would an investment in Idaho transportation do? The AGC of America released a study conducted by George Mason University for Idaho showing that if Idaho invested \$250 million additionally into transportation, the following would result: over \$500 million would be added to the State GDP and 6,000 Idaho jobs would be created or sustained.

We urge you to follow the audit and invest in transportation funding through the Governor's plan.

During questions after the presentation, the following issues were addressed:

- A concern was raised that the legislature has been told that the Transportation Department is not working. Yet, the legislature is being asked to give more money to it. It seems to be bad business to spend more money if what is being done is not working. **Mr. Dunham** replied that the ITD does need to be accountable. The IAGC is bringing ideas to the ITD, and they are responsive. The audit gives a roadmap of accountability, and the Governor is also focused on implementing performance measures.
- A question was raised about construction costs. In many meetings it has been stated that the cost of road construction will continue to increase 10% to 15% per year, projects are not being funded, and people are looking for work. But how do we tell people that we will raise taxes to spend more, when every other industry seems to be experiencing diminishing costs, rather than rising costs? **Mr. Dunham** answered that construction materials for transportation are different. We (the State) don't have a refinery, so we have higher prices for asphalt. We have only one supplier in Idaho. Other items are also not fluctuating like they are for residential construction. So the analysis is that commercial construction costs are going down, but not the costs for transportation.

Another concern was that construction people are saying that road construction projects in subdivisions are going down in cost. If that is true, why are costs not going down for Statewide transportation projects? **Mr. Dunham** said that he had some statistics about the prices of materials for transportation that he could provide. He could also get some information about what is being done to obtain more materials within the U.S.

- When asked how transportation needs can be addressed given the State's size and differing climates, roads, populations, etc., **Mr. Dunham** said that the ITD has different formulas for different regions so that they can put a regional perspective on things.

Dave Carlson, Public Affairs Director, AAA Idaho, took the podium. He noted that gas prices have been very volatile, especially in the last six months. They reached a high in mid July, and then it was "demand destruction" with the largest single price decline in about 30 years. Today's lower price makes this discussion possible. We doubt we will return to \$4 or \$3 this year, so this may be the best time to talk about raising taxes. But we don't really know where prices will go.

Fuel taxes help spread costs among users, even those who don't live here; they do this better than other methods. The surveys we have done about them have shown that the public perception is not friendly, but it is not hostile. Our members have said that if we do a increase, do a small

one rather than doing something major. They said (10 years ago) that they don't mind paying extra if it goes to the roads.

We support H 94. The purchasing power of the current gas tax is not keeping up with the backlog of needs. Maintenance and repair costs are going up. We support raising fees incrementally. Other states are doing this and it makes sense. If a family with one car uses 600 gallons per year, the increase will mean \$12 for the first year, or with two cars, \$24. By the end of year five, a two-car family is paying \$120 per year more for the increase. It moves us in the direction of filling the \$240 million annual shortfall.

During questions after the presentation, the following issues were addressed:

- Several questions were asked about how the effects of fuel prices and the amount of the tax affect AAA's support. **Mr. Carlson** said that a new report came out from the safety transportation board that advocated a tax structure based on vehicle miles traveled. He said given the \$240 million shortfall yearly, even small steps need to be taken to address the issue. If fuel prices become high later, he doesn't know if AAA would support the five-year plan, but a two-cent increase now seems like a reasonable start. Regarding the bill that proposes a 5 cent increase, he said it is good to have options, and that bill provides a faster running start. Also, it provides a definition of an account that AAA likes because it is specific and to the point.

Stuart Davis, Executive Director, Idaho Association of Highway Districts, took the podium. He said that the Association supports the Governor's package. Things are most dire. Some places may grind pavement and go back to gravel. He attended the seven meetings around the State. Citizens are ready to pay if they know where the money is going.

Mr. Skip Smyser, attorney and legislative advisor representing the Idaho Trucking Association, took the podium. They (those he represents) support the Governor's proposal and specifically H 94. The phased in approach is good because it allows the ITD to know the increases in income that will happen and they can deal with it. Also, it gives the trucking industry a chance to deal with the tax increase in an orderly fashion and consider it as contracts and other business things come up. It also helps the audit suggestions to be implemented. If things do not go the way they should or gas prices go way up, things can be reconsidered before the taxes are imposed. We have had many members declare bankruptcy; sole proprietors have walked away in great numbers. Tax increases are hard considering this, but they are necessary.

Congestion must be addressed. We lose money every minute we are stuck. Cutting back on snow removal and things also have a big effect. Bridges with reduced limits cause detours that could mean many additional miles. We must go forward and deal with these issues.

During the questions following the presentation, the following issues were addressed:

- **Mr. Smyser** said they would definitely not support a mileage tax,

rather than a gas tax. Because of the environmental constraints, fuel efficiency has gone down. The mileage system creates a bureaucratic nightmare with so much bookkeeping. They had a “ton mile” system before, and the members do not want to return to a mileage system. One problem is that payment is done basically on the honor system. Imagine a retailer not charging tax, but purchasers just sending in what they owe to the government for tax. You would have to hire so many auditors. The mileage system doesn’t work as well as a fuel tax or a registration system.

- When asked whether his group would support a “local option” type of scenario in which local groups of county government and highway districts can tax themselves for highway road projects, **Mr. Smyser** said that if this comes forward, he could take it to them, but he doesn’t know right now. He said it would probably be a difficult thing in Ada County. Many members could drive to the fuel stop in Elmore county or somewhere else to avoid paying the tax. If you put a hodgepodge of taxes across the state, they will do these things to avoid them.
- When asked what his group would think about a 5 cent one-year tax, **Mr. Smyser** said he wasn’t certain; he would have to ask them. Having the ability to plan is attractive. If you pass something with an emergency clause that happens suddenly, it is hard to handle as part of the business.
- A question was asked about the “ton mile” system. Don’t members have to keep track of miles now? **Mr. Smyser** replied that record keeping for a mileage system is different from what they have to do now. He’s been involved in 20 audits, and when a mileage system is involved, the audits involve fights about things like which gate you entered because it changes your miles. The record keeping is different from keeping broad-based mileage records. Under a mileage system, it becomes very detailed.

The federal system only cares about keeping track of all the miles. It isn’t nearly as detailed.

- Regarding a question of how the timing of the fuel tax increase implementation might affect contracts, Mr. Smyser said that having more time is better. The industry people can handle two cents this year, and they would be prepared by knowing that two cents is coming every year. He doesn’t know how it might affect the duration of contracts.

Mr. Dan Chadwick, Executive Director, Idaho Association of Counties, took the podium. He said that the Association supports H 97. They need the comprehensive approach that this presents.

During questions, the following issues were addressed:

- When asked whether 38% would be enough for local jurisdictions, **Mr. Chadwick** said that \$18 million is the county portion for this year. They encourage the jurisdictions to plan carefully. He doesn’t think money will be sufficient after four years. But the 38% seems appropriate and

fair right now.

- When asked about local options, **Mr. Chadwick** said that they support local options in addition to what they have. They already have local option registration fees in some areas. They've had elections in some parts of the state that have not been successful. Rep. Labrador's bill provides more opportunities.
- **Mr. Kreizenbeck** pointed out the following about the funds in H 94 above the current 25 cents: only the State's portion will go into the special account. The local jurisdictions will still get their 38%.
- In response to a question, **Mr. Benzon** said that he could get the data regarding the volume of gas that Idaho consumes.
- **Chairman Wood** said that the Governor's Office has a flow chart that might answer many questions.

Ms. Julie Pipal, Director of Legislative Affairs, Boise Metro Chamber of Commerce, took the podium. She said that members of her coalition have spoken to the fluctuations in gas prices and say they can deal with a change in the gas tax. Also, regarding the previous questions about construction and materials costs, they can get some answers about pricing.

Ms. Pipal said that she represents the CEO Coalition on Transportation, which consists of more than 70 members across the state. They (the coalition) agree that action must be taken to address freight mobility and congestion.

They support the setting of priorities and the requirement for performance measurements and reports by each transportation entity. These things should help ensure a return on investment.

Over the last six months, they have shared their positions with the Governor from a business perspective. Their work is reflected in the Governor's plan. They are also prepared to talk with any member of the committee at any time.

Ms. Pipal said that an accountability system for transportation funds must include transparency and communication among all parties. This can be achieved by identifying an executive branch representative, and the Governor has assumed this role. They also support investing in a data management system to assess statewide costs so that user fees can cover the costs of services.

They don't believe that fuel taxes and registration fees look to the future, but those are what is available to work with. They support, in tandem with using accountability measures, increasing registration on passenger vehicles and increasing fuel taxes to restore 1996 buying power. They also support H 151 and H 96.

They want a statewide transportation plan that minimizes regionalism. They believe the following things need to be kept in mind: 1) The HDA is 21 million below actual amount received in 2007. The HDA received just over \$331 million in FY2007, and the FY2009 forecast is about \$310 million. Considering just fuel tax, it would take a minimum of a 3 cent increase to get Idaho back to where it was in 2007. 2) An investment in transportation provides at least a two-to-one return as those dollars pay for materials and wages, which in turn flow to retailers and the service industry. 3) Every \$1 million investment in transportation results in 22 jobs. 4) The stimulus money and GARVEE can be used to create jobs in Idaho.

Ms. Pipal repeated the Coalition's priorities: 1) implement accountability 2) set priorities 3) require performance measures in tandem with accountability, and 4) increase revenue.

A comment was made that if we get a two-to-one return, perhaps we should spend a billion dollars. **Ms. Pipal** said that if the benefit would indeed reach that, they would support spending such a high amount. But if the market won't bear it any more, you reach diminishing returns.

Mr. Ken Burgess, Legislative Advisor for the Community Planning Association of Southwest Idaho (COMPASS), took the podium. COMPASS is a metro planning organization (MPO) for Ada and Canyon counties. The purpose of an MPO is to provide coordinated transportation planning between local entities. The federal government requires the creation of an MPO to receive federal transportation funds when the population of an area reaches 50,000. An MPO board is made up of representatives of all the municipalities, counties, and highway districts in the region, and it includes the ITD. In Idaho, there are four MPOs in addition to COMPASS.

Local transportation planning agencies have developed long-range plans, but funding is not available to implement them. The State's current funding structure is not meeting current needs and not providing for future needs. The transportation investment must increase. The Governor has proposed a reasonable vision that includes H 94. The increase in the fuel tax is a logical first step. It is a user pay funding mechanism that is low compared to other states. Fuel consumption and road wear are linked, and people understand this. They just don't want large one-time increases.

COMPASS believes that the Governor's plan and this committee should be sure that dollars are used efficiently. They would also like a funding mechanism that is less subject to fluctuating fuel prices and consumption patterns. Development of more fuel-efficient vehicles and alternative fuels make this important. But they do support H 94.

Ms. Annie Henna, Legislative Advocate Intern for the Roman Catholic Diocese of Boise and Catholic Charities of Idaho, took the podium. She stated opposition to H 94 or any bill that raises the gas tax. Transportation projects are important but should not be funded this way. Raising the tax by any amount would affect working families. She introduced a hypothetical "Jones family" consisting of a mother, father, and two children. Their one car gets 25 miles per gallon and they drive about

12,000 miles per year, using 480 gallons of gas per year. A 35 cent tax means they would be paying \$168 per year in gas taxes. This is equivalent to 65 gallons of milk, a month of home heating, 3 primary care doctor visits, or 6 months of Mr. Jones' heart medication (if generic, 2 months if not).

Other testimonies today have mention two vehicles. Most Idaho families have only one and cannot afford the most fuel efficient ones. The importance of this illustration is that many real families are like this; 40% of Idaho families with children are considered low income, and 13% are considered to be in poverty. This is the problem with the tax.

When the legislature voted against the beer and wine tax, they said that the hard times were a factor. That same factor applies here. We should not raise taxes during these times. Please keep the Jones family in mind when you consider the tax.

During the questions following Ms. Henna's presentation, the following issues were addressed:

- **Ms. Henna** said she was not advocating complete removal of the current tax. The current tax does already have an impact, but a further increase would be worse.
- A comment was made that a helpful number to look at would be the additional burden per month, which in this case would be \$48 per month. If the committee could get information about what the typical family's monthly resources are and how they have to spend their money, it would be good. **Ms. Henna** said that she could get those numbers. She explained that low income families make 200% of the poverty level, and the poverty level is \$22,000 per year or less.
- She said that she had not discussed the registration increases with the charity groups. They are most concerned about the gas taxes.
- When asked what she would recommend rather than gas taxes, **Ms. Henna** said that the position of the charities is that the state of Idaho provides large corporate tax credits. If this were reduced by a little (example, \$200 million), that money could be used instead.
- It was noted that no private citizens had signed up to testify about the bill.

Mr. Kreizenbeck took the podium to wrap up his testimony for **H 94**. He said that the Governor has a plan that can be discussed later to deal with the accountability issue. We (State government) will work toward culture change at the Department for accountability. The Governor wants to be able to go to one person with information about what we want and what the Department has provided.

The reason we chose 2 cents over 5 cents was that we listened to stakeholders. People said to spread out the pain. We didn't bring up additional bonding because of various issues. We believed that 2 cents for one year would not meet needs, but 10 cents would, and we wanted to

spread this out. When you are in Boise filling up, you can find a 2-cent difference in prices. The effort is toward being gradual and making increases as small as possible.

H 135 and H136 **Chairman Wood** asked **Rep. Smith** to present for both pieces of legislation (**H 135** and **H 136**) because they are so similar.

Rep. Smith said that over the last three or four years, we (the legislature) have not responded well to requests from the ITD and Governor, and we don't want to repeat this pattern.

Last year, we worked hard to put together bills, and nothing made it through. But we did get an audit to find out what was wrong with the ITD and what was needed. The \$450,000 audit was timely and under budget. It was clear on two points: 1) Maintenance and preservation of highways is poor, and 2) We need to put money in so that there is no more deterioration.

The premise was that even the Governor's proposals would fall short of what is needed for maintenance, which page 61 of the audit says is \$153 million per year. If the ITD does the worst roads first, they can't do preservation. We've heard varying figures of how much it would save to do preservation in a timely manner.

Pages 15 and 16 of the audit say to put \$157 million into maintenance and preservation and do not siphon off any money for construction projects. About 35% of roads need help. Idaho roads are worse than peer states. Also, the report said that a pavement management system is needed to control the pavement needs. What should we do with the audit? Should we put it into practice?

H 136 addresses these issues. It provides a 60-40 split, with 40% going to local jurisdictions. We have to take care of them too; they are hurting badly, with many people being layed off. The 40% is probably fair.

The bill raises the current 25-cent gas tax to 30 cents effective July 1. All of the 5 cent increase goes into a maintenance and preservation account, not into the HDA. It cannot be spent until the ITD has a statewide pavement management system in place. The local portion has no restrictions, however.

Page 2 of the bill mandates that the fund will be used only for the maintenance and preservation of state highways that are in use. No new capacity projects will be provided for from the fund.

The increase would generate \$44 million; \$26.4 million would to the ITD and \$17.6 million would go to locals.

Rep. Smith compared H 135 to H 94. He said he believes, after talking with many legislators, that a 10 cent increase will not be accepted. The stage-in seems practical, but the ITD needs the money for maintenance as soon as possible. Another difference is that the Governor's fund includes construction in the wording and seems all encompassing. H 135 and H 136 call it a dedicated fund that more clearly limits what the funds can be used for.

Rep Wood's bill (H 136) increases the gas tax by 2 cents. She thought that is where we could start to get something done. It would generate \$10.6 million to the ITD. He doesn't think this is enough. H 135 increases the tax by 5 cents all at once. He believes that five cents is not going to make a big difference. Prices fluctuate this much almost weekly.

Rep. Smith referred to the chart that he created for comparison purposes. It shows the money that goes to the ITD and the percentages that apply.

During the questions after Rep. Smith's presentation, the following issues were addressed:

- The reason that the funds from some things go into the HDA while those from other things go into the special fund is that some things, such as ethanol, must go into the HDA. You can't separate that out.
- A question was raised about the \$18 million to help locals. Given this amount, would we still need to give 40% of the special account to them? **Rep. Smith** said he wasn't sure how many of the counties would have any of the \$18 million available to them because it applies to only a few of them.
- When asked what he thought about taking \$3.2 million only from the HDA, Rep. Smith said that he didn't want to see the State Police removed from the HDA because he doesn't know if the Joint Finance-Appropriations Committee (JFAC) can make up the difference.
- When asked what a realistic timeframe would be for the implementation of the statewide pavement management system if funds were made available now, **Rep. Smith** said that the Transportation Board is already promoting this. Some question the cost, and some say that their own system in their district is cheaper. They do have pieces of it. He doesn't know how long it will take. It may be done in stages. They won't have all the money for a few months anyway. When accumulation is there, they could have some of the system in place at least.
- **Director Lowe** said that they (the ITD) have wanted a system for a long time and have researched the kind of system they would like. The systems are complicated and can't be implemented really quickly. The Utah Department of Transportation spent about four years, North Carolina took two years, and Virginia took four years. The Board does support a pavement management system. The only way to currently fund one is by cutting one or more projects, and they don't want to do this.
- **Mr. Tom Cole**, Chief Engineer, ITD, said that pavement and maintenance management go hand in hand. Vendors link them even though they can run independently, but they work best together. The process is as follows: Do an RFP and evaluation of vendors, buy the system, fine tune the system to Idaho needs, collect data, put the data in the system, and then train users. If they start a pavement management system in April of this year, October of 2011 is when they estimate that it would be fully used. A maintenance management system would take until about the end of 2012. Because there are

more parts to using it, it takes longer to complete.

Mr. Cole explained that the ITD used to have a maintenance management system. It gives you a high level look at what the State can do. But the place where you get the most benefit is in the districts. Given the many things that go on in each district, the system is critical to doing things more efficiently as the audit recommends.

- **Rep. Smith** said that he could work with the Governor's Office and with the ITD to tweak the bills. If the time to implement the system needs to change, they could work on this.
- A question was asked about page 2 lines 28 and 29. If a bridge needs to be replaced and a future capacity projection says it needs to be four lanes instead of two lanes, would that "new capacity" be prevented? **Rep. Smith** answered that yes it would be, from the dedicated fund. But this would be a STIP project or something for GARVEE. When asked if the dedicated funds could be used to maintain the bridge, **Rep. Smith** said that the ITD has been very imaginative in the past. They could probably arrange this.
- A question was raised about whether money in the FY 2010 budget will fund the \$6 million system or the \$10 million full system. **Rep. Henderson** said that he works on the transportation budget, and he plans to bring a proposal that creates opportunities in the budget for some efficiencies that will equal this. JFAC wants to find the funding to make the efficiency things in the audit happen.
- **Rep. Smith** said that while everyone seems to have different ideas, the consensus seemed to be that one year was necessary and at least 5 cents was necessary to be meaningful.

Chairman Wood said she also wanted to do a brief presentation regarding **H 135**.

HB 135 follows the Governor's bill by proposing a 2 cent increase. She talked with many other legislators too and found that while the Governor wants a five-year plan, others would like to see us do something with the audit. They would be more willing to increase 2 cents the first year and see if the audit is implemented. They also want to see what is in the stimulus and in reauthorization and then see where we are in a year.

Some have said they will not vote for any increase. Her feeling is that 2 cents is better than nothing. She is very nervous about the locals. Her district has many small areas in need of help. She agrees with Rep. Smith that 40-60 is a good split.

The committee has seen what the Local Highway Technical Assistance Council would do with the funds.

During the questions after Rep. Wood's presentation, the following issues

were addressed:

- A comment was made about what Utah is doing. One thing not mentioned is that they track revenue from auto related sales and allocate 17% of that to their transportation department. We'd like to do that sometime in future. Rep. Wood said that the Governor has agreed to this. It is a component of what he would like to do.

Chairman Wood said that the committee would vote on the bills at a later date.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 4:20 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

- DATE:** March 2, 2009
- TIME:** 1:30 P.M.
- PLACE:** Lincoln Room, Idaho Supreme Court Building
- MEMBERS:** Chairman Wood (35), Vice Chairman Hart, Representatives Smith, Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd, Ringo, King, Ruchti
- ABSENT/
EXCUSED:** Rep. Roberts
- GUESTS:** Julie Pipal, Boise Metro Chamber of Commerce; Halley Rush, BMCC; Alan Frew, ITD; David Tolman, ITD; Mollie McCarty, ITD; Alex LaBeau, ID Assoc. of Commerce & Industry; Dustin Kuck, Governor's Office; Tom Cole, ITD; Amy Smith, ITD; Mark Dunham, Association of General Contractors; Tom Dale, Mayor of Nampa; Roy Eiguren, lobbyist; Zach Hauge, Capitol West; Dennis Tanikuni, ID Farm Bureau; Skip Smyser, ID Truckers Assoc.; Roger McBreun, DFM; Jane Wittmeyer, Intermountain Forest Assoc.; Garret Nancolas, Mayor of Caldwell; McKinsey Miller, lobbyist; Ken Burgess, Compass; Alan Hart, District 19 precinct committeeman; Stuart Davis, ID Assoc. of Highway Districts; Jeremy Pisca, ID Building Contractors Assoc.; Keith Allred, The Common Interest; Dave Carlson, AAA of Idaho; Jayson Ronk, IACI; Mark Buthurk, IACI; Roger Seiber, Capitol West; John Watts, Chamber Alliance; Tony Poinelli, ID Assoc. of Counties
- Chairman Wood** called the meeting to order at 1:30 p.m. and a silent roll was taken.
- MOTION:** **Rep. King** made a motion to approve the minutes from the February 10th, 2009 meeting as submitted. On a voice vote, **the motion carried.**
- MOTION:** **Rep. Mathews** made a motion to accept the minutes from the February 12th, 2009 meeting as submitted with the following change; add "silver" before "metals" on the fourth page and add "silver" before "wholesale" also on the fourth page. On a voice vote, **the motion carried.**
- H 98:** **Jason Kreizenbeck**, Chief of Staff for the Governor presented this bill to the Committee. He explained that **HB 98** deals with increasing the standard motor vehicle registration fees for passenger cars and other vehicles. He explained that **HB 98** is the result from Governor Otter's travels around the state and hosting meetings with many citizens and legislators about how to maintain and improve Idaho's roads and bridges.

The Governor's comprehensive plan focuses on three main areas which include improving the accountability and efficiency of how services are delivered by ITD, generating new revenue, and looking to improve the future of the state's transportation system.

Mr. Kreizenbeck summarized the Governor's comprehensive proposal. He made the following points: ITD needs a long term solution and stable funding source, Idaho is a "user pay" state and relies on fuel taxes and registration fees to maintain the system, ITD needs to find efficiencies in its delivery of services, a creation of a restricted account where all new funds would be deposited needs to be established, the Governor has proposed the creation of an annual ITD Accountability Report, the Governor proposes to appoint a task force made up of Idaho CEOs to perform a Peer review of ITD, and all existing and new revenue should be spent by priority with measurable and reportable results.

Mr. Kreizenbeck explained that **HB 98** would keep Idaho's registration fee system for passenger vehicles on a graduated scale that moves based on the age of a vehicle. The proposed increase would be implemented over five years and increase gradually. Light trucks would see a similar percentage increase on an annual basis.

If the proposal is implemented, at the end of five years, passenger vehicles 1 to 2 years old would pay a total cost to the state of about \$120 annually, or about \$10 a month. Vehicles over 8 years old would pay a total cost to the state of \$50 annually, or just over \$4 a month.

The Governor is proposing to increase registration fees by 5% on commercial trucks. He would then appoint a Task Force on Truck Transportation during the summer of 2009 to study the validity and inequities of the truck registration system.

Mr. Kreizenbeck explained that after five years, **HB 98** would generate about \$57 million in new revenue. He further explained that an amendment will have to be made to the bill to create the proposed restricted account to deposit these funds into.

Alan Frew, Motor Vehicle Administrator from ITD discussed the specifics of **H 98** with the Committee. He explained that the proposal provides a one time 5% increase in registration fees for trucks. New revenue from truck registration would be \$13.6 million revenue increase in the first year. The total would be 52.8% over their base. The increase would be effective on Jan. 1st, 2010.

Mr. Frew outlined the increases for other vehicles which would be phased in over five years. There is a fee increase for motorcycles of \$5.50. Effective 2011, there would be a 10% increase of fees followed by a 12.5% increase in fees, then a 15% over the previous year and the final round of increases would be a 17.5% increase over the previous year. Mr. Frew discussed each category of vehicle and the proposed increases in fees.

In response to a question regarding if the fees were incorporated from the Senate bill, **Mr. Frew** explained that **H 98** addresses different fees.

In response to a question regarding the average registration fee for commercial trucks, **Mr. Frew** explained that interstate trucks operate at the lower end of fees. Idaho carriers pay the full amount of fees if the fleet operates 50,000 miles per year.

He further explained that other states have similar programs and some states have excise taxes. He felt that with a 5% increase, Idaho would not be losing any trucks.

He explained that most logging trucks are in the 80,000 pound category.

In response to a question regarding fees for antique vehicles, **Mr. Frew** explained that registration fees on classic plates which are required on antique vehicles will increase with this bill.

In response to motor home fees, **Doug Benzon** from ITD explained that motor homes are registered by the age of the vehicle and then owners are required to pay a fee to Idaho Parks and Recreation. He further explained that depending on the age of the motor home, fees would be within the range of \$48 to \$204 annually.

In response to a question regarding how many people purchase two year license plates, **Mr. Benzon** explained that about 5% of people purchase these plates. He further explained that this percentage has gone up, but it is not a significant impact to overall funding.

Mr. Frew provided a handout to Committee members regarding the fees for registering cars in Ada county compared to surrounding states. He explained that the different fees include ACHD fees, EMS fees, Choice fees and administration fees. (The handout is attached to these minutes.)

Alex LaBeau, president of the Idaho Association of Commerce & Industry **spoke in support of H 98**. He explained that it is a realistic plan based off of work that has been done traveling around the state listening to citizens. He further explained that there will likely be compromise language coming forward. He explained that there is a need to increase revenues to continue to maintain public property and renewed accountability is needed to put most of the money into roads. He explained that IACI is supportive of the audit, to ensure that ITD is accountable, and they do not believe that this problem can be solved in one year. He further stated that **H 98** is a well thought out long-term philosophy and there is a need for good roads to get products to market and get employees to and from work safely. He concluded that IACI supports job creation and supports this bill.

Tom Dale, Mayor of Nampa and Vice President of the Association of Idaho Cities, **spoke in support of H 98**. He explained that the current level of funding is not sufficient to fit the need for Idaho's roads.

Rep. Labrador commented that Idaho's corporate tax index ranks 29th in the nation and questioned Mayor Dale about how he would attract people to live and work in his city. **Mayor Dale** responded that there is a need to have a viable and long-term transportation system.

Roy Eiguren, representing the Amalgamated Sugar Company and the Northwest Grocery Association **spoke in support of H 98**.

Skip Smyser, representing the Idaho Trucking Association, **spoke in support of H 98**. He explained that the Association has appreciated the Governor's willingness to better understand the entire trucking industry. He further explained that Idaho has the third highest truck registration in the country and there is still a lot of information that needs to be brought together. The Association supports the Governor's recommendation of looking at other funding mechanisms. He explained that the trucking industry is very important to the state and the vitality of the state is tied to the vitality of the trucking industry.

In response to a question regarding the drop in trucker registration in the state, **Mr. Smyser** explained that he did not know the reason why there was a drop. He explained that truck registration fees were last raised in 2003 and car registration fees were last raised in 1996.

Jane Wittmeyer, Vice President of the Idaho Forest Association, **spoke in support of H 98**. She explained that the Association has an interest in what happens on state highways and there is a need for improvement. The Association supports a long term package that provides adequate revenue that can be used in the improvement of Idaho's roads. She explained that it is critical that ITD does its job and does it well.

Garret Nancolas, Mayor of Caldwell **spoke in support of H 98**. He thanked the Committee for what they are doing to address transportation issues. He also applauded the efforts of the Governor to increase revenues, and an increase in fees is a necessary and appropriate step.

Tony Poinelli, representing the Idaho Association of Counties, **spoke in support of H 98**. The Association feels that the bill addresses the transportation system as a whole.

H 148: **Rep. Leon Smith** presented this bill to the Committee. He explained that **H 98** is a comprehensive plan and it generates a lot more revenue for the highway system. **H 148** states that the increased fees on motor vehicles will raise an additional \$28 million dollars, of which \$24.9 million will go into the "maintenance, preservation, and restoration" fund. Sixty percent (60%) of the \$24.9 million (\$15 million) will go the Idaho Transportation Department, and approximately \$10 million will go to local units of government.

He explained that **H 149** is almost the same as **H 148**. The difference is that in the category of vehicles over 8 years old, HB 149 has a \$30 charge and HB 148 has a \$40 charge.

He explained that JFAC is trying to get \$6 million into the ITD budget to address maintenance software systems and ITD is working toward that goal.

H 149: **Chairman Wood** explained that **H 149** came about because she found there was no support for a five-year plan, so she worked on offering a

one-year plan for consideration.

She explained that the OPE audit on ITD was worth the money to show how to better utilize dollars in the state. She further explained that the reluctance of going with a five-year plan is why there is **H 148** and **H 149**, but it is time to take a look at what the Governor's long-range plan is.

She announced that the Committee would hear testimony from individuals who wanted to speak to all of the bills.

Julie Pipal, representing the CEO Coalition on Transportation addressed the Committee. She explained that the Coalition supports raising revenue through a user-pay philosophy from a variety of sources and there should be a phased approach to any infrastructure plan for Idaho. The Coalition supports increasing registration fees on passenger vehicles to restore 1996 buying power and to keep the state whole.

Mark Dunham, representing the Idaho Association of General Contractors, **spoke in support of H 98**. He explained that the Association feels that it is a comprehensive approach and it is important to address this year. He further explained that the reality of problems were highlighted in the audit on ITD and realistic funding needs to be addressed. He explained that the OPE report suggested that there is a need for \$240 million in increased revenue, but today it is closer to \$174 million. There is a need for a five-year phase in.

Alan Hart, Precinct Committeeman in District 19, explained that people in his district are not in favor of an increase of taxes and fees. He commented that in difficult economic times, increases are detrimental to the state.

In response to a question regarding what suggestion or ideas he would have to solve the transportation issue, **Mr. Hart** explained that the state should try to cut out parts of government that are unnecessary and see what is not essential and take it away to provide revenue. He further explained that the state should look at shifting funds into fixing roads, and there is a need to think outside of the box.

Stuart Davis, representing the Idaho Association of Highway Districts explained that the state has not addressed the transportation funding problem in 13 years. The Association **supports the Governor's plan** and would stand behind any compromise language.

Dave Carlson, representing AAA Idaho addressed the Committee. He explained that AAA Idaho is supportive of the Governor's efforts to address this issue, however they **oppose H 98**. He explained that highway users should pay for what they use. He provided to the Committee a handout that showed varying rates of increase in fees and discussed two highway cost allocation studies (attached to these minutes). He explained that the studies concluded that contributions of large trucks fail at a time when the contributions of other vehicles are rising. The recommendation of the studies state that the existing registration system should be evaluated relative to evasion of user fees and the existing registration system should be examined relative to revenue generation and efficiency.

He explained that **H 98** increases dramatically registration fees for other vehicles other than trucks. He further explained that registration fees cannot allocate needs to recognize that people drive at different mileages. He explained that cars and trucks together pay registration fees now of about \$100 million. With the proposed legislation, car and light truck owners would have to pay \$57 million additionally and commercial trucks only \$2.4 million. He concluded that cars are overpaying and trucks are underpaying.

Mr. Carlson explained that the Governor has considered a fee for registration for vehicle miles traveled. He further explained that if this is done, it would replace the need for a gas tax, but most likely rural Idaho would not support this.

He explained that AAA would support a program that is mileage based. Mr. Carlson explained that AAA is opposed to **H 148** and **H 149**.

Keith Allred, representing The Common Interest, addressed the Committee. He explained that his group does not support or oppose **H 98, H 148 and H 149**. He further explained that his group recommends that the Legislature consider raising revenue on an equity basis and people should pay proportional to the cost they use. He explained that each bill contains new inequities that are not there currently. He further explained that the 2007 cost allocation study results are not final.

He explained that cars are overpaying and trucks are overpaying and the proposed legislation would create an inequity that would have to be addressed.

In response to a question regarding equitable ways to generate revenue, **Mr. Allred** explained that it is tough to come up with a perfect user system, but we can do what is fair in the meantime. He explained that he feels the gas tax is more fair. He further explained that he felt that registration fees should go up with the weight of the vehicle.

He explained that in Oregon, Cost Allocation Studies are done every two years and then the Legislature has to address taxes and fees accordingly. He recommended that the state set a policy this year to hold ourselves to cost responsibility.

Chairman Wood commented that there is a need to look at the veracity of the Cost Allocation Study and if Idaho decides to do a similar study, the state should look at the possibility of hiring outside professionals.

Mr. Kreizenbeck concluded that the state has been examining the transportation problem for a long time and knows that there are no simple solutions. He explained that the bottom line is that people want good road and they expect government to provide these roads.

He acknowledged that there are concerns about where Idaho ranks in registration fees and more study is needed. He explained that the Governor agrees that there are inequalities in the system. He explained that the problem with raising fees on trucks is that they can go to other states to register.

He explained that roads continue to need an additional funding mechanism and a long stable funding source for ITD. There is a need for a comprehensive plan. He further explained that a perfect plan will not come around, but there is a need to find out what is workable. There will be inequities, but the state needs to make a decision and move forward.

Chairman Wood announced that the Committee will not take a vote on fuel tax or registration tax as yet, but will look at other bills and make a determination as to how to vote at a later date.

ADJOURN:

There being no further business to be brought before the Committee, **Chairman Wood** adjourned the meeting at 4:00 p.m.

Representative JoAnn Wood
Chairman

Claudia Howell for
Cindy Williams, Committee Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 4, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Rep. Roberts

GUESTS: See attached committee sign-in sheet.

Chairman Wood called the meeting to order at 1:32 p.m.

MOTION: **Rep. King** moved to **approve the committee meeting minutes of February 16, 2009, as written.**
Motion **carried on voice vote.**

H 93 **Mr. Jason Kreizenbeck**, Chief of Staff, Governor's Office, presented **H 93**. He explained that with a minor change to Rep Smith's bill (H 133), he would ask the Committee to not support H 93, but support H 133 instead.

The concept for H 94 is a 6% fee on the daily lease of rental cars. This was discussed last year as he met with people around the State, and it did not generate controversy at that time. The concept of the Governor's plan is to increase fees across the board but make them minor.

H 93 would generate \$2 million in revenue, and the funds would go to a restricted account. The Governor's Office has come to agreement with H 133 regarding the name and purpose of the account.

Other states have a rental car tax: Utah 6.5%, Nevada 6%, Wyoming 4%. The tax spreads the cost of road maintenance to those who visit the State. One change discussed with Rep. Smith related to H133 is distribution of funds. The Statement of Purpose (SOP) indicates a 60-40 split between State and local jurisdictions. The Governor's proposal uses a 62-38 split which is in Code now. Rep. Smith said he would change his SOP, so please consider H 133 instead.

MOTION: Rep. Smith **moved to hold H 93 in committee.**
Motion **carried on voice vote.**

H 133 **Rep. Smith** presented **H 133**. He asked permission to refer to H 93 as he presented, and Chairman Wood approved.

Page 4 lines 1-3 describe the tax. Lines 32-35 state that "All moneys collected or received by the state tax commission from the taxes, penalties, interest and fees imposed by this chapter shall be deposited

with the state treasurer to be credited by him to the highway, maintenance, preservation and restoration fund under 35 section 40701A, Idaho Code..." This is the difference between H 93 and H 133. In H 93, funds go to the restricted fund, the Highway, Bridge and Railroad Crossing fund. Both funds refer to the same statute.

The gas tax bills describe the distribution between locals and the ITD. Because distribution is not relevant to H 133, The SOP should be changed to strike the last line: "By the terms of that dedicated fund, 40% will go to local government units, and 60% will go to the Idaho Transportation Department."

During questions, the following issues were addressed:

- To answer a question about the percentage of rental cars rented by residents versus out-of-state people, **Mr. Doug Benzon**, Economics and Research Manager, ITD, said that when the bill was developed, Utah was used as a model and things were scaled down to Idaho's population. But residency was not broken out.

MOTION FOR H 133 SOP

Rep. Jarvis moved to **change the SOP for H 133 per Rep. Smith's request.**

Motion **carried on voice vote.**

During further discussion, the following issues were addressed:

- When asked to clarify the difference of the fund mentioned in the bills, **Rep. Smith** said that the bills put the receipts into different funds. The Code section referred to in both bills is the same, but the funds are called something different. The gas bills amend the section and this does too. The distribution will be hashed out later.

Mr. Kreizenbeck said that the Governor's Office and the ITD have come to an agreement as to the terms of the account and what it is called. The accounts are the same, though. The distribution split is addressed in different pieces of legislation.

Chairman Wood called for people who wanted to speak regarding H 133. She emphasized that they would be speaking to **H 133**. She, the Governor's Office, and Rep. Smith talked about how the bills were identical, with the only difference being the fund the receipts would go into. She and Rep Smith thought that because of the audit recommendations, the money should be for preservation and restoration. The Governor agreed. So, we have held H 93, and we are now speaking to H 133. She asked if everyone was clear on this.

When one person said he was still confused about the distribution, **Chairman Wood** said that the distribution will be stricken from the SOP for H 133. The distribution formula is in some of the gas bills, but it is irrelevant to this bill.

Mr. Rhett Fornof, Vice President and General Manager for Enterprise,

took the podium. He explained that when you think about rental cars, you think tourism and people who don't live here. But a couple of years ago, the local markets surpassed airport revenue. These are not tourists; they are people in Idaho.

Forty percent of Boise rentals are local, and fifty percent of rural rentals are local. These are people that don't own a car and rent on weekends to go out of town. In this economy, people may have sold larger vehicles but still need a truck to move something. Also being rented are cargo vans for companies' deliveries. These represent small businesses in the community. People rent luxury cars for special events. The revenue of \$400,000 to \$500,000 could be better used by the local people for commerce, rather than spending it on the tax.

Many local rental companies are bankrupt. We don't want to give people a reason not to rent a car. Idahoans are already paying fuel taxes and so are we (car rental dealers). And we register them. So the small amount of money that the tax hopes to generate (and he thinks the numbers are skewed) is really a lot of money to the constituents.

During questions, the following issues were addressed:

- When asked how many people use rental cars when their cars are in the shop, **Mr. Fornof** said about 30%, which is less than it used to be. Often when people wreck a car, they get an insurance check and they don't fix the car.
- Mr. Fornof was asked for data suggesting what would happen to the industry if this bill were to pass. **Mr. Fornof** referred to a study that was done when Kansas City raised their tax. He said they could get more data. Someone then handed him a sheet, and from this he stated that the National Business Travel Association claims that rentals drop by about 40% when a fee is implemented.

Mr. Fornof said that 27 states have a fee. There is federal legislation pending to stop taxes from being put on rental cars.

- When asked if a different percentage would be under the threshold of diminishing returns, **Mr. Fornof** said that the threshold has already been passed. He stated that a year ago, AVIS-Budget was trading at \$22 per share, and it is now less than a dollar a share. Some companies cannot borrow money and some are being delisted. Some local franchisees are bankrupt.
- Mr. Fornof said that they do pay some other airport fees, such as concessionaire fees of 10%. If you rent a car today, you pay 20% in fees, and with this tax, that will increase to 26%. He already gets many complaints about fees. When large organizations think about coming into town, things like this are what they look at to see if they want to do business here.
- Because he has business in both Utah and Idaho, Mr. Fornof was asked what he found was the decrease in revenue when the tax came into effect in Utah. Was it more or less than a 10% drop? **Mr. Fornof**

said that it was less.

- When asked whether there are still “mom and pop” rental companies in the State, **Mr. Fornof** said there are licensees that could speak about that. Some are not in business anymore.
- Regarding the fees that the companies pay at the airport, Mr. Fornof said that they are currently paying a fee to pay for a new parking garage, if that ever happens. They also have to pay “minimums” regardless of the fees they collect from customers.

Mr. Michael Hilman, Manager, Hertz, took the podium. He has been employed by Hertz for 42 years. In Idaho, Hertz is under a franchiser. He believes H133 is unfair because it targets a single industry to address a broader concern. He asked that a table of figures be passed out to the members (table is attached to these minutes).

He said that their dollars are a matter of public record. At end of last year, December was down 26%. January ended down by 28%. They depend on airline and automotive industries and both are down. He urged a “no” vote.

He said that when special events come to Boise, people on planning committees do look at costs. We need to be able to attract events like the Special Olympics, which brought in \$34 million.

Ms. Kimberly Lewis, Manager for Budget, took the podium. She stated that Budget of Salt Lake City was in Chapter 11. Now is not the time to add taxes. Many companies will be affected, including local customers. The small business owner needs a “no” vote.

Mr. Gilbert Cordero, Manager for National and Alamo, took the podium. He explained that he is an independent franchisee in Boise. Things have changed for the industry and there are many statistics. But increasing the tax for locals or anyone coming here is a bad decision.

He asked that a letter be passed out to the members (letter is attached to these minutes).

During questions, the following issues were addressed:

- Mr. Cordero said that he tries to get business from wherever he can. There may be an increase in one area of the business and not another, for example, an increase in leisure travel but a decrease in business travel, or an increase in local rentals but a decrease in airport rental.

Mr. Mike Brassey, Legislative Advisor for the Idaho Rental Car Association, took the podium. He spoke about the tax burden at the Boise airport. There is a 6% sales tax on rentals, a 10% concession fee, and airport charges of 3%. With this bill’s 6% fee, that adds up to 26%. There is also counter rental and this isn’t included. These are just taxes.

There are other cities that charge the concession fee. Lewiston and the

Moscow Pullman Airport charge a daily fee per car that can be 8-10%.

They believe the proposal in H 133 is not good tax policy. It singles out vehicles that are already paying what other vehicles are paying. It is an imposition on the businesses that cannot afford it. They urged holding the bill.

During questions, the following issues were addressed:

- When asked about what happened in Utah, **Mr. Brassey** said he looked at one point, but the states were so different in what and how they charged, he wasn't able to compare.
- He does believe H 133 would affect things negatively because when costs are raised, people will make other choices, especially locals, and they make up substantial numbers. It won't affect business travel as much. He doesn't know for sure if it would push some out of business. However, he said we've seen so far that people with lower market share have been driven into chapter 11. You can't blame this tax because it doesn't exist yet. But more costs always hit the smaller businesses more.
- When asked about doing things like hanging onto cars in a fleet a little longer to save costs, **Mr. Brassey** deferred to Mr. Hilman. Mr. Brassey did say that this can have an adverse affect on sales taxes. The more the cars turn over, the more sales tax you get. **Mr. Hilman** said that everyone in the industry is holding onto vehicles longer. The used car market is poor now. But this can create repair issues. People like to rent newer cars, and there are fewer problems with them.
- **Mr. Hilman** was asked what his airport charges are. He stated a 6% Idaho sales tax, 10% concession fee, a \$1.20 user fee that is going toward a parking garage or some other improvement. They also have a licensing fee of 90 cents per day. It all adds up to about 19% or 20%.
- A question was asked about registering the cars in Idaho. **Mr. Hilman** said that they do not register all their cars in Idaho. They subscribe to an international registration code. They do business in nine states, and their base state is Utah. They may have to register some cars in a state depending on how much business they do there. **Mr. Fornof** said that they order all of their cars in Idaho from dealers. They register the cars in whatever county they come from. So registration is another cost to their bottom line. **Mr. Cordero** said that they do all of their registrations locally.
- A comment was made that it is hard to tell the impact of this fee. It seems that in Utah, it caused around a 10% loss in business, but another testimony quoted 40% for a different place. The industry seems to have been struggling for years. If much of the struggle is just because there are too many players in the market, perhaps the market needs to adjust so that there are fewer players.

Mr. Brassey responded by saying he didn't know enough to say

whether the market should be sorted out. But he believes that if 6% is added to the price of the product, some people will choose not to rent, particularly within the local industry. A tourist has already made the choice to take a vacation. But local people have other choices. This (local) is the fastest growing segment of the market, so having more overhead has to be taken from the cost, or you raise the price so that local people will make other choices.

- Mr. Brassey was asked if some costs could be offset by changing locations. He replied that this is available. Companies can move off the airport, but they give up convenience and this takes the money out of the airport stream of revenue. For smaller airports this could be big. Moving may impact negatively more than just not having the tax.
- When asked if companies have tried to get lower fees from the city, he said he assumed that the industry expressed concern at the time the taxes were imposed.

MOTION: **Rep. Jarvis moved to send H 133 to General Orders** with the following amendment: On line 14 of page 4, add the words “or replaced” after the word “repaired”. The reason is that when a car is a total loss, renting while the car is being replaced is covered.

SUBSTITUTE MOTION: **Rep. Nonini made a substitute motion to hold 133 in committee.** He said that we are facing dire times with the ITD, but this hits the threshold of diminishing returns. These companies pay tax and register cars, so they are doubly hit. It isn't the time to go after the industry.

Rep. Ringo said that she favors this motion. Our system of taxation needs work. It is a hodgepodge, and this bill would be adding to that. This seems random and doesn't add fairness to how we raise revenue.

Rep. Bedke said he also favors this motion, though he doesn't believe we have a hodgepodge. We have user fees. These people pay like everyone else does. Compared to other states regarding tax policy, ours isn't very good. Our user fee arrangement does not capture value or money from everyone who uses the roads. We should not do this just because we can or just because this didn't get a reaction from people around the State. He said he carried this last year, and he hoped it would meet a similar fate this year.

ROLL CALL VOTE: **Rep. Nonini** requested a roll call vote on the substitute motion. By a vote of **11 to 3, the motion passed.**

Voting in the affirmative: **Reps. Hart, Bedke, Wills, Nonini, Hagedorn, Labrador, Mathews, Shepherd, Ringo, King, and Ruchti.**

Voting in the negative: **Reps. Smith, Jarvis, and Wood.**

H 147 **Mr. Ed Pemble**, Driver Services Manager, ITD, presented **H 147.** He explained that it revises penalties for violating an out-of-service (OOS) order to be in accordance with federal SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act) standards.

Idaho statutes define an OOS order. The penalties don't affect many, but the purpose is to provide a stronger deterrent. There is a safety concern if

a driver is ignoring an OOS order.

The new language is easier to understand and narrower. The changes in penalties are pretty straightforward. The purpose of the bill is to comply with the required minimums and maximums in SAFETEA-LU to preserve highway funding. Failure to comply will mean a loss of 5% of the federal funding in the first year, then 10% each year thereafter. The ITD also wants to keep the CDL (Commercial Driver's License) program in Idaho certified. Drivers would have to go to another state to be licensed if we don't comply.

A question was asked about whether changing Idaho law regarding the violations would take us out of compliance with the federal requirements. **Mr. Pemble** said that the definition in statute does comply with the federal requirements.

MOTION: **Rep. Wills** moved to send **H 147 to the floor with a DO PASS recommendation**. This is an area that money might have an impact for better drivers. Often suspensions don't carry much weight.

Frustration was expressed by several on the committee regarding the threat from the federal government of withholding funds. It happens in many areas, not just transportation.

The motion **carried on voice vote**.
Rep. Wills will be the **floor sponsor**.

H 153 **Rep. Andrus** presented **H 153**. In the City of Pocatello, when the sanitation truck goes to the landfill, it can go only partially filled because it is a double axle truck. The weight exemption is for a single axle truck. They are requesting that the exemption be allowed up to 42,000 pounds (page 11 of the bill).

The ITD has indicated that they have no problem with this. Rep. Wills has said his fear is that if we do this for one group, all will want it, and this is probably true. Other entities will want to take advantage.

They will make fewer trips, so they will be on the roads less, causing less wear.

During questions, the following issues were addressed:

- The PSI (pounds per square inch) applied to the road would not be a problem because while the load would be heavier, but it would be spread out over more axles.
- There was much discussion over the impact to local roads versus the State highways. While the bill is meant to affect only local roads, it became apparent that the State highways would likely also be affected because in Pocatello, as elsewhere, portions of the sanitation truck route include State highways. On a state highway, if trucks are over the legal axle weight, they can be given enforcement action. The language of the bill seems too broad. Rather than opening up all of the state highway system to the exemption, the bill may need to be

worked on so that only certain portions of the State highways have exceptions.

- A question was raised about whether the bill would create a conflict with the table on page 10.
- A concern was raised that the bill was for a particular city that likely made a mistake in buying a certain truck. We should not change code for one truck.

MOTION

Rep. Mathews moved to hold H 153 in committee until the call of the chair.

Motion **carried on voice vote**.

H 196

Mr. Bill Gigray, attorney from White Peterson, presented **H 196**. He explained that he represents certain cities in support of **H196**. It is supported by the Idaho Association of Highway Districts and the Association of Cities. It amends Idaho Code 40-203A. (A letter regarding the legislation and a map of the Highway Districts is attached to these minutes.)

The map shows how much area is covered by highway districts and how much by county roads. This bill regards the validation procedure for highway jurisdictions that are not under the ITD. The City of McCall was sued by a property owner. The plaintiff wanted the City to agree that certain roads were public roads, but the City didn't want to say that they were public. The procedure was cumbersome. A better procedure would be validation. We want clarification in 40-203A to allow for this.

The validation proceedings can be initiated by the jurisdiction where the road is. There must be ambiguities about the public status of the road. An example is an abandoned road. There are procedures now to classify a road as "abandoned", but there are old rights of ways, so there are some ambiguities. The validation procedure is good for these things. There is judicial review if one party doesn't like the result of the validation.

During questions, the following issues were addressed:

- A question was asked about whether the original intent of the statute was to include city council. **Mr. Gigray** said that if there was a reason why they were not included, he didn't know what it was. They have no jurisdiction in Ada County because of the Ada County Highway District, but it affects other places.
- A question was asked about whether the bill would be giving the governing board of a highway system the authority to decide if a right of way exists. **Mr. Gigray** said that the authority exists now for highway districts. Section 40-203A contains verbiage that says "...may petition the board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, to initiate public proceedings to validate a highway or public right-of-way, including those which furnish public access to state and federal public lands and waters, provided that the petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the

proceedings....” This is already in legislation for highway districts and counties. This bill was developed because the City of McCall believed that the best procedure would be validation, and when they talked to other parties, the parties agreed. But the attorney for the plaintiff questioned whether the City had authority. Section 40-203A for some reason did not include city councils. But when you read highway district laws, cities have the same authority. So this is what brought the cleanup to his attention. Our Supreme Court can be very literal in interpreting statute. To be protective, the statute should specifically include the city councils.

- Mr. Gigray was asked if there was a specific reason in the beginning why city councils were not included. If cities can go to counties and ask for validations, why do we need this? **Mr Gigray** said they can't because the county has no authority to pursue any validation in the city because they have no authority over the city highway system. So the county can't take the action. In rural highway districts, the law becomes quite convoluted. This bill clarifies things about who has authority to do the validation procedure.
- Mr. Gigray was asked whether the change would give city council authority to determine validation. What about the State highway that goes through McCall. Could they, for example, set a speed limit on that state highway? **Mr. Gigray** said that the City would have no authority (nor any other jurisdiction) to do this. They could only determine whether something is a public right of way. If the road is State, then the City doesn't have jurisdiction. The statue doesn't get into maintenance issues.
- Mr. Gigray was asked why Section 2 is there with an emergency clause. Are we going to arbitrate some fight that is going on right now? **Mr. Gigray** said that there is an order of stay pending doing a validation in the City of McCall to see if some roads are public right of way. When asked whether Valley County has been involved, **Mr. Gigray** said that Valley County is not a defendant. The subject area is within the boundaries of the City of McCall. They have a Public Works Department and a highway system and jurisdiction over secondary roads. The only jurisdiction over secondary roads belongs to the city, not the county. The highway system law is set up this way. The public rights of way are held by those jurisdictions if they are within the boundaries. No other public entity has the right to hold.

Rep. Smith said he didn't think the bill extends authority to the city beyond what they would have anyway.

MOTION:

Rep Smith **moved to send H 196 to the floor with a DO PASS recommendation.**

Motion passed by voice vote. Reps. **Wood, Bedke, and Labrador** asked to go on record as voting **Nay**.

H 198

Mr. Gigray presented **H198**. He has distributed a letter that explains the bill and a memo regarding publication notice requirements. (These two documents are attached to these minutes.)

He stated that this bill is supported by the Idaho Association of Highway Districts and the Association of Cities. It deals with one government entity transferring personal or real property to another, for example, a surplus fire truck. The current Code says that the notice of intent has to be published for two consecutive weeks. If the newspaper is weekly, the notice is published twice. But most areas have a daily paper, which means it must be published 14 times, if the court interprets that it must be published daily. This is very costly. The desire is to change the requirement to limit the number of times the notice must be published as outlined in the bill.

Most statues that deal with publication address differences in weekly and daily publications. Some statues say three consecutive times in a daily publication, but twice for a weekly one.

During questions, the following issues were addressed:

- **Mr. Gigray** said that the language used in the bill comes from election law. However, it was then pointed out by the committee that the election law language may contain a problem because in order to meet the requirement, you could just publish two notices in the same document on day 12. The one publication would not be less than 12 days, and the second one would not be less than 5 days. So, while this is not the intent of the language, the language does allow a way to get around the intent. The language needs to be clarified to prevent this, especially because the Supreme Court does tend to like things to be very literal.
- A comment was made that sometime soon, we need to begin thinking in terms of putting notices in electronic media.

MOTION: **Rep. Bedke** moved to **send H 198 to General Orders with committee amendments** to clarify this issue. He said that we aren't opposed to the concept but have found an inadvertent loophole.

Motion was **seconded** by **Rep. Labrador**.

Mr. Gigray will come up with the wording and will give the wording to Chairman Wood.

Motion **carried by voice vote**.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 3:55 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 10, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached committee sign-in sheet

Chairman Wood called the meeting to order at 1:30 p.m.

MOTION: **Rep. Smith** moved to **approve the minutes of February 18, 2009, as written.**
Motion **carried on voice vote.**

MOTION: **Rep. King** moved to **approve the minutes of March 2, 2009, as written.**
Motion **carried on voice vote.**

**H 130 and
H 197** **Rep. Hagedorn** explained that both **H 130** and **H 197** have to do with semi trailers. He met with the Idaho Transportation Department (ITD), and they came up with some good ideas to incorporate. Canada also has a problem with registering and licensing semitrailers. We want them to be able to license their trailers in Idaho as well. So rather than a National plate, we need a North American plate. A new bill has been drafted that combines H 130 and H 197. The scope of potential has increased to about \$1 billion. He requested that H 130 H 197 be held in committee indefinitely.

MOTION: **Rep. Mathews** moved to **hold H 130 and H 197 in committee.**
Motion **carried on voice vote.**

H 95 **Mr. Jason Kreizenbeck**, Chief of Staff, Governor's Office, explained that they are working on a compromise with Rep. Roberts, and asked that the committee hold H 95.

MOTION: **Rep. King** moved to **hold H 95** in committee until the call of the chair.
Motion **carried on voice vote.**

H 156 **Rep. Wills** said that he wanted **H 156** to be held.

MOTION: **Rep. Wills** moved to **hold H 156 in committee until the call of the chair.**
Motion **carried on voice vote.**

H 219 Rep. Roberts said that he is working on a potential amendment.

MOTION: Rep. Roberts moved to **hold H 219 in committee until the call of the chair.**
Motion **carried on voice vote.**

H 53 **Colonel Bill Shawver**, Director, Idaho Bureau of Homeland Security, presented **H 53**. He said that they (the Bureau) are proposing changes to the bill. According to current Idaho Code, they are reimbursed for the cost of hazardous substance calls only if there is an "abrupt release." This doesn't allow cost recovery for situations in which there is only a threat. An example is a white powder incident. A team responds, but if the powder is found to be nothing, they can't recover costs. Or if there is an explosive device, a team responds, but they can't recover costs because it didn't blow up. Our law enforcement and fire personnel respond to suspected drug labs. If testing finds that the hazardous materials aren't released at the crime scene, they can't recover costs. Changes include language for the "threat of release", which is in the bill. They have worked with the Attorney General's office to get the wording correctly. The teams are requesting cost recovery as spelled out in Code. There were 348 hazardous substance instances in 2008, and 39 were processed for cost recovery under the Code.

During questions, the following issues were addressed:

- The changes being requested can be summarized as "threat of release" and, by amendment, "potentially hazardous substance." The substance may turn out to be not hazardous, but the threat is what they have to be able to respond to.
- A question was asked about cost recovery when a spill is accidental but there is no intent to cause damage. Col. Shawver said that when there is no party to go after for costs, the State pays to make the responding agency whole.
- Several questions were asked regarding exactly what parts are included in the original bill and what parts are included in the proposed amendments. On the amendment sheet, some things are in yellow, some are in red, some are bold and underlined, and some bold and underlined text is also highlighted. In some cases, the bold and underlined are in the original bill, but in some cases they are not. For example, on lines 28 and 29, the bold and underlined text, "to include explosives and weapons of mass destruction" is not in the original bill.

The committee members want things to be clarified so that they can tell what is original and what is being amended.

MOTION: **Rep. Smith** moved to **send H 53 to General Orders with amendments after they are clarified.**
Rep. Hart seconded the motion.

A question was asked about page 2 of the amendment: Emergency is defined and potentially hazardous substance is defined. Both require consultation with the Bureau. So an emergency person has to consult with

the Bureau every time? **Col. Shawver** said that before an agency can respond under the umbrella of the State, Title 39 requires that a hazardous materials duty officer from the Bureau authorizes a response. If they respond without that, they can't recover costs.

The **motion to send to General Orders passed on voice vote.**

H 151

Mr. Ted Spangler, Deputy Attorney General, Idaho Tax Commission, presented **H 151**. He distributed a chart regarding the monthly gallons of fuel taxed in Idaho (attached to these minutes). He explained that H 151 comes from the Tax Commission to address what they perceive to be a growing problem of the improper use of dyed diesel fuel on the highways. Dyed fuel, which is not taxed, is legal for offroad use, heating fuel, and some other uses. They've seen evidence of increasing use in ways that are not outlined in statute to avoid paying tax. The green and red lines of the chart are the ones of interest. Since about the middle at January 2005, use has gone from 10 million to 20 million gallons. The use of dyed fuel over a three year period has essentially doubled. In October of 2007 there is a spike, which is the date that the 1 cent transfer fee that was suspended came back into effect. The trend line does show a definite increase and even crosses the line of taxable fuel.

The question is, has the need for the untaxed fuel to service agriculture, heating, construction, etc., really doubled or just the use of the fuel? The Tax Commission has received referrals from enforcement authorities in other states about Idaho-registered vehicles using dyed fuel, and from auditors seeing invoices for dyed fuel, that provide anecdotal evidence that there is a growing problem of people avoiding paying for highway maintenance. So, we are proposing H 151, which provides increased civil penalties. It is a tiered penalty based on repeating offenses. The penalties would be asserted in the same way the Tax Commission takes care of unpaid taxes, instead of by using the sole enforcement tool available today, which is to persuade a prosecutor to bring misdemeanor charges. This has not been a good way to handle the problem.

During questions, the following issues were addressed:

- **Mr. Spangler** said that the fiscal note was based on their estimate of how revenue would be affected by the deterrent effect—what they anticipate might be the growth in revenue by more enforcement. They know they won't get full compliance right away.
- When asked whether the fines are set by Code or by some other mechanism, **Mr. Spangler** said that they selected the amounts after discussion with committee members to replace an earlier bill. They thought the tiered system would be better for those who were concerned that the \$1000 for a first offense (in the previous bil) would be too harsh.
- Mr. Spangler was asked whether criminal charges could be imposed as well. He replied that line 19 does make it a misdemeanor to use dyed fuel on the highway. Pressing this would involve engaging the services of the prosecutor, and there may be circumstances in which this would be appropriate.

- When asked for clarification about when dyed fuel can be used, **Mr. Spangler** said that for a licensed motor vehicle on the highway, it can't be used. There are a few minor exceptions for things like school buses and snow plows.

MOTION:

Rep. Bedke moved to **send H 151 to the floor with a DO PASS recommendation.**

In further discussion, the following issues were addressed:

- A concern was raised that according to the chart that was distributed, there seems to be a trend of using more gas in the State. But other reviews indicate a decreasing use. Are these numbers in synch with the ITD's numbers? **Mr. Spangler** said that the chart was prepared using ITD research, which was based on data from the Tax Commission regarding fuel tax returns. Mr. Spangler said he didn't pay attention to the gas part of the chart, so he didn't have a direct answer but could find out.
- Answering questions about how the Tax Commission finds offenders and how they enforce the penalties, **Mr. Spangler** explained that violations are reported by the IRS or law enforcement, and sometimes people turn in their neighbors. Recently, a tax auditor found someone selling dyed fuel illegally. This bill doesn't enhance the Tax Commission's authority to do things to find offenses.

The process of enforcement is to issue a notice of deficiency determination that proposes the penalty based on the facts stated in the notice. The person has time to file a protest and get a hearing. There is a due process, which is the same as for someone who owes more income tax. To appeal, people must go through the administrative process first. If they don't like the result, they can go to the courts.

The motion to send to the floor with a DO PASS recommendation carried on voice vote.

Rep. King will be the **floor sponsor.**

H 205

Mr. Stuart Davis, Executive Director, Idaho Association of Highway Districts (IAHD), presented **H 205**. He distributed a copy of 2007 Idaho State Code Title 40 Chapter 13 (attached to these minutes). He explained that **H 205** provides a slight correction to H 525. Regarding 40-1305 F, they (Association) would like this wording put back in. He worked with the Secretary of State's office on this. This statute was overlooked. It saves having to have an election if nobody qualifies. Also, H 201 moves the date back, and H 205 moves the write-in date also. H 205 dovetails with H 201.

When asked to clarify what was being put in and why, Mr. Davis said that in the early 1990s, election consolidation was started. His predecessor put many things into Title 40, including their own election code. Then legislation changed things, but some changes weren't transferred to Title 40.

Last year, when he took their election law out, it contained 40-1305 F, and he later found out that they overlooked it. So they are asking that it be put back in.

MOTION: **Rep. Bedke** moved to **send H 205 to the floor with a DO PASS recommendation.**
Motion **carried on voice vote.**
The **floor sponsor** will be **Rep. Ruchti.**

H 206 **Mr. Davis** presented **H 206** and said that it represents another “cleanup.” The Code is Title 40-1329. Mr. Gigray (an attorney) frequently finds conflicts, and in an email (attached to these minutes) he suggested repealing 40-1329 because it is in conflict with 63-803 (3). He recommends that the Highway District law should follow the property tax law and not reference a different date or statute.

MOTION: **Rep. Roberts** moved to **send H 206 to the floor with a DO PASS recommendation.**
Motion **carried on voice vote.**
Rep. Shepherd will be the **floor sponsor.**

H 207 **Mr. Davis** requested that the committee hold **H 207.** Rep Moyle and he want to work on a better bill.

MOTION: **Rep. Wills** moved to **hold H 207 in committee.**
Motion **carried on voice vote.**

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:20 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 12, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith (24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached committee sign-in sheet.

Chairman Wood called the meeting to order at 1:31 p.m.

S 1111 **Rep. Bayer** presented **S 1111**.

Page 1, line 12 refers to public safety officer and permanent disability language. The one-time benefit is \$100,000. This amount and approach is used so that the officer does not incur displacement of other benefits that can be offset, such as PERSI (Public Employee Retirement System of Idaho) and Workers' Compensation.

Much of the language in the bill references existing Code. In Section 3 are the qualifying and benefit payable parameters. This is for people who go into harm's way, such as law enforcement, fire fighters, corrections officers, paramedics, and fish and game officers.

The mechanism to administer the benefit is already in PERSI. The benefit would be at the expense of employees. The legislation has the support of PERSI, the Idaho Sheriff's Association, the Professional Firefighters of Idaho, and the Chiefs of Police Association.

During questions, the following issues were addressed:

- A question was raised about whether the benefit would be subject to federal income taxes. **Rep. Bayer** indicated that Mr. Kane would address this in his presentation.

MOTION: **Rep. Wills** moved to send **S 1111** to the floor with a **DO PASS** recommendation.

During further discussion, the following issues were addressed:

- A question was raised about what the term "voluntarily intoxicated" means. This was clarified to mean that the officer must be in the line of duty for it to apply, but further clarification was deferred to Mr. Kane's forthcoming presentation.

- Questions were raised about the definition of a public safety officer. **Rep. Bayer** said that the bill refers to Idaho Code 59-1303, 59-1302(16) and 72-1403A, which provide the definition of a public safety officer.
- Regarding paid vs. unpaid workers, **Rep. Bayer** clarified that in order to be eligible for the benefit, the officer must be a PERSI participant, so volunteers would not qualify. If a county is not currently participating in PERSI but would like to offer this benefit, they could go to PERSI and enroll.
- **Rep. Shepherd** mentioned Officer Kralicek in North Idaho and what this benefit would have meant to him and his family. **Rep. Bayer** said that a consideration when drafting the proposal was whether to have the benefit be retroactive, but that ended up being quite controversial.

Mr. Mike Kane, an attorney representing the Idaho Sheriff's Association, took the podium. He said that the bill is modeled after a death benefit law in place now, and much of it is taken directly from that law. Currently, if you are killed in the line of duty as officer, your family can apply to PERSI for a benefit. But in many cases in which the officer is permanently disabled, (such as in the Mike Kralicek case), the family loses health benefits. This bill is an attempt to take care of those families. In many cases, health insurance costs can consume up to 40% of the family's benefits. Different ideas were considered, such as buying insurance policies. In the end, it was thought that the approach in this bill was best.

Regarding whether it is subject to federal tax, we don't think so, but we don't have official IRS ruling. Generally personal injury settlements are not taxable. We can only make sure it isn't State taxable.

Regarding the "voluntarily intoxicated" language, this is used in criminal law. If you are intoxicated, and if you are because you chose to drink, you are voluntarily intoxicated.

Regarding the line 36, Section 5, the intent is that this will never be funded by a state, county, or city entity. It will be funded by officers. Regarding who qualifies, Code 59-1302 deals with paid officers, not volunteers. Regarding the definition of a public safety officer, under PERSI this is the following: police, including deputies and chiefs, sheriffs, Idaho State Police officers, correction officers, paid law enforcement for fish and game, paid EMTs, brand inspectors, fire fighters, and magistrates. All will be paying into the fund. The fund will be available immediately on July 1 of 2009. This is part of current fund that death benefits are based on, so money is already in there.

The cost as determined by the PERSI board is that public safety officers will increase their PERSI contribution rate by .04%.

During questions, the following issues were addressed:

- When officers are disabled, if they can no longer be employed, they no longer receive any salary, only Workers' Compensation and PERSI disability benefits. But about 40% of this can be consumed by health

insurance costs.

- Regarding the definition of a permanent disability, Mr. Kane explained that in Code, in PERSI rules, and in disability laws, this means that you cannot work at any job, not just the job at which you were injured. It doesn't mean you have to be totally helpless, but you can't function in the workplace. For this bill, the definition would be enforced by PERSI, who has a board to make the determination.

Mr. Paul Jagosh, Legislative Advisor representing the Fraternal Order of Police took the podium. He said that we (police) are taking responsibility for ourselves with this bill. All the research shows that PERSI is the best way to fund this. They met with groups including Social Security Insurance (SSI) and Workers' Compensation and tried to find a private solution. But for everything they considered, costs things would be subtracted each month.

He explained that it is very difficult to get a PERSI disability rating. You cannot be able to get any gainful employment. If it is likely that you will recover within a couple of years, you won't get the rating. Their doctors make the determination. There as been about 1.5 positive determinations per year for 6,500 employees. More people are denied than get it, and it is reserved for the worst cases. Once disabled, a person is virtually doomed to poverty because of offset penalties. Workers' Compensation is offset by SSI, SSI is offset by PERSI, etc. When you do get SSI disability and PERSI disability, it is basically a retirement benefit. But the theory of retirement pay is that you can live off that when you are retired and the kids are gone.

If a disaster were to occur that disabled many people at once, the PERSI board could require officers to pay more to meet the needs. This bill should not create more work for PERSI because once an officer has met all the requirements, PERSI signs the check and the issue is done.

Workers' Compensation only covers an injury that occurs in the line of duty, not future complications. For anything unrelated to be covered, the officer must have another policy.

Mr. Jagosh said he has had many things happen to him, from being punched in the face to being shot at. Even so, he and most officers think, "This will never happen to me." But even if it doesn't, he wants to have this benefit in place for his fellow officers.

Rep. Nonini commented that Officer Kralicek worked in his former district. He visited with Officer Kralicek and his wife, and the injuries were very hard for them. She gave up her job as a nurse to care for him. Rep. Nonini wished this legislation would have been in place.

VOTE ON MOTION:

The motion **to send S 1111 to the floor with a DO PASS recommendation carried on voice vote.**
Rep. Bayer will be the floor sponsor.

S 1098a

Rep. Hagedorn presented **S 1098a**. This bill has spent several years in

refinement. We passed H 602 last year to change way we license ATVs, UTVs, an motorbikes, which are different from motorcycles. Motorbikes are driven on hills and trails. We knew there would have to be changes to it, and this bill follows H 602 with the changes. We may have to work on this every year because of the new vehicles that come out.

This bill was created to fill some title and registration requirements. It eliminates the need for a restricted vehicle plate when the owner will operate only offroad. Motorbike people have no place to put a plate. And a license plate can be dangerous if an accident occurs. Motorbikes, ATVs, and UTVs, need a sticker if the vehicle is used offroad or on state or federal lands, or they can get the plate and the sticker.

The plate is \$3, and the sticker is \$10 each year currently, but with this bill, it will be increasing to \$12.

The vehicle does not need low pressure tires; the manufacturer can define what is needed. The bill further defines minimum and maximum sizes for UTVs. Newer ones are a little smaller than the original definition. This bill provides a range, and if the vehicle doesn't fit in the range, there is a specialty vehicle category that includes dune buggies, go karts, etc.

The bill allows unlicensed operators under age 16 to operate an offroad vehicle (not on part of the highway system) when they are under the supervision of a licensed adult operator. This was for liability issues, and we got the Attorney General's opinion on it.

The bill also clarifies some traffic codes and allows nonresidents to license offroad vehicles and pay the fees if they are registered in their own state too. They can buy the Idaho plate or sticker.

The proposal is that January of 2010, the \$10 sticker would increase to \$12. One dollar of the increase would go into an off-highway vehicle law enforcement fund. Registration would be similar to what it is currently for boats. You state your primary county and your secondary county, and funds are distributed in that order. The second dollar would go to the Department of Lands.

An important note is that the bill requires Parks and Recreation, law enforcement, and the Department of Lands to do an annual report of how the money is spent that they are getting from this.

The bill was a collaborative effort that included Parks and Recreation, the Idaho Transportation Department, and the insurance industry. Rep. Hagedorn said he received an email from members of the North Idaho ATV organization, and they think this is a good bill.

During questions, the following issues were addressed:

- If this bill passes, the vehicle operator can buy either a plate with a sticker, or just a sticker. Currently, they have to buy a plate and sticker.
- A concern was raised about law enforcement's ability to identify vehicles. Without a plate, this is almost impossible. **Rep. Hagedorn**

said that during bill drafting, they included sheriffs in the discussions and they were okay with not having the plates.

- A question was raised because someone reported that he had a motorcycle that he was not planning to use off of the road, but he was informed that he had to buy both a plate and a sticker, and he didn't want to buy the sticker. **Rep. Hagedorn** said that this person received wrong information, because the offroad sticker is only required for offroad vehicles. Regular vehicles have an annual renewal sticker.
- When asked to clarify where ATVs and offroad vehicles can and cannot legally be, **Rep. Hagedorn** said that in this bill, they are restricted from being on state highways or freeways. Also, each subdivision has the ability to restrict some of their roads. If the vehicle has an offroad sticker, they can only go on offroad trails.
- Much discussion occurred regarding the definition of "supervision." Does it mean that the adult has the driver within his or her sight? If the adult just says "Be careful" to the driver, does that qualify? **Rep. Hagedorn** said that much time was spent on this during bill drafting, and the Attorney General was involved. Currently, there is no requirement for supervision and they wanted to start with something. If challenged, the language would have to be further defined.

He said that law enforcement officers will need to make the right call according to the situation. You can keep someone within eyesight in the desert for a couple of miles, but on a logging road, you can lose sight of a driver who goes around a corner. We need some flexibility so that law enforcement can manage this.

- Some discussion ensued regarding distribution of funds and having the money go into the counties where the trails are. **Rep. Hagedorn** said that the paperwork process to manage that is not currently in place. The bill drafters thought the best thing would be to start the process by giving \$1 (of the \$2 fee increase) to the Department of Lands and \$1 to law enforcement so that the reporting could start, people could see where the funds are being used, and dialog could start.

People often go to other counties to ride. If they say where they will ride when they register, the other counties will get some money. If counties rely only on the registration that happens in their own counties, they may not get any money.

- Questions were asked about the age that qualifies as an adult in "licensed adult." **Ms. Amy Smith**, Vehicle Services Manager, ITD, said that a licensed adult means a person 18 years or older.
- **Rep. Hagedorn** said that several groups came together to draft this bill, and they did a good job. After it was printed, many people started coming with ideas, and they tried to incorporate as many of these as possible. But then they had to stop changing it to get the bill going.

While they will probably need to change or add more later, it is a step in a positive direction.

- **Ms. Smith** said that penalties for violations are contained in Code sections, and fines are set by Supreme Court rulings.
- Page 21 section 17 provides for everything except Section 16 to be effective immediately. Section 16 starts January 1, 2010.
- Concern was raised regarding law enforcement capabilities under this bill. It was stated that this bill removes an important law enforcement tool by removing the requirement for a plate. Also, the requirement for law enforcement to decide what constitutes supervision is unrealistic. They will not make this call. When you tell people that their children are doing something wrong, they will justify the behavior. So everyone will be “supervised”, and there won’t be any enforcement. Also, anyone can also say he or she is the supervisor if he/she is old enough. Some things have been in place to minimize these problems, but with this bill, we are going backward. Complaints will come in about violations, but they won’t be able to identify the vehicle or the people.

Mr. Mike Kane took the podium to represent a different client this time, The Property and Casualty Insurance Corporation of America. He said that last year, his clients had to provide coverage for underinsured and uninsured motorists riding ATVs. This is a heavy expense and is not wanted even by the ATV community. This bill says that this is not mandatory, which addresses the problem and is essential to the insurance industry.

In answer to a question, he said that ATVs would be covered by homeowner’s insurance if the driver stays on the property, but not if the driver goes onto trails. That is being fixed in another bill.

Mr. Kane said that another of his clients is the Sheriff’s Association. Originally, the Sheriff’s Association was getting nothing for enforcement money. However, the formula for funding is now in this bill, which is 1\$ (of the \$2 increase) for law enforcement.

Some Sheriffs were concerned this was too low. However, they understand that this is a beginning as the mechanism for distribution is being set up. The Association and people of Parks and Recreation will work on a rule. We need the money to go where it is needed even in smaller counties with many vehicles being used in them. We can’t base funding just on population.

Regarding the enforcement concerns, the Sheriff’s Association has not asked to hold the bill. The ATV community must be addressed. A big issue is that there is no place to put a plate on some vehicles. We don’t want to hold things up for this. Regarding the supervision issue, they suggested visual supervision, but it didn’t seem doable. They’ll do their best, but it will be up to a judge somewhere. No one from the Association thought this issue should stop the bill.

Mr. Tom Crimmins from the Idaho Recreation Council took the podium. The Council wants to be actively involved in any further work on this work in progress. They (Council) support this bill as it will resolve many issues.

It will allow families to ride together and supervise their kids without having to do things that are illegal. They have worked with sheriffs who say that if a person is a problem, the ATV violations aren't the only problems they have with that person. Enforcement is important, and the money isn't enough, and county programs need to be addressed as well in the future, but it is a start.

Mr. Russ Hendricks, Idaho Farm Bureau, Regional Manager, Southwest Idaho took the podium. He said that the Farm Bureau supports this bill. It is important to members who own off highway vehicles. Having no place to put a plate on many vehicles has been a problem, and they appreciate the efforts to resolve this. There is another bill about insurance that came up too late to be in this bill, and he expects that the committee will hear it in the near future.

MOTION: **Rep. Roberts** moved to **send S 1098a to the floor with a DO PASS recommendation.**

A question was raised about whether there is an exemption to the helmet requirement for young children. **Mr. Troy Elmore** from the Idaho Department of Parks and Recreation said that there is no exemption.

The motion carried on voice vote.

Reps. **Wood** and **Hagedorn** will be the floor sponsors.

H 226 **Rep. Hagedorn** presented **H 226**. He said that H 197 and H 130 enabled the ITD to sell permanent license plates to semitrailers. He met with the ITD, and they came up with some ideas and additional things. So they have taken both of those bills and combined them into this bill. They've added the capability to service Canada, which brings the opportunity to \$1 billion.

He said that the State has about 17,000 permanently registered trailers in Idaho. Those license holders were told that they could transfer the plate from trailer to trailer, and that will be honored. However, anyone who purchases a permanent plate after July 1, 2009, won't be allowed to do that.

During questions, the following issues were addressed:

- The amount of time it takes to see any funds come in from this depends on marketing. If the State puts forth a strong effort and hires a marketing firm, we could see money coming to the Highway Distribution Account very soon.
- No emergency clause is in the bill now. It will need to be added.

MOTION: **Rep. Mathews** moved to **send H 226 to the floor with a DO PASS recommendation.**

A question was raised about where the money would come from for marketing. **Rep. Hagedorn** said that we (the State) has Correctional Industries that can be used. If we hire an outsider, we would have to find out the costs by contract. The ITD may advertise on their Web site. But

there is no seed money for this.

The motion carried on voice vote.

Rep. Hagedorn will be the floor sponsor.

H 97

Rep. Jaquet presented **H 97**. She handed out the final environmental impact statement (EIS), which is attached to these minutes. She also had an amendment to the bill.

She said that there is no provision for enforcement regarding high occupancy, and this bill addresses that. Vehicles must have two people, including the driver, except motorcycles and public transportation. Regarding trucks vs. busses, busses go about the same speed as trucks.

The Supreme Court staff found a tighter definition for a high occupancy lane that is in the amendment.

In the record of decision in the EIS, there is concern that while the community wants this, State legislation does not provide regulations. That is why we have this bill.

The amendment restricts the bill to counties with populations of fewer than 25,000 people. This targets Highway 75, but it could apply to other places too.

During questions, the following issues were discussed;

- Rep. Jaquet said that the goal of a high occupancy vehicle (HOV) lane is to get from point A to point B quicker. One on highway 75 would not be implemented until the highway is expanded.
- Some discussion ensued regarding the practicality of HOV lanes in smaller communities. Public transit vehicles are often slower, instead of faster, than other vehicles. Rep. Jaquet said that in California, traffic moves more quickly in HOV lanes because there is gridlock in other lanes. They wouldn't be putting the lanes in high occupancy areas if they didn't work. The point was made that those California interstate highways have more than 4 lanes. But in Idaho, you are dealing with only 3 lanes and you would be restricting one as an HOV lane. It seems that it would make things worse. Rep. Jaquet said that in six months, the HOV lanes would be reevaluated. When this was written, the people were saying they wanted it. But there is an evaluation that uses a formal process and several studies so that if it doesn't work, it can be discontinued.
- Rep. Jaquet said that the ITD can implement HOV lanes now, but there is no enforcement ability. This bill allows them to penalize violators and defines what a violation is. Law enforcement can enforce the lanes.
- When asked if the amendment would remove the ITD's ability to create an HOV lane between here and Caldwell, Rep. Jaquet said that she was making the bill centric to her area because it may have a better chance of passing.

MOTION: **Rep. Wills moved to send H 97 to General Orders with amendments attached..**

A question was asked about clarifying the definition of an emergency vehicle. The amendment language says "A person may drive an emergency vehicle or other vehicle authorized by a governmental entity in a high occupancy vehicle lane...." Could a library district be interpreted to be a governmental entity?

Mr. Greg Laragan, Assistant Chief Engineer/Operations, ITD, answered that according to the Federal Highway Administration, emergency vehicles are allowed. The Washington D. C. office says these need to be responding to an emergency, not just on their way home. People in other cars would need to yield just as they regularly do.

The comment was made that even though this clarifies the circumstances, it would be good to have further clarification so that not just any government entity could use it. **Rep. Jaquet** said she could fix the language to be in compliance with Mr. Laragan's information and to be approved by Reps. Hagedorn and Wills who have concerns about who uses the lane.

SUBSTITUTE MOTION: **Rep. Roberts** made a **Substitute Motion to hold H 97 in committee**. He said that the ultimate goal is to move traffic more quickly, but if the lane is not built today, we don't need to hurry to put this into place. You must have enough lanes for the other vehicles, or this could make things worse. He would like to hold off for a year or so.

During further discussion, the following issues were addressed:

- It is time to have an enforcement tool. Road rage is an issue. People get in accidents, then there is delay. This is justified and starts the process.
- We have only half a tool at the ITD if they can't enforce. If we give them this, they can try things in other areas. They should have the chance to use this on Highway 75.
- An HOV can be an incentive for people to pool together to have more than one person in a vehicle.
- Rep. Jaquet said that the amendment gives the bill a better chance of passing. She thinks people need the chance to get used to something like this. We can learn from the experience in a smaller area.
- If the bill does not pass, the language in the EIS (lines 3 through 5) indicates that an HOV lane on highway 75 cannot be implemented. Enforcement is a requirement.

VOTE ON SUBSTITUTE MOTION: The **voice vote** on the **Substitute Motion** was **inconclusive**. **Chairman Wood requested a roll call vote**. By a vote of **7 to 8**, the **motion was defeated**.

Voting in the affirmative: Reps. Hart, Smith, Roberts, Bedke, Nonini, Mathews, and Wood

Voting in the negative: Reps. Wills, Hagedorn, Jarvis, Labrador, Shepherd, Ringo, King, and Ruchti

VOTE ON ORIGINAL MOTION:

Rep. Ringo seconded the motion to **send H 97 to General Orders** with amendments attached.

Motion carried on voice vote.

H 24

Mr. Jim Adams, Administrative Support Manager, Idaho Division of Veterans Services, presented **H 24**. It regards a license plate that is being adopted all across the U.S. for families—spouses, parents, and other family members—that have lost a loved one in combat. Spouses and parents will not pay the specialty fees for the plates. Other relatives will pay for them. Fees collected that are above costs will help pay for veterans' services.

There are ways to be sure that purchasers qualify. There is a Department of Defense document, a death certificate, and other means to determine that a person was killed in combat.

During questions, the following issues were addressed:

- A new issue is \$35. Of that, \$10 goes transportation, and \$25 goes to a fund for veterans' services.
- A question was raised about whether this was similar to a "Support Our Troops" plate. The concern is that if we get too many similar plates, we might reach diminishing returns. Mr. Adams said that the Gold Star is a special organization. While Support Our Troops is also a worthy organization, not all of the members have lost a family member in combat. This is a unique plate for a unique organization.
- Some plates are discontinued if a minimum number of plates aren't sold. For this plate, no minimums are required.
- When asked what the fund for veterans' services is used for, **Mr. Adams** said that it was established to support programs throughout state that can't get state money. Examples include the Memorial Day ceremony at the cemetery, special equipment or needs at a veterans' home, or a conference or memorial for the American Legion or VFW. The fund is administered by the Administrator for Veterans Services. Ms. Smith said that Veterans' plates have additional fees that go to the Veterans' Cemetery fund, but some other plates like the Pearl Harbor plate, don't have additional fees.
- A concern was raised about how this would impact the \$3 per transaction loss that the ITD is experiencing regarding special plates. Ms. Smith said that with these plates, they don't know how many they will do for a parent or child who would not pay the initial fee, versus an aunt, uncle, brother, or sister who would pay the full fees. Also, it would only be a loss on the first time issue, not on renewals.

MOTION:

Rep. Hagedorn moved to **send H 24 to the floor with a DO PASS**

recommendation.

- A question was asked about regarding the Fiscal Note in the Statement of Purpose. Mr. Adams said that about 700 Idaho veterans have been killed since World War II. Not very many WWII veterans are left, and generally, remaining spouses don't drive anymore. There are approximately 300 spouses and parents, and they are not sure how many of these will buy the Gold Star plate. These estimations are where the numbers come from. They would pay the registration fee, but not the specialty fee.
- Some discussion ensued regarding whether costs would be covered at the ITD. **Ms. Smith** said that they lose money on brand new plates. In this case, the first timers come through her office, so they lose on that. But they don't lose on renewals. Only 250 to 300 are eligible for not paying specialty fees. Everyone else has to pay. While the most likely people to get these are immediate family (who don't pay), brothers, sisters, and step siblings might pay for them.

The point was also made that those folks not getting a free plate are putting \$10 into the fund to offset costs. Over time, the money pays for the program.

- Two representatives expressed that while they were committed to not supporting any more specialty plates, they wanted to express their respect and support for veterans.

VOTE ON MOTION:

The motion to send H 24 to the floor with a **DO PASS recommendation carried on voice vote**.
Rep. Hagedorn will be the **floor sponsor**.

H 134

The sponsor did not want to go ahead with H 134.

MOTION:

Rep. Roberts moved to **hold H 134 in committee**.
Motion **carried on voice vote**.

H 131

Rep. Mathews presented **H 131**.

He said that H 131 is a tool for selling gold and silver medallions, and the revenue will be used to maintain our highway. It is a voluntary source of funding. His research has shown it will have a ripple effect that can provide some economic development, uses Idaho's natural resources, and helps commerce and industry. Rep. Hart was working on something similar that he thought would strengthen this bill, so he recommended that they combine efforts and make some amendments. He yielded some time to Rep. Hart to explain the amendments.

Rep. Hart took the podium. He explained that he originally set out to put people to work in North Idaho and thought about the silver in that area and about using silver medallions to pay taxes. The Constitution says that no state shall make anything except gold and silver coins to pay for debt, but we don't strictly do that anymore. He talked to some silver investment people in the Silver Valley area, and the silver ore from that area does not get processed in the U.S. It goes to many other countries, so you can't take the ore and do anything with it here. Idaho does have a mint in Coeur d'Alene that he has toured. They mint about 20 million blanks for the

American Eagle coin each year. His amendment attempts to have a silver medallion minted in Idaho that uses silver refined in Idaho.

Kellogg gets silver bricks from Mexico and they refine it into pure silver that could make a medallion used to pay taxes. But it bothered Rep. Hart to not use silver from Idaho, so the amendment provides a tax exemption that applies to companies who would build a facility. The bill provides a tax exemption of not more than \$75 million. There is an existing hydro-metallurgical process that is used in Kellogg. They crush the ore, run it through a solution and a bath, and the metal is drawn out. The ore comes from a cobalt mine in Salmon. If this bill passes, the existing hydro-metallurgical plant might expand to accommodate silver as well. This expansion of the hydro-metallurgical plant would cost between \$30 and \$50 million.

Rep. Hart said he also met with four mining companies in working on this and found that in Kellogg, there is a PTM (Principal Threat Material) cell owned by the State of Idaho, which is a pile of material left over from the Bunker Hill smelter. It is stored in a big "plastic bag" and is highly toxic, as it contains arsenic and lead that are water soluble. The value of it is \$100 million because of the Indium it contains, which is similar to silver and is used in making solar panels. The PTM cell was constructed by the EPA who, against their own regulations, put it within 30 feet of groundwater and used a geotextile material to enclose it that corrodes in copper that is in the PTM cell. This came out when Congressman Helen Chenoweth made the EPA own up to this. The hydro-metallurgical technology could be used to process the PTM cell, neutralize the arsenic, make the lead insoluble, then recover the Indium. With a joint venture, the State of Idaho could end up with \$40 million. Currently, all of the of the silver ore mined in Idaho goes out by truck from the Silver Valley, and the DEQ doesn't want to ship the PTM by truck to another location to be processed.

The State Treasurer has been consulted about how his office would manage this. His concerns are incorporated into the amendment.

During questions, the following issues were addressed:

- There was a process several years back in which the EPA thought they might dredge the Coeur d'Alene river and a bill said they could process the material. The process used in this bill is not the same.
- When asked if the Cominco mines could get the silver out and then send it here, Rep. Hart said that different mines have different makeups of silver ore. The composition of ore has to be in the right smelter because some smelters can't handle all makeups of ore. The hydro-metallurgical system is a closed system. There is no discharge if done right. You have different recipes of chemicals to deal with ore from different mines.
- The rest of the discussion was about whether the amendment was appropriate for H 131 and which committee would be most appropriate to hear the ideas of the amendment and of the bill (H 131). **Rep. Roberts** raised the concern that the amendment presented a division of issues and caused the bill to address two separate subject matters. Each bill is supposed to address only one subject matter. The amendment is a revenue and taxation issue, while H 131 is a transportation issue. Also, H 131 references Section 63 of Idaho Code which deals with income tax. The amendment references Section 67,

which deals with property tax.

Reps. Mathews and Hart asked whether the Revenue and Taxation Committee would be a more germane committee. **Rep. Roberts** said that even there, it would likely be challenged because of the division of subjects. He said that both concepts were solid, so the solution would be to introduce a new bill in Revenue and Taxation for the amendment that covers the mining issues. He said that H 131 may be more appropriate to that committee as well because it addresses tax issues. He said that as things are, we really have only one bill (H 131). What would make H 131 a good bill would be to remove section 3 about the deduction for income tax purposes.

Rep. Mathews presented the idea of a joint committee hearing with Revenue and Taxation. **Rep. Wood** said that the leadership could discuss this.

The point was made that we have only H 131 right now, but the amendment is good also and could stand alone. By combining them, the representatives could risk losing one because of the other.

Rep Mathews said if they needed to divide, they could do that. He would like to run his bill (H 131) separately and change it to remove the income tax deduction. Then he hoped leadership would give the other one (Rep. Hart's amendment) a chance in Revenue and Taxation. Rep. Hart agreed to this.

MOTION: **Rep. Hagedorn** moved to **hold H 131 in committee at the call of the chair** to allow sponsors to come up with appropriate amendments.

Rep. Roberts agreed and said he thinks the committee should look at the amendment for removing the income tax deduction.

Motion **carried on voice vote.**

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 4:33 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 16, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Rep. Bedke

GUESTS: Sarah Fuhriman, Leg. Adv.; Bill Roden, Leg. Adv.; Troy Elmore, Idaho Department of Parks and Recreation; Paul Jackson, Leg. Adv.; Woody Richards, Leg. Adv.; Sandra Mitchell, Leg. Adv.; Tom Glass, ISSA; Senator Heinrich; Kent Lauer, Leg. Adv.; Jane Wittmeyer, Leg. Adv.

Chairman Wood called the meeting to order at 1:30 p.m.

S 1061

Sen Heinrich presented **S 1061** and said that it is about snowmobile groomed trails. The trails seem to attract unwitting vehicle drivers, and prevention has not worked. "Road Closed" signs have been prohibited because they would cause local jurisdictions to lose funds. Huge berms at the trail heads have been an idea, but the liability insurance people didn't like these because snowmobiles could wreck on them. Driving motor vehicles on groomed trails gives a false sense of security. It damages the trail and is hazardous to the public. Ruts catch skis on snowmobile. A motor vehicle operator could get stuck, and the occupants of the car may not be dressed appropriately for waiting in the cold for rescue or for trying to free the vehicle. This year, this happened to three elderly women. The Idaho Transportation Department and the Idaho Snowmobile Association like this bill. It says that no other vehicle beside a snowmobile can operate on groomed trails without special permission. This bill would allow signage that restricts the trail to snowmobiles and to allow for infractions.

During questions, the following issues were addressed:

- A question was raised about whether some ATVs that can have tracks put on them can go on the trails. Sen. Heinrich said that regarding any modified four-wheeler or ATV or other new ones, if they have a snow machine sticker, they can ride on the trail.
- Regarding what this bill means for trail head notification, Sen. Heinrich said that the County Commissioners could put signs on them. They haven't been able to because the law has been interpreted to mean they would lose money. Also, the bill would mean that if people are "rescued", they'll be cited with an infraction (because the trail has a sign).

- Regarding whether people can cross-country ski and sled on the trails, Sen. Heinrich said the bill doesn't address this and would have no bearing on that.
- Rep. Wills raised a concern that many trails are on roadways that are shut off to vehicles temporarily. Landowners can still go back and forth on snowmobiles. If the road is open but not plowed or groomed, what will happen? Though the landowner has permission from the forest service to use the road, how do you tell if the trail is still "groomed?" These roads are not county roads, they are forest service roads, so the county has limited authority on the road until it is opened by the forest service (to, for example, remove the signs). We could have a "catch 22" situation.

Mr. Troy Elmore from Idaho Parks and Recreation said that if the road is closed to public, it is not a groomed trail, so it would not be impacted. **Rep. Wills** said that the particular road he was concerned about was definitely being groomed even though it was a forest service road. Mr. Elmore said that unless he was mistaken, it was not being done by the county-operated program. According to the county, as soon as a road is no longer groomed, it would be open to vehicles.

- A question was made about UTVs. It seems that ATVs can use the groomed trails as long as they are registered as snowmobiles, but what about UTVs and other types of vehicles? Is their omission intentional? Rep. Heinrich said that new legislation is coming out soon that will address this.

MOTION:

Rep. Wills moved to **send S 1061 to the floor with a DO PASS recommendation.**

Mr. Tom Glass from the Idaho State Snowmobile Association took the podium. He said that he used to be president of the association. Please keep trucks off groomed trails. This bill addresses the issue. It is long overdue and he endorses it.

The motion to send to the floor with a DO PASS recommendation carried on voice vote.

Rep. Hart will be the **floor sponsor.**

S 1131

Mr. Russ Hendricks, Idaho Farm Bureau, Regional Manager, Southwest Idaho, presented **S 1131**. He said that many member families are ATV owners. This is second of two bills this year that correct H 602 issues. S 1131 addresses things that came up while the prior bill was already in process. They have worked with all people in the other bill and they know about this bill.

There was an unintended consequence of H 602 when there was no discussion about insurance. Six weeks ago, the Idaho Department of Insurance issued a bulletin interpreting the law to require, for the first time, that insurance for off-highway vehicles meet all requirements for automobile insurance, though several of those requirements were never intended to apply to off-highway vehicles. S 1131 exempts off-highway vehicles from four sections of title 49 chapter 12 of Idaho Code as long as

operators have liability insurance that meets the minimums in 49-1428. This doesn't change when insurance is required or what the minimums are. It just says that automobile-type features don't apply to the offroad vehicles.

Without this bill, thousands of current off-highway vehicle owners will have to scramble to find suitable coverage. Some Idaho-based insurance companies do not even have a policy that would meet the new technical requirements as current law is interpreted. So they would have to cancel their current off-highway vehicle policies to develop new "auto-type" policies and in the meantime, refer their clients to another company for coverage. S 1131 gets us back to the way off-highway vehicle insurance has been working for years. Idaho Parks and Recreation, the Idaho Transportation Department (ITD), and insurance companies all support the bill.

During questions, the following issues were addressed:

- Many off-highway vehicle owners have an endorsement on their homeowner's policy or their farm and ranch policy that covers off-highway vehicles. Under the new Department of Insurance interpretation, they would need a new auto-type policy.

As an example, under an auto-type insurance, I am insured for any other vehicle that I may drive, even if I don't own it. Under a homeowner's endorsement, I'm insured for other ATVs that I ride, but not other vehicles. If the bill is not enacted, my homeowner's endorsement would have to cover all of the other vehicles I would drive, and that increases risk and fees.

MOTION: **Rep. Jarvis** moved to **send S 1131 to the floor with a DO PASS recommendation.**

Motion **carried on voice vote.**

Rep. Jarvis will be the **floor sponsor.**

S 1097 **Mr. Ed Lodge** from Qwest presented **S 1097**. He said that it is often necessary to relocate utility infrastructure for highway projects. This bill recognizes that utility and highway representatives need to meet during the design phase to 1) mitigate costs associated with relocating 2) prevent interruption of services, and 3) prevent the need for future relocation. It has been a collaborative effort that is supported by the ITD.

During questions, the following issues were addressed:

- Highway districts were part of the collaboration, but the counties were not, though this would apply to them. According to Code, the definition of public highway agencies includes cities, counties, and highway districts.
- There are 65 highway districts in the state and many utilities. They do meet some now, but to get everyone on the same page to mitigate costs, it would be good public policy to meet during the preplanning phases. This bill would facilitate having notification sent to the utilities and having a meeting set up during the early development.

- **Mr. Lodge** said that when the utilities incur costs to relocate, they are not reimbursed. They do pass the costs on to customers. They are trying to prevent this with the bill. A comment was made that if relocation is part of a road project, it seems costs should be part of the highway project costs, not borne by the utilities. **Mr. Lodge** said that is right, but it is not the current practice. The utilities do bear the costs and they don't get reimbursed. This bill creates the opportunity for dialog to mitigate the costs, and some can be lessened or prevented.
- **Rep. Smith** said that most utilities get interruptible easements for which they pay nothing. When there is an expansion project, the highway district, city, county, and canal companies give notice to utilities that things have to be moved. When he was with the ITD and they did the Cole/Overland interchange, the utilities could not find a place to move things. This cost taxpayers a lot of money.

Rep. Smith said that a bill to create cooperation would be good. However, all the players have not been involved. For example, there are many counties that aren't in the highway district association. It is important to include the others. Rep. Smith said the committee could put the bill on hold and asked Mr. Lodge if he could contact some of the other entities and get an approval letter from them. **Mr. Lodge** said that he could accommodate the recommendation of the committee. Ultimately, he wants to help the taxpayers.

- **Rep. Wood** said that she would like to have seen something that says planning and zoning "shall" get cooperation from other groups before they okay changes.

Mr. Mark Dunham, Executive Director, Idaho Association of General Contractors, took the podium. He said that contractors would like to talk with Mr. Lodge also. The members recently spent time talking about the issue.

During questions, the following issues were addressed:

- **Mr. Dunham** said he didn't know whether the Association would have disputes with the language of the bill. He thought that it did address a legitimate issue.
- **Mr. Dunham** said that sometimes communication is happening now, but in many cases, it doesn't happen. They are trying to get utilities involved sooner rather than later. Association members are sometimes surprised to find that things haven't been communicated, and the project gets shut down.
- Responding to a question, **Ms. Mollie McCarty** from the ITD said that they had reviewed the bill and see it as continuing the planning effort. They think it is a good tool for the Department.

MOTION:

Rep. Smith moved to **hold S 1097 in committee at the call of the Chair** to give Mr. Lodge an opportunity to contact other entities and get letters

that support or criticize the bill.
Motion carried on voice vote.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:32 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 17, 2009

TIME: 8:00 a.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: Dennis Tanikuni, Legis. Adv.; Greg Williamson, KBOI; Eric Turner, KIVI-TV; Julie Pipal, Legis. Adv; Dede Shelton, Legis. Adv.; Dan John, Tax Commission; Skip Smyser, Attorney; Martin Bilbao; David Tolman, ITD; Bill Speace, reporter; Colby Cameron, Legis. Adv.; Benjamin Davenport, Legis. Adv.; Dave Carlson, AAA Idaho

Chairman Wood called the meeting to order at 8:00 a.m.

RS 18858

Mr. Jason Kreizenbeck, Chief of Staff, Governor's Office, presented **RS 18858**. He said that it deals with motor fuels tax being raised over three years: 3 cents the first year, 2 cents the second year, and 2 cents the third year, for a total of 7 cents. Each penny results in \$8.8 million.

All money collected over the current 25 cent tax goes into a new highway maintenance, restoration and preservation fund, which is explained on page 1 line 27 through 30. This is consistent with language in the Chairman's bill and Rep. Smith's bill. Distribution is 62% to State, 38% to local. Changes would go into effect July 1, 2009.

During questions, the following issues were addressed:

- A request was made of **Mr. Doug Benzon** from the ITD to explain Section 4 regarding gaseous fuel. **Mr. Benzon** said that Section 4 deals with the people who buy this and pay an annual permit sticker. It is by weight group. Gaseous fuels were overlooked in the 1996 increase from 21 cents to 25 cents, so the first increase is higher. Then it proportionally increases equivalent to the 2 cents for the next two years.

The process for gaseous fuels is that you buy a sticker (\$89 currently) for, for example, propane and then you fill up as many times as you want. This keeps the propane dealers from having to report gallons and keep track of individual sales to fleets that have stickers.

MOTION:

Rep. Roberts stated that we have had previous hearings on these topics and these are minor changes in rates. He **moved to introduce RS 18858 to print and send it directly to the second reading calendar without recommendation.**

Rep. King said she would be voting no for the same reasons as before. The Treasure Valley contains 45% percent of population and has about 60% of the wealth in the State, but it only gets about 25% back for roads and bridges. Also, public transportation needs to be included as part of the mix.

Rep. Ringo stated that we need to do something to restructure revenue for roads. To plan for the future, we need to do something different. She also believes we should have an opportunity to vote on other opportunities that we have seen. The information in this RS is good, but she wants to be able to look at different ideas and choose from among them. This seems like a short circuit.

Rep. Ructi said he thinks the Governor has done a good job of trying to solve the transportation problems. While he will oppose this on the floor, he thinks it deserves a hearing of the full House. He said he doesn't know when there is a good time to raise taxes, but it is a very bad time now for Idaho families. It will show that government is out of touch.

Rep. Roberts said that the goal is to get the bill to the floor so that the Representatives in Idaho can weigh in on the issue of the Governor's revised plan. That's what the process is about, and we should let the process work.

VOTE ON MOTION:

The motion to **introduce RS 18858 to print and send it directly to the second reading calendar without recommendation carried on voice vote.** **Rep. King** requested to be recorded as voting **Nay**.

RS 18864

Mr. Kreizenbeck presented **RS 18864** and said that it regards motor vehicle registration fees. It is a three-year plan that generates \$43.7 million for the ITD. New funds will be going to the highway maintenance, preservation and restoration fund. The 5% increase on heavy trucks will go directly to the Highway Distribution Account (HDA).

It is a tiered system based on the age of the vehicle. Regarding the increase to heavy trucks (60,000 lbs. and over), the Governor intends to develop a task force to look more closely at these trucks.

The proposals are similar to what we have been discussing for about 14 months. This money would go toward maintenance, operation, and restoration, which the audit said was vital to preserve our transportation asset.

During questions, the following issues were addressed:

- **Mr. Kreizenbeck** was asked about the section in the Statement of Purpose regarding the costs for implementation. Regarding the \$106,000 to bring in the automated system and cover some other costs, is this included in the \$6 million that the ITD is asking for? **Mr. Kreizenbeck** said that it was.
- A concern was raised that everything goes into the special fund, except trailers on P. 13. Where does that money go? **Mr. Doug Benzon** from the ITD said that heavy trucks and trailers pose a

problem. If a truck apportions 1% of its miles in Idaho, how do you take a percentage of that and attribute it to the account? To avoid incurring expenses beyond the scope of the bill, they decided to keep putting funds from the heavy trucks into the HDA.

- Mr. Kreizenbeck was asked to speak to the amount of funds that the Governor's office is trying to raise for the ITD. **Mr. Kreizenbeck** said that in the compromise proposal of three years on gas and registration, 38% goes to local, 5% goes to the Idaho State Police (ISP), and the remainder goes to the ITD. The ethanol exemption will add to that. They would still like to take the 5% that the ISP gets from the HDA and give it back to the State. All proposals would generate \$130 million, which is down from \$174 million with an earlier plan.

MOTION: **Rep. Bedke** moved to **introduce RS 18864 to print and send it directly to the second reading calendar without recommendation.**

Rep. Labrador said he would vote to send it to print, but that doesn't mean he would vote for it on the floor. He said that this is not a compromise. It is a revised plan. We haven't decided yet what to do with the plans. The Governor has worked very hard. Whether he votes for it or not, it deserves a full hearing.

Rep. Hagedorn said that in all the discussions in hearings on all of the bills, we heard from many lobbyists and businesses and other people who would benefit. We have heard from only one single individual who talked about his neighbors and how a tax increase would affect them. He said that because we are not hearing these in committee, the citizens really need to let legislatures know how they feel so that when the bills are discussed on the floor, legislators can know where constituents stand. We need citizen input.

VOTE ON MOTION: The motion to **introduce RS 18864 to print and send it directly to the second reading calendar without recommendation carried on voice vote. Rep. King** requested to be recorded as voting **Nay**.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 8:23 a.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 18, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Reps. Smith, Bedke, Labrador

GUESTS: Dennis Tanikuni, Legis. Adv.; Amy Smith, Vehicle Services Manager, ITD; Amanda Albers, Trade Specialist, Idaho State Department of Agriculture; Laura Johnson, Legis. Liaison, ISDA; Terry Lee, citizen; Benjamin Kelly, Legis. Adv.

Chairman Wood called the meeting to order at 1:32 p.m.

MOTION: **Rep. King** moved to **approve the minutes of February 24, 2009**, as written.
Motion carried on voice vote.

H 241 **Rep. Andrus** presented **H 241**. He said that this bill came from a situation in Pocatello. The city has purchased two electric cars that they use at their sewage treatment plant and for meter reading. They are rated to go 35 mph. Many roads within Pocatello have a 45 mph limit. Current law says they can't go on roads with more than a 25 mph limit. The Idaho Transportation Department (ITD) does not want to allow them to travel on 45 mph roads because they would mingle with "regular" cars and they do not have airbags. They do have other safety features, such as turn signals, etc. The bill would allow them to travel on the 35 mph roads, and the ITD has no problem with that.

He said that the City of Pocatello is to be commended for using these vehicles that produce less pollution. Mayor Chase has been recognized by the Snake River Alliance for implementing environmentally friendly things in the city. He said that we have to start somewhere with conserving energy and producing less pollution.

Rep. Andrus yielded to **Mr. John Ziglar**, Senior Environmental Coordinator from Pocatello, who took the podium. **Mr. Ziglar** said that H 241 would help the city. The two vehicles are electric trucks that use no gas. They would get the equivalent of about 100 to 110 mpg if they did use it.

One is being used at the wastewater treatment plant and doesn't have right-of-way issues because it stays inside the fences of the plant. It works well there and it holds equipment and other loads. They have a shop for it.

The other one has been outside all winter. The factory has changed the way it charges so that it charges more deeply. They hope to achieve 30 miles per battery charge soon. The utility billing department will use it. They often stop at every house to read water meters. There is no need for load carrying capacity; they just have to drive a loop of about 15 to 20 miles, and then they can plug in again.

There are some major highways through the city that are posted at 45 mph. When it comes from the factory, the vehicle won't go over 25 miles per hour, but it can be changed to go much faster. They want to be able to run them at 35 mph. The legislation would also allow them to cross over roads that are posted at 45 mph. This is currently illegal.

There are already vehicles that don't move as fast as general traffic, such as farm equip. We have few situations where this is an issue.

Mr. Ziglar distributed pictures of the vehicles (attached to these minutes). He mentioned that they don't look like trucks made in the U.S. They are utilitarian. They don't have much traction so would need snow tires and weight in the back in winter. The tradeoff is that they can buy these for about the same price as a small pickup (\$20,000) and drive them for the price of electricity, which is much less than gas.

During questions, the following issues were addressed:

- A question was asked for **Ms. Amy Smith**, Vehicle Services Manager, ITD, about whether the issues could be taken care of with a county or city ordinance. Also, the safety requirements were questioned. **Ms. Smith** said that they do have a safety standard that is less than regular vehicles, but they get regular passenger car registrations. They are just prohibited statewide from being on roads with a speed limit over 35 mph. It probably could be handled by county ordinance, but we have the opportunity with this bill to address the issue statewide.
- **Rep. Nonini** commented that during his first term in the Legislature, he carried the legislation to allow the electric cars on Idaho roads. He commended Pocatello and said that more government agencies should consider electric vehicles. The ones he is most familiar with are more car-like. They have all the features of the federal highway requirements. The Committee has supported allowing ATVs to cross over certain roads that they couldn't before. This would help in North Idaho where the electric vehicles are sold. People could use them on some of the 35 mph roads, and the ability to cross over other roads would also be helpful.

MOTION: **Rep. Nonini** moved to **send H 241 to the floor with a DO PASS recommendation.**

During further questions, the following issues were addressed:

- The question was raised as to why the bill does not include the requirement that the vehicles meet federal safety standards. That would eliminate those that don't. Those are a liability and there are several out there. We do want to support this, but only for the ones

that meet standards.

Ms. Smith said Idaho Code 49-402 already requires an electric vehicle to meet federal standards. (The following is from that Code: ...each neighborhood electric vehicle and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds and that complies with the federal motor vehicle safety standards as defined in section 49-107, Idaho Code...) She explained that this bill deals only with an operating restriction.

- **Rep. Andrus** said that the vehicles do not have airbags, which is why the Department does not want them to travel on roads with a speed limit over 35 mph.
- When asked about what constitutes a “neighborhood electric vehicle”, **Ms. Smith** said that the National Highway Traffic Safety Administration has standards for each different type of vehicle, such as motor vehicles, motorbikes, and neighborhood electric vehicles. The manufacturer has to certify that the vehicle complies with those standards to get a certification label. **Rep. Andrus** confirmed that the ones in the picture have the certification label.
- **Mr. Ziglar** said that some electric vehicles can achieve speeds much higher than 35 mph. However, if one is traveling at a high speed on a highway, someone may have tampered with its computer illegally.
- It was clarified that the objective of the legislation is to allow the neighborhood electric vehicles to be driven on roads with speed limits up to and including 35 mph and to cross roads with speed limits up to and including 45 mph. They would still not be able to cross roads with speed limits over 45 mph.
- **Rep. Andrus** said that regarding whether we need state legislation for this, we really do because in areas like Pocatello, there are state roads (as well as county and city roads) that have a 35 mph speed limit.
- A question was asked whether most people who are going to cross a road know what that road’s speed limit is. **Mr. Ziglar** said that citizens might have a problem, but those working for the city know where the streets are that have different postings, especially utility people. If many people start driving these cars, we would need to post more signs or increase education.
- A comment was made that the bill would be better if it referred to the code that says the vehicles meet federal standards.

Mr. Terry Lee took the podium. He said that as a private citizen, he wants a strong economy and clean environment. He said that we (the State) should bring in industries that provide higher paying, growth industry jobs, and electric vehicles are a good fit because of the low cost of electricity in Idaho and the fact that we have hydroelectricity. In places where utility bills are very high, the industry it doesn’t make as much sense. And if the goal is to improve the ecology but everything is powered with coal, that

isn't a good tradeoff. But in Idaho, many things are powered with hydroelectricity. We could be an incubator for the industry. Some manufacturers are shopping for a place and are considering California. He would like them to consider Idaho.

Mr. Lee said that the current legislation is restrictive so that people who drive these vehicles can't leave their subdivisions. To make an environmental impact, we need to get people to replace their regular cars with electric cars. Some are available for \$16,000 to \$20,000, but you must be able to use them. This legislation is a good first step. In Boise, being allowed to drive on 45 mph roads would be better. Montana has adopted this. Our two largest employers, Micron and HP, are on 45 mph roads. So it would be good to remove that barrier.

Regarding people who modify their cars, if they can go fast on the freeway, they cannot go far. Higher speed modifications create a reduced range.

During questions, the following issues were addressed:

- A question was raised about whether it is a special challenge for an electric car to get liability insurance. **Rep. Hagedorn** said that this depends on how they are registered. Most insurance companies have programs for them. He said that there is currently an influx of various vehicles, and the insurance industry and the State will have to decide how to categorize them. Currently, some "alternative" vehicles can be driven on roadways regardless of the speed limit. Eventually, we have to look at all the different types and classify them by their uses and the areas they can be used in. This legislation is a good first step, but it is not the final answer. He also mentioned that this week, the first "flying automobile" was tested.
- **Mr. Lee** made a point regarding the concern about the electric cars intermingling with high speed traffic. He said he can do that now with a motorcycle, moped, or bicycle, even without a helmet. And those vehicles cannot even keep up with the electric cars.

VOTE ON MOTION:

The vote on the **motion to send H 241 to the floor with a DO PASS recommendation carried on voice vote.**
Rep. Andrus will be the **floor sponsor.**

S 1053a

Ms. Amy Smith presented **S 1053a**. She said that it deals with the collection of personal information for titling and registration. It enables the Department to collect owners' and businesses' identifying information, including full legal name, driver license number or identification card number, or social security number (SSN) if the applicant does not have one of those other two numbers. If the applicant doesn't have one of the numbers and isn't eligible for an SSN, a written document can be presented to say why.

Currently, the Department of Motor Vehicles (DMV) has separate "stovepipes" of information. These subsystems are either people specific or vehicle specific, and they don't "talk" with each other, so common identifying information is not shared among them. Records exist in many

variations of people's names. This makes it impossible to identify vehicle records that may all belong to the same person. The ITD needs to be able to replace this old system with a one person, one record concept.

She did a search in the titles database that is similar to one that law enforcement might do to find the vehicles that may be owned by a person or to find an address. The name "Jack Jones" showed 159 possibilities. If you don't know the make, model, or year of the vehicle, or unless you look in a specific geographic location, you can't further limit the search. The problem is that owners use so many name variations. Jack Jones can be J. Jones, Jack Anthony Jones, J.A. Jones, etc. Also, this person could be listed as a second owner on a vehicle, rather than the first owner.

If the Department collected the information mentioned previously, personnel could more easily retrieve records and be sure that they have the correct customer.

SSNs are already collected for issuing an Idaho driver license or identification card. They are protected from record release by Idaho Code. During the Senate Transportation hearing, there was concern about the security of the ITD databases. Their systems are approved by the Social Security Administration. The ITD is protective of this information. The Department has protective policies and procedures, and employees receive training. Also, management can review records to know who has accessed any record.

There were also concerns about requiring a physical address as well as a mailing address for titling and registration. This is already a requirement of Idaho Code 49-401B for registration to ensure that the appropriate counties and highway districts receive their part of the money collected. Only the mailing address is used for correspondence and requested records.

Ms. Smith said that she surveyed other jurisdictions regarding whether they collect this information. Of the 36 responses, 20 said collection is mandatory, 5 collect it but it isn't mandatory, 3 states are seeking legislation to make it mandatory, and 8 do not make collecting this mandatory.

Idaho Code 49-1210 is currently in sunset unless it is extended this session. It requires the Department to cancel registrations of owners who are required to provide proof of financial responsibility for certain driver license suspensions. Under the current system, they cannot comply with this because they can't match people to records of what they own. With this bill, they can collect the unifying information they need and prepare for modernization and future automation.

Law enforcement supports the bill and believes it will help investigations regarding fraud and theft. The Dealer Advisory Board and both Auto Associations have approved as well. And because people already must provide the information for a driver license or identification card, they won't experience an undue burden when applying for title and registration. The fiscal impact is none because the current system can accommodate the information.

During questions, the following issues were addressed:

- A question was asked about whether they currently tie a vehicle title to a driver's license number. **Ms. Smith** said they do not.
- A discussion ensued regarding whether the employer tax identification number required of a business would be the federal number or the state number.
- A concern was raised about whether safeguards ensure that when databases are compiled and combined, firewalls and other security measures will remain in place for information such as SSNs. **Ms. Smith** said that they have had the Social Security Administration come in and do a physical audit, and they passed all of that Administration's tests for safety.
- A concern was also raised about address protection for victims of domestic violence. Law enforcement must go through the Secretary of State to get an address for certain individuals. The Department would need to be sure to be in line with that.

MOTION: **Rep. King** moved to **send S 1053a to the floor with a DO PASS recommendation.**

During further questions, the following issues were addressed:

- A question was raised about the circumstances of the amendment. **Ms. Smith** said that in the original proposal, people who didn't have an SSN would have to bring written verification from the Social Security office regarding their ineligibility. The Senate didn't want people to have to do this if they had something else that would work. The Department needed a mechanism to accept valid documentation from foreign students, foreign military members, etc. They amended the bill to accept written documentation but not specifically from the Social Security office.
- A question was asked whether this was moving in the direction of Real ID. **Ms. Smith** said that it has nothing to do with Real ID. It helps the Department modernize their system. You should not have to go to various offices to change your address. One office should be enough.

SUBSTITUTE MOTION: **Rep. Hart** moved to send the bill to General Orders with an amendment. Where the bill says "employer tax identification number", put "State or Federal".

Discussion ensued as to whether this was necessary. **Ms. Smith** said that she believed it could be either the way according to the bill. She assumed they would use the federal number, but she thinks it could be the State number also. She said they could train their staff to ask which one it is.

Chairman Wood called a brief recess for the committee at 2:35 p.m.

Vice Chairman Hart called meeting to order again at 2:48 p.m.

**WITHDRAWAL
OF SUBSTITUTE
MOTION:**

Rep. Hart said that he was withdrawing the substitute motion. He requested that the minutes reflect that it was not determined whether the employer number is a state or federal number, and it could be either one.

**VOTE ON
ORIGINAL
MOTION:**

The motion to **send S 1053a to the floor with a DO PASS recommendation carried on voice vote.**
Rep. Hart will be the **floor sponsor.**

S 1054

Ms. Laura Johnson, Legislative Liaison from the Idaho Department of Agriculture, presented **S 1054**. She said that the Rural Economic Development and Integrated Freight Transportation (REDIFIT) program was transferred to the Department of Agriculture. Their agency has gone through the zero-based budgeting process and have looked at all the statutes. They need to provide for annual funding for things associated with REDIFIT.

Current law allows for a one-time 3% of total assets for personnel. This is sufficient now but won't be in the long run. They inserted "from interest only" in this bill.

During questions, the following issues were addressed:

- When asked about the money that goes into the account, **Ms. Johnson** said that assets are \$ 5.5 million, including principal and accounts receivable. The interest earned from loans and earned on the cash balance should make this grow. Interest is about \$165,000 per year. Their spending authority is \$30,000 per year: \$20,000 for operating expenses and \$10,000 for personnel.

MOTION:

Rep. Nonini moved to **send S 1054 to the floor with a DO PASS recommendation.**
Motion **carried on voice vote.**
Rep. Wood will be the **floor sponsor.**

ADJOURN:

There being no further business before the committee, **Vice Chairman Hart** adjourned the meeting at 3:02 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 24, 2009

TIME: Upon Adjournment of the House

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Roberts, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Representatives Smith (24), Bedke, and Wills

GUESTS: See attached sign-in sheet.

Chairman Wood called the meeting to order at 2:24 p.m.

Minutes from 02/26/09 were introduced for approval. **Representative King** moved to accept the minutes as written. **Motion carried on a voice vote.**

Minutes from 03/04/09 were introduced for approval. **Representative King** moved to accept the minutes as written. **Motion carried on a voice vote.**

Minutes from 03/10/09 were introduced for approval. **Representative Mathews** moved to accept the minutes as written. **Motion carried on a voice vote.**

Minutes from 03/16/09 were introduced for approval. **Representative King** moved to accept the minutes as written. **Motion carried on a voice vote.**

Minutes from 03/17/09 were introduced for approval. **Representative Nonini** moved to accept the minutes as written. **Motion carried on a voice vote.**

Minutes from 03/18/09 were introduced for approval. **Representative Mathews** moved to accept the minutes as written. **Motion carried on a voice vote.**

S 1097: **Edward Lodge**, of Qwest Communication, presented **S 1097**. The bill amends Chapter 2, Title 40, Idaho Code, by the addition of a new Section 40-210, Idaho Code. It would provide legislative intent, to provide that certain public highway agencies or any private party working with such agency on a project that may require relocation of utility facilities shall permit the affected utility to participate in project development meetings. It would also provide for written notice to the affected utility and provide for a meeting, as well as providing that certain public highway agencies and affected utilities shall use best efforts to eliminate or minimize certain costs. As well, it would provide that failure by the affected utility to

respond to written notice would not affect the public highway agency's ability to proceed with the project. The proposed legislation would provide definitions and limits to application.

This legislation creates synergy between highway districts and utilities, and saves money for utility companies and taxpayers. Mr. Lodge visited with cities and counties, and says both have indicated that they are neutral on this legislation. Highway districts support the bill.

Mr. Gigray, of Canyon Highway District #4, originally felt concerned about the bill with regard to affirmative duty being placed on highway districts to foot the cost of moving utilities. His understanding is that this bill is not an attempt to make highway districts pay, but would require districts to be notified when a design phase begins. He stated that while he is listed as "con" on the sign-in sheet, he is actually neutral on this legislation.

Mr. Justin Ruen, of the Association of Idaho Cities, said that he had S 1097 reviewed by public works and cities, and they did not find anything worthy of opposition. He is neutral on this legislation.

MOTION: **Representative Nonini** moved to send S 1097 to the floor with a **do pass** recommendation. **Motion carried on a voice vote.**

S 1134: **Senator Goedde** presented **S 1134** to the Committee. S 1134 is an act relating to motor vehicle responsibility. It amends Section 2, Chapter 236, Laws of 2003, to revise a sunset provision and to provide for an annual report. The bill states that beginning January 1, 2010, the department will report to the Senate Transportation Committee and the House Transportation and Defense Committee on progress that the department is making toward upgrading and implementing the Division of Motor Vehicles' automated system. The report would be submitted no later than January 1 of each year.

He stated that when the Division of Motor Vehicles' equipment fails, only reconditioned equipment is available to for replacement.

In response to questions, **Amy Smith** said that she feels lucky when she goes to work and the systems are working. She is not able to answer how long the equipment that is currently being used will last. It was built in the early 1980s.

MOTION: **Representative Hart** moved to send S 1134 to the floor with a **do pass** recommendation. **Motion carried on a voice vote.**

S 1104: **Susie Pouliot**, of the Idaho Medical Association, presented **S 1104**. This is an act relating to motor vehicle registration fees and emergency medical service fees. It amends section 49-452, Idaho Code, to revise certain fees and to provide for monies dedicated to the operation of the trauma registry.

It would require an emergency medical services fee of \$1.55 to be collected in addition to each motor vehicle registration fee amount collected under the provisions of this chapter, with the exception of those vehicles proportionally registered under Section 49-435, Idaho Code.

Twenty-five cents of the fee shall be retained by the county of residence for use in funding local emergency medical services costs. One dollar and thirty cents of the fee shall be transmitted to the state treasurer for deposit in the emergency medical services fund established in Section 56-1018, Idaho Code, provided that thirty cents of such fee shall be dedicated to the operation of the trauma registry established in Section 57-2002, Idaho Code.

For vehicles registered under provisions in Section 49-402B, Idaho Code, the fee shall be three dollars and ten cents. Fifty cents of the fee shall be retained by the county of residence for use in funding local emergency medical services costs. Two dollars and sixty cents of the fee shall be transmitted to the state treasurer for deposit in the emergency medical services fund established in Section 56-1018, Idaho Code, provided that sixty cents of such fee shall be dedicated to the operation of the trauma registry established in Section 57-2002, Idaho Code.

Several years ago, Idaho physicians asked for a trauma registry. Emergency Medical Services (EMS) contracted for implementation of the registry. Funding was through the EMS office, but has now been discontinued. The purpose of the registry is to collect data, analyze costs, causes, and outcomes, to improve EMS and prevent serious injuries. According to preliminary data, Motor Vehicle Accidents (MVAs) are the second leading cause of traumatic injuries in Idaho. This legislation provides a slight increase in the EMS portion of motor vehicle registration fees by thirty cents. In the original statute, there was a prohibition stating that the trauma registry would not be funded through the general fund.

The first section of the bill talks about a thirty cent EMS fee. The second part talks about a sixty cent fee. The sixty cent fee refers to the biennial registration, as opposed to annual fee of thirty cents. It comes out to thirty cents per year, per registration, regardless of whether a driver registers a vehicle for one year or two.

There is a connection between the trauma registry and motor vehicle registration fees. The registry allows for better information about trouble spots on roads, dangerous intersections, links to other data resources, as well as outcomes for patients who enter the trauma system.

In response to questions, Ms. Pouliot stated that anyone who sustains a traumatic injury in Idaho is included in the registry, it is wide ranging and does not solely focus on MVAs. Local jurisdictions and police do have information about crashes that occur in their districts, however, there is more information contained in the trauma registry than just locations and numbers of crashes.

Mr. Mallard, of the Idaho Hospital Association, responded to questions. He offered data from hospitals to provide a picture of what happens from the time a crash occurs until a person is discharged from the hospital. This information assists in making safety changes. He said that reporting by hospitals is required by statute, and reports are linked to other sources. All Idaho hospitals that receive trauma cases are required to report.

Dr. Bill Morgan stated he has handled trauma for eleven years. The

trauma registry allows him, as the physician, to have the benefit of multiple individuals' experience and to make the best possible decisions for his patients. It is used in other states and allows physicians to connect with data based on outcomes and other issues as they make decisions.

Mary Hunter, Highway Safety Manager, Idaho Transportation Department (ITD), said that the ITD provides dedicated funding for the trauma registry. From their perspective, in order to best utilize funding to address any problem, the problem must be understood. They want to reduce traffic deaths. The trauma registry combined with their crash data provides the only window they have into the details of crashes and the impact on victims. Allocating resources where they can make the biggest difference is important. If there is an intersection that has 100 crashes a year, but they're all fender benders, and there is another location that has 8 crashes a year, but they're all fatalities, it will be important to understand that so that funding can be directed to the intersection where the fatalities are occurring. The trauma registry helps them focus limited resources to make the greatest impact.

In response to questions, Ms. Hunter said that ITD completes an Idaho Collision Report annually. The report for 2008 is not yet available, as data is still being gathered. It looks at contributing factors such as impaired driving, aggressive driving, youthful driving, and seat belt use. They work with highway districts to see where high accident rates are. That report is based on crash data that comes from law enforcement agencies. She stated that the trauma registry collects data on all traumatic accidents, not just MVAs. It is put together by the Idaho Hospital Association. Traffic crashes and falls are the primary reasons for traumatic injuries.

Ms. Ginger Flourshinger-Franks, Director of Idaho Trauma Registry, said that all injuries are classified based on how they occurred.

James Aydelotte, of the Department of Welfare, is speaking on behalf of the Division of Health, representing Public Health. Data provided on death certificates is useful, but only gives information on traumatic injury that results in death. Many more traumas result in injury, than result in death. The trauma registry gives a complete picture and helps evaluate program needs and program impacts, and allows Idaho citizens to be safer and healthier.

In response to questions, Mr. Aydelotte stated that other states do have a trauma registry, however, he is not sure what the cost to individual states is.

Mr. Steve Mallard, President of Idaho Hosp Association (IHA), said that the IHA is the contractor for the Idaho Trauma Registry. He stated that initial funding came from several sources but was not a statewide program. If this is not funded now, the registry will have to shut down, as there is no other funding source. Adding onto the EMS fee was the only thing they could think of to provide the necessary funding.

In response to questions, **Dr. Morgan** said that surgeons and trauma physicians can accrue an enormous amount of data points that are listed on the trauma registries. Data allows them to look at specific injuries and

change the way they practice, based on how injuries respond to different treatments. He believes that trauma registries have improved trauma care tremendously in the United States.

Ms. Flourishinger-Franks, in response to questions, stated that looking at transport times allows EMS to lay out a structure for ambulance systems and to improve patient outcomes. She stated that a trauma system involves all injuries.

Mr. Mallard stated that the bill prohibited general fund funding. EMS is in Title 49 and is attached to motor vehicle fees, and that is why this request for funding is attached to motor vehicle fees.

MOTION: **Representative Hagedorn** moved to **hold S 1104 in committee**, to look for alternate funding from the general fund when those monies are available. He stated that everyone has heard him say "In God we trust, everyone else needs to provide data." The trauma registry has allowed hospitals to tune their facilities to data provided. This gives an advantage to all of Idaho's residents.

SUBSTITUTE MOTION: **Representative King** moved to send S 1104 to the floor with a **do pass** recommendation. She stated that she likes this bill, and it is only thirty cents.

AMENDED SUBSTITUTE MOTION: **Representative Roberts** moved to **hold S 1104 in committee until time certain**. He suggests hearing S 1104 at the end of today's meeting, when a representative from Health and Welfare can address the committee and provide additional information. Short of that, he supports the original motion.

Representative Mathews stated that he supports the amended substitute motion. He believes that S 1104 is redundant with a child death review bill from a few years ago. He would like more data on costs and does not currently have enough information.

The amended substitute motion carried on a voice vote.

H 196: **William Gigray III** presented **H 196**, an act relating to validation proceedings for a highway or public right-of-way. It amends Section 40-203A, Idaho Code, to include City Council authority to initiate and conduct validation of proceedings involving a public highway or public right-of-way. H 196 declares an emergency.

He stated that this legislation is not an interference with pending litigation that would include cities. The lawsuit was brought against the City of McCall by Bear Basin, LLC. He has a copy of the order of the court entered in April of 2008 that stays proceedings, so McCall can pursue validation and deal with subject matter of the lawsuit involving public rights of way. The plaintiff does want Bear Basin declared public. Without a legal description of where roads are, the city could not admit to those allegations. All parties agreed that the validation procedure, if followed, could resolve issue. Idaho Code is specific in delineation of highway systems. A city can't exercise authority over a county, and a county can't exercise authority over a city. This action brought up the issue that this

needs to be changed. This is not an eminent domain issue, it just seeks to clear up ambiguity about whether locations are public rights of way.

In response to questions, Mr. Gigray stated that Bear Basin was an easement that was transferred to the city. Under 42-03A, if there was property that encroached on a right-of-way, the highway jurisdiction could pay for the cost of the loss. He wants to be sure there are not these circumstances in the field, and wants to consider the best interests of the public. This bill seeks to make sure statute is clear that cities can exercise validation authority, as other highway jurisdictions have that authority. He has not been part of the highway series of law or the amendments. It strikes him that the cities not being included is a disconnect, as other entities are included. Cities and city systems having authority over their highway district systems is included throughout existing law. Highway district commissioners have the same authority as county commissioners. He believes cities do have authority already, but it is not written into statute.

He has spoken with the Association of Idaho Cities about this bill, and it is his understanding that they do not oppose this legislation.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, had two attorneys look at this bill, and expressed concerns. This legislation creates a new right for a city. His understanding is that cities only have the rights that are given to them by the legislature. There is a reason why cities are not included in this section of code. The county or highway district has the responsibility of putting maps together. If cities get added in, how does a dispute get reconciled? That is not provided for in this bill. Validation is a term used for settling disputes about existing rights of way. If a business says it's 20 feet and a city says it's 30 feet, a validation process takes place. The person disputing the claim makes the decision. They are a party with an interest in the dispute, so this does not make sense. There is an appeals process, but judicial review is severely limited. His recommendation is that this legislation is not a friend of private property rights.

In response to questions Mr. Gigray stated that the subject of the lawsuit only involved roads inside the boundaries of McCall and did not involve any roads in the unincorporated areas of Valley County. His position is that a city would have no jurisdiction over any roads outside its boundaries. He said that statute speaks to itself. There is a procedure for resolving ambiguities and criteria has to be met. County highway districts as well as counties have initial authority to determine in a validation procedure. They have that authority now. He said that the counties are not having jurisdiction removed in this legislation. It only affects cities.

MOTION:

Representative Labrador moved to **hold H 196 in committee**. He spoke to his motion, saying that it bothers him that he does not have a reasonable explanation as to why this law did not include cities originally. No presenter has been able to explain, and he is concerned that leaving cities out was not an oversight, but that leaving the cities out was purposeful. Cities only have the powers and authority they are granted by the legislature.

Representative Hagedorn said that it is apparent to him that if there is a

challenge to a right of way in a city street or roadway, that the county can not intervene even though that city is within a county, nor can county commissioners intervene. The city streets do not belong to either one. If there is a challenge of a right of way on a city street, who decides but the court system? If the city built the street and owns it within its incorporated boundaries, the city should be able to be challenged with the right of way. He believes the changes make sense. He does not understand why they were not in the original language. He does not see a reason not to make the code better and more solid.

Representative Hart spoke in favor of the motion. He believes there can be times when the city has a biased interest. The safe thing to do is to hold in committee and maybe next year a better explanation will be available.

The motion carried on a voice vote.

H 131:

Representative Mathews presented **H 131**, an act relating to Idaho Commemorative Medallions. It amends Section 40-702, Idaho Code, to provide that the State Highway Account may consist of the proceeds of the sale of Transportation Idaho Commemorative Medallions. It amends Section 63-3022, Idaho Code, to deduct any amounts included in the gross income. It amends Section 63-3622PP, Idaho Code, to provide that all medallions sold by the State Treasurer are exempt from the sales and use tax. It amends Section 67-1223, Idaho Code, to provide for a gold and silver commemorative medallion to be sold and to provide for what proceeds from the sale of medallions shall be used. It declares an emergency, providing retroactive application.

He would characterize this as a no foul, no harm piece of legislation. It would help Idaho highways and may open and broaden the base for which funding is always needed. If enacted, H 131 would provide a voluntary source of funding for maintenance, and construction projects. All monies received from the sales would go to the state highway account. There is no adverse fiscal impact. Medallions would be paid for in advance.

In response to questions, Representative Mathews stated that if the bill is amended, the fiscal impact statement will change. The State Treasurer would determine pricing and would need to have at least a 6% markup if tax exempt. Pure gold is too soft to use. He believes optimistically, with good marketing, that 100,000 could sell in the first year.

Representative Ringo does not feel favorably disposed to this. It does put a burden of sorts on the State Treasurer's Office to try to launch this and get it going. If the track record was a little more hopeful, she might feel better about it.

MOTION:

Representative Roberts moved to **send H 131 to general orders** with an amendment to delete section 3 of the bill. **Motion carried on a voice vote.**

S 1104:

Dia Ganor, Chief of the Emergency Medical Services (EMS) Bureau, Department of Health and Welfare (DHW), which was established in

1976. The Bureau provides response to homes and highways throughout the state. In response to questions, she said that she has been responsible for the dedicated funds since 1992. Each year, the EMS Bureau expended less funds than were appropriated. In 2002, budget analysts at DHW looked at the condition of funding and believed that sufficient revenues existed to continue paying for the trauma registry. Precipitous increases in the need for dedicated funds, and a loss of \$145,000 in income in 2005 that was specific to trauma, caused actual expenses for service delivery to exceed the amount of money in the dedicated fund. During 2008, \$330,000 was lost from the budget.

The FY 09 EMS Bureau budget is about \$5 million. They receive funding from drivers' license fees, motor vehicle registration fees, federal grants, and receipts from other states for services provided mainly by the EMS communication center. She recognizes a \$400,000 figure as what the collection of the thirty cent fee increase would yield.

During discussion on the bill, **Representative Roberts** stated that he is concerned because of the 6% reduction, and the fact that this is a budget issue.

Representative Ringo stated that she does not want to kill this because it's important, but would like to hold onto the bill until Friday or Monday to see what the Health and Welfare budget looks like.

Representative Hagedorn stated that he does not agree with the initial decision that funding for EMS would be through vehicle registration. Not all Idaho citizens register a car. It would make more sense to him that when people check into the hospital, that they be charged the thirty cents. The program itself is good, but he does not want to continue to fund it through vehicle registration.

In response to questions, **Mr. Mallard** stated that there is about \$380,000 cost annually for the trauma registry.

MOTION:

Representative Ringo moved to **hold S 1104 until time certain**, at the call of the chair. She spoke to her motion, saying she thinks the program is important, but shares the reservations of other committee members. She thinks that there might be more information from JFAC, and possibly there could be a sunset.

Representative King agrees this is a great program, but the disadvantage of funding from the general fund is that it fluctuates, and this program requires a solid revenue stream. She'll agree to vote to wait a week and get more information.

SUBSTITUTE MOTION:

Representative Nonini moved to **hold S 1104 in committee**. He believes the information contained in the reports produced by the trauma registry is common sense. There are so many cuts happening and he does not see a need to increase registration fees. He stated that hospitals are sitting on large amounts of cash. He is not comfortable with this legislation.

Representative Hagedorn supports the substitute motion. It appears that

the biggest recipients of data are hospitals and doctors, and the service they provide to customers is paid for by customers. It is the hospital that is paid to provide services, not the state of Idaho. If hospitals want this service, they should pay for the data, since they profit from it.

Representative King stated that 40% of people who suffer trauma injuries are covered by Medicaid or self pay, so the state will pay for it either through the Medicaid budget or some other way.

The substitute motion carried on a voice vote.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 4:43 p.m.

Representative JoAn Wood
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 26, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: See attached committee sign-in sheet

MOTION: **Rep. King** moved to **approve the committee minutes of March 12**, as written.
Motion **carried on voice vote**.

S 1086 **Sen. Pearce** presented **S 1086**. He said that part of the money from the “Shriner’s license plate” would go to the Grand Lodge of Idaho charitable fund. He also provided some history regarding the Freemasons, stating that George Washington and several signers of the Declaration of Independence were Masons.

He mentioned a relatively recent event that happened at the McCall airport when two planes collided. A little boy was badly burned and incurred very high medical expenses. The Shriners transferred him to a hospital that will care for him free of charge to the family.

The Freemasons organization has an Attorney General opinion regarding whether the fees from the license plate are allowed to go to their charitable organization. The opinion is that this is legal. It is similar to several other plates for which the fees also go to a charity.

In response to a question, **Sen. Pearce** said they would not object to an amendment that would raise the fee to make up for the \$3 per transaction loss that the Idaho Transportation Department (ITD) incurs for specialty plates.

MOTION: **Rep. Wills** moved to **send S 1086 to General Orders** with amendments to help defray the costs. **Rep. Shepherd** seconded.

Rep. Hagedorn said that he has not yet seen any data about how much the specialized plates actually cost. Until we get good, across the board numbers on what all specialty plates costs, we should not amend the bill.

SUBSTITUTE MOTION: **Rep. Hagedorn** made a **substitute motion to send S 1086 to the floor with DO PASS recommendation**.

During further discussion, the following issues were addressed:

- **Rep. Wills** said that there has been plenty of testimony regarding the

current additional costs. If we find that \$3 isn't the exact number, we can adjust later.

- **Rep. Roberts** said that the pilot in the McCall tragedy is his friend, and he heard the other plane fly over his house just minutes before the collision. Even so, he said that his position on specialty plates does not change. His dad was a Mason. But, on principle he will not support a new specialty plate, as he hasn't supported any for the last nine years.
- In response to a question by **Rep. King**, it was confirmed that the Freemason charity is a 501(c)(3).
- **Rep. Shepherd** commented that years ago when her oldest daughter was seven, her daughter received services for scoliosis at a Shriner's hospital in Spokane, and she continued to receive services until she was 18. After the first two months when Rep. Shepherd hadn't received a bill, she inquired and was informed that the services were free. Rep. Shepherd did have a Mason in her family.

Mr. Kent Gist took the podium in favor of the bill. He said that he believed this is the only time the Masonic fraternity has lobbied for legislation. They don't discuss religion or politics—only good citizenship.

Mr. James Voyles took the podium in favor of the bill. He mentioned the influence that Freemasonry has had in Idaho's history as shown in the exhibit at the Idaho Historical Museum this summer. He said that the Freemasons' primary purpose has been to take good men and make them better.

Over the years, the Freemasons have branched into other organizations such as Eastern Star, Jobs Daughters, and Shriners. Many of these have philanthropies, the most well known being the Shriner's Hospitals. To be a patient, you don't have to be affiliated with the Masons. Until recently, the Freemasons themselves, however, did not have a 501(c)(3) charitable instrument.

In 2007, the Freemasons established a 501(c)(3) fund, the Grand Lodge Charitable Trust, that anyone can donate to. **Mr. Voyles** said that there is no national or international body for Freemasonry. Each jurisdiction is governed by a Grand Lodge, which is the ultimate authority. In the U.S., the jurisdictions coincide with state boundaries. So what is enacted in Idaho relates to Idaho alone. The trust fund is managed by a Charitable Trust Management Board, with staggered three-year terms. All investments are required to be under the Idaho Uniform Powers of Trustees Act and the "reasonably prudent man" standard as defined under Idaho law. And, only the earnings can be used. All disbursements shall be proper under section 501(c)(3) of the IRS Code.

They intend to put the initial \$25 fee for the license plate and the \$15 recurring renewal fees into the fund. This will grow the fund much faster than individual donations.

Mr. Voyles said that society needs the influence of organizations like the Freemasons. Since 1960, membership has declined while population in Idaho has doubled. The license plates will help remind citizens of their influence and enhance their ability to extend charity within the State.

Rep. Roberts asked why the list of license plates were not included in this bill, as it was for S 1088. **Mr. Eric Milstead** from the Legislative Services Office said that license plate bills have proceeded with and without amending Idaho Code 49-402. For this bill, this could be changed in amending orders.

**VOTE ON
SUBSTITUTE
MOTION:**

The substitute motion to **send S 1086 to the floor with a DO PASS recommendation failed on voice vote.**

**VOTE ON
ORIGINAL
MOTION:**

The original motion to **send S 1086 to amending orders passed on voice vote.**

S 1088

Sen. Heinrich presented **S 1088**. He said that the State has about 41 different plates that fund various efforts. There are some volunteer rockhounds going into schools to teach kids about the different minerals in Idaho. They encourage them to become associated with the Rockhounds of America as "Pebble Pups". The organization teaches them to set goals, etc.

All of the rockhound clubs in Idaho have been in the process of developing the proposed license plate. Boise's Idaho Gem club, a 501(c)(3) organization, will collect the funds. A board will review requests for grants for projects. The intent is to help fund the statewide education of earth science and lapidary subjects in schools.

Sen. Heinrich said that at the mineral and fossil show at the fairgrounds, sponsored by all the gem clubs in Idaho, they asked attenders about the license plates. Even though most attenders did not belong to a gem club and did not have a specialty plate, about 87% said they would buy the plate. Plus, there are about 900 members in the gem clubs. So, there would be a pool of purchasers.

Mr. Eugene Stuart took the podium and passed around some framed gemstones. He also held up a map that showed numbers on different sections of the State and explained the types of gemstones that are found in each part of the state. For example, aquamarine and smoky quartz crystals are found in the Stanley area, and the Bruneau Canyon area is the only place in the world that contains Bruneau Jasper. In the town of Spencer, about 7,000 to 8,000 arrive during the summer months to shop for opals. About 1,000 people also dig at the mine that is just outside of that town. The forest service runs a concession in the St. Joe National Forest where people can dig for star garnets. They sold over 6,000 permits last year at \$15 each; 60% of the people were from Idaho, 25% were from the rest of the U.S., 10% were from Canada, and 5% were from 11 other countries.

Mr. Stuart said that the rockhound clubs would like a license plate for Idaho that represents all of the State. Many people recognize Idaho as the Gem State.

Mr. Charles McCreath, a member of the Idaho Gem Club and a federation director took the podium. He explained that they would dedicate the funds from the license plates to education. Their plans include purchasing books about earth science and putting them in school libraries or classrooms; sponsoring field trips to the opal mines, sand

dunes, craters of the moon, and other mines across the State; obtaining the fossils from Idaho State University and displaying them around the State for a week; and sponsoring a student essay contest across the State with a laptop as the prize. They also want to contact the State Board of Education, charter schools, and the Idaho Earth Science Teachers Association to talk to them about working together on some programs.

MOTION: **Rep. Ringo** moved to **send S 1088 to General Orders** to correct the fee. **Rep. Nonini** **seconded the motion** and said he applauded keeping the idea of "The Gem State" alive.

Rep. Hagedorn reiterated that we need a sheet from the ITD to know what the costs and profits are. **Rep. Wood** said that the ITD is working on that.

The **motion carried on voice vote.**

S 1137 **Sen. Jorgenson** presented **S 1137**. He said that the bill corrects an inconsistency in the law and is supported by the Idaho Sheriff's Association. The issue is that there are boats manufactured and sold that have a device that can be engaged or not engaged. If it is engaged and you go fast enough, the noise from the boat will be above the decibel level allowed by law. Currently, the mere existence of the device, which is installed by the manufacturer, is a citable offense. He compared this to having a Jake brake on a truck. Sometimes you are not allowed to use it, but its existence, when not applied, does not constitute grounds for a citation.

In North Idaho, which has many lakes, there are many of these boats with the device, and the law has caused confusion. Tickets have been issued. This is something we need to correct.

MOTION: **Rep. Nonini** moved to **send S 1137 to the floor with a DO PASS recommendation.**

Discussion covered the following issues:

- A great deal of discussion ensued regarding why these devices are on the boats and what would constitute probable cause for law enforcement's finding them. **Sen. Jorgenson** said they are on the boats because it is a manufactured device that is put on many boats that are distributed throughout the U.S. Manufacturing is not specific just to the Idaho market. He also said that a deputy can inspect a boat for safety equipment, and the switch that activates the device is visible when you walk by the boat. **Rep. Roberts** said that he has been a marine deputy, and he doesn't believe that probable cause can be established just by the appearance of a switch. **Rep. Jorgenson** said that the devices do bypass the mufflers, and using the device would improve performance and reduce pollution. However, the violation is not in using it, it is just in having it. **Rep. Roberts** said that probable cause would need to be hearing noise that is in excess of allowable decibels. **Rep. Wills** concurred and said that training would tell marine deputies to hear the noise first, then go issue the citation. If this isn't the sequence, this could cause problems in the future.
- Questions were raised about why hours of operation were not in the bill to provide some parameters. In general, the daytime hours are not

when people complain, it is in the evening or morning.

Sen. Jorgenson said this was not given consideration because this wasn't the issue. If you break the law, the time doesn't matter.

- Concerns were raised about the device being tied into the muffler system, which may make the whole boat illegal. Page 2, section 7 of the bill says, "...a person shall not manufacture, sell or offer for sale any motorboat unless it is equipped with a muffler or muffler system which does comply with subsection (3) of this section." **Sen. Jorgenson** explained that on some boat models, the device is not optional. It is standard equipment. When asked if any sellers have been cited, **Sen. Jorgenson** said that only owners have been cited. **Rep. Hagedorn** said that if we want to provide protection for owners, then we need to protect sellers too, or force sellers to comply with the Code.

SUBSTITUTE MOTION:

Rep. Mathews made a **substitute motion to send S 1137 to General Orders to amend subsection 7.**

Discussion started about the changes.

AMENDED SUBSTITUTE MOTION:

Rep. Hart said that he didn't believe the amendment could be drafted in the committee meeting. He made an **amended substitute motion to send S 1137 to General Orders and draft the amendment later.** **Rep. Hagedorn** seconded the motion.

VOTE ON AMENDED SUBSTITUTE MOTION:

The vote to **send S 1137 to general orders with a forthcoming amendment carried on voice vote.**

H 135

Rep. Wood presented **H 135.** She explained that the committee has already discussed the idea, which is increasing the gas tax by 2 cents. She wants to send the bill to amending orders so that the fund that she and Rep. Smith have worked on that is for preservation and restoration of the roads can be implemented.

MOTION:

Rep. Smith moved to **send H 135 to general orders with an amendment to section 2 that has been drafted with the ITD.** **Rep. Wood** seconded the motion.

Discussion covered the following issues:

- There was confusion about which amendment was being talked about. **Rep. Smith** said it was the amendment to section 2. He explained the interest insertion. When the money comes in, it goes into a dedicated fund. The ITD will give the local roads their 40%, and the 60% stays in the fund until needed. Interest will stay with the 60%. He also explained that another change is to realize that it will take time for the ITD to implement the required systems, so as long as they are starting to implement, they can use money from the fund. The fund is the maintenance, preservation and restoration fund.
- A question was raised about the change in the split. **Rep. Smith** said that this was a difference that the Governor had with all of the committee bills. The Governor gave the locals only 38%. The division was negotiated, and it worked out as 60/40 for all bills except the Governor's. **Rep. Labrador** said that because the audit was done on

the ITD, not on locals, he thinks the distribution should stay the same as current law.

- A question was raised about the impact of the Governor's Executive Order. **Rep. Wood** said that this is the reason for the added language. The ITD has to start getting things implemented in order to use the funds. Also, the Governor's bill was a three-year bill, and this is not, which would make a difference in implementation.

VOTE ON THE MOTION:

The motion to send H 135 to general orders with an amendment to section 2 carried on voice vote. Rep. King and Rep. Ruchti requested to be recorded as **voting Nay**.

Discussion after the vote was as follows:

Rep. Bedke raised the idea about carving out some money from the Highway Distribution Account (HDA) and dedicating it to maintenance and preservation. By doing this, something will go lacking. But the audit was clear, and we may have to do this.

Concern was raised that we not put the federal match at risk. **Rep. Wood** said that we should perhaps get with the ITD or with the Joint Finance and Appropriations Committee (JFAC) to see what other possibilities there are that will not jeopardize matching.

Rep. Smith raised the concern that this bill only nets \$10.6 million to go into the maintenance fund. The audit says the ITD needs more than \$150 million per year to get out of their worst-first situation. If we carve money from other programs like STIP (Statewide Transportation Improvement Program) to go into maintenance, we would usurp the function of the Board.

Rep. Bedke said that we have substituted our judgment all the way along. The roads don't care about the economy, only the weather and other factors, and they are deteriorating. We can't do business as usual. We must maintain the system we have with no new STIP projects or other projects.

Rep. Wood said that we must also represent our people. We aren't trying to micromanage the Department, but we have to take into consideration what our people can do. The new budget gives the ITD the ability to go forward on STIP. When you add it to the stimulus and GARVEE, they don't have a really gloomy picture. If we do anything at all for them, they will be doing well.

Rep. Labrador said that we are acting as if we are not funding the ITD. We do have a pretty significant amount that we spend every year on roads. We keep saying that we need the new money for preservation. But the audit says we are not doing that right and we need to stop building new things to maintain the existing system. This seems misleading. We just had a two-hour debate about cutting education. But we are increasing transportation. So to say we aren't doing anything about transportation is not true. We are being accused of not taking care of roads when we are spending millions. We may have to decide to stop doing STIP and put the money into preservation.

Rep. Wood said she had received nasty communication about "doing nothing" as well. We studied the ITD budgets very carefully and got an

audit. The ITD got their budget from JFAC and got authorization to spend \$9 million to get new technology. They needed that per the audit, and she supports that. We have not shirked our responsibility.

Rep. Bedke said to keep in mind that the ethanol money is going back into the kitty. It is not directed anywhere and you can't separate it. JFAC allowed \$9 million from HDA to get the software for the pavement management system. Using the same process, and with research, we could carve out something, without ruining the match, to put more emphasis on the restoration fund.

Rep. Wood said that the Governor is honed in on that. The Department will take money from the HDA to obtain technology, and the thought behind this bill is to fill the void.

Rep. Ructi said his frustration with the debate is that when we are talking about education and personnel we take the approach that the economy will keep being bad and we can't afford to spend any rainy day funds. But when we talk about funding infrastructure we say it is such a small amount for people. If the gloomy outlook is there, we should not raise gas taxes and registrations. We have money with GARVEE and the stimulus and other devices that take care of transportation. We can look later at getting more. There are inconsistencies that become obvious during debates.

Rep. Hagedorn said that you can't compare some of the other debates because those other things come from general funds. Those have seen some increases to keep up with what is going on. In our case, there is a dedicated fund and we have not increased the funding when costs have gone up. So the comparison is not fair.

Rep. Ructi said he agrees that they aren't the same in many ways. But if you don't look at how they've been funded in the past and only look forward, all new money comes out of taxpayer pockets.

The next order of business was a presentation of an annual report by **Mr. Lance Holmstrom**, Administrator of the Local Highway Technical Assistance Council (LHTAC). He distributed a handout that provides highlights of the annual report and a handout regarding the proposed stimulus. (Both handouts are attached to these minutes.)

He explained that the Council meets four times per year, and they are in their 15th year. They are funded by .326 percent of the locals' share of the HDA. LHTAC is a liaison between the ITD and local highway jurisdictions.

The ITD gives them 12.6% of the federal money received for the Surface Transportation (STP) program. About half is for the urban program and half is for the rural program. Counties, highway districts, and cities apply for the funds. The Board rates the projects, and they fund them until they run out of money. Page 4 and 5 of the highlights handout shows projects. Last year, there were about 100 applications.

LHTAC also administers the Local Bridge and Off-System Bridge programs.

With regard to the stimulus money, the Board recommended that the ITD share funds in the same proportion as the 12.6%, half for urban and half for rural. Money would be distributed to each engineering district, or about

\$2 million per district. Projects are capped at \$500,000 to fund more projects. Stimulus projects promote the economy and focus on distressed communities. Getting a project to be shovel ready takes 6 to 12 months. The American Recovery and Reinvestment Act (ARRA) law gives 12 months, but they are negotiating with ITD on this. They want to be able to use all the money.

In response to questions, **Mr. Holmstrom** said that they are getting \$2 million allocated to each district. Then they can fund about four projects in each district. The money flows from the federal government through the FHWA (Federal Highway Administration) division office that is over at the ITD. Then they cooperate with the ITD with delegated authority. They administer things and comply with standards about how the money is spent.

Mr. Holmstrom also explained that a local highway mile is a centerline mile. Per the improved highway definition, it must be at least graded. The amount of money a highway district gets is based on highway miles. They are putting together a statewide improved roads roadmap. He also said that a paved road gets the same funding as a gravel or nonpaved road. While it costs more to maintain a gravel road than a paved road (once it is paved) funding is \$1,500 per centerline mile whether the roads are dirt, gravel, or paved.

Rep. Wood emphasized that LHTAC is in charge of many things and has a great deal of responsibility.

ADJOURN:

There being no further business before the committee, **Chairman Wood** adjourned the meeting at 4:46 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: March 30, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Reps. Bedke, Nonini, Ruchti

GUESTS: None signed in

Chairman Wood called the meeting to order at 1:34 p.m.

MOTION: **Rep. Mathews** moved to **approve the minutes of March 24 as written. Motion carried on voice vote.**

S 1150 **Sen. Goedde** presented **S 1150**. He worked on this section of code and the Governor's office received suggestions from the City of Boise this year on changing it again. It has had work from the Idaho State Police and the City of Boise.

Sen. Goedde went through the bill section by section. It clarifies ambiguities, requires citation for an abandoned vehicle via certified mail, establishes a consistent policy for law enforcement in dealing with stolen vehicles, specifies that unregistered vehicles must be on the highway to be impounded, eliminates the need for officers to record the mileage of vehicles being impounded, clarifies criteria for low value vehicles, and raises the threshold for low value vehicles from \$500 to \$750. Another change made by the bill is a cost savings measure that allows for some notifications to be made via first class mail instead of certified mail. This is consistent with Idaho Transportation Department (ITD) notifications and can save \$5,000 per year.

He said that concerns about used car dealers have been met, but they will work on another change next year.

During questions, the following issues were addressed:

- Concerns were raised about allowing notices to be made through first class, rather than certified, mail. If people don't receive notice because, for example, they are out of town, they could have their cars impounded and have to pay the fees. In a previous bill on another issue, the Governor vetoed the bill because of the same concerns regarding first class vs. certified mail.
- Another concern was raised that the bill includes no information about what the impound lot can charge.

- **Sen. Goedde** clarified that section 6 primarily regards people who buy a piece of property and find that junk cars are already there. The burden is on the towing company for notice but they also get the proceeds. They get to sell the parts or scrap metal.
- Regarding the reference to inventory on page 5, an inventory is required in case things are taken. Before, the only requirement was that mileage be recorded. But this has been removed, because in newer cars with electronics, you can't get the mileage unless you can start the car.

MOTION: **Rep. Wills** moved to **send S 1150 to General Orders with a change:** On page 2, line 4, replace "arresting officer" with "arresting agency". Most of the vehicles are housed at a dispatch center where the original officer may be gone after a shift. But the agency could still follow up.

SUBSTITUTE MOTION: **Rep. Hart** made a substitute motion to **send S 1150 to General Orders and amend to replace each instance of "first class mail" with "certified mail" and also include Rep. Wills' suggestion.** He said that there is a due process issue. People need adequate notice if you are going to sell their car. Legal process starts with notice.
Rep. Labrador seconded the motion.

The **substitute motion carried on voice vote.**

H 267 **Colonel Bill Shawver**, Director, Idaho Bureau of Homeland Security, presented **H 267**. He said that H 267 is a fully engrossed version of H 53. There is no opposition from the private sector that they know of.

Chairman Wood reminded everyone that the bill talks about the Bureau's being called in for the threat of release of hazardous substances.

MOTION: **Rep. Wills** moved to **send H 267 to the floor with a DO PASS recommendation.**

In response to a question, **Chairman Wood** said that previous amendments were difficult to engross. So they redid the bill to incorporate the amendments.

The motion carried on voice vote.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 1:55 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: April 14, 2009

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Reps. Hart, Bedke, Wills,

GUESTS: Jason Brinkman, GARVEE Manager, Idaho Transportation Department;
Martin Bilbao, Legislative Advisor

Rep. Wood called the meeting to order at 1:30 p.m.

MOTION: **Rep. King** moved to approve the minutes of March 26 as written.
Motion carried on voice vote.

MOTION: **Rep. Mathews** moved to approve the minutes of March 30 as written.
Motion carried on voice vote.

Rep. Wood handed the gavel to **Rep. Hagedorn** to chair the meeting because she was experiencing laryngitis.

H 286 **Rep. Henderson** presented H 286. It further defines the existing US 95 Garwood to Sagle project to include the section of US 95 from Wyoming Avenue in Hayden to State Highway 53.

Rep. Henderson said that the bill is not a request for appropriation. The GARVEE project was originally defined as Garwood to Sagle. Garwood is a large rural community. This bill defines where the project starts.

The part of highway 95 in the bill was intended to be in the project, but it was not deliberately included, so it became questionable regarding whether it was eligible for GARVEE funding. Rep. Henderson held up a visual that showed the length of the project and explained places where there were only two lanes going into four lanes and then back to two lanes. He said that everything including the environmental study is in place. But the section needs to be included in the definition to be included in the project.

MOTION: **Rep. Smith** moved to **send H 286 to the floor with a DO PASS recommendation.**

In answer to a question, **Rep. Henderson** said that it is exactly 3.1 miles that needs to be included.

The motion carried on voice vote.

ADJOURN: There being no further business before the committee, **Chairman Hagedorn** adjourned the meeting at 1:37 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

- DATE:** April 17, 2009
- TIME:** 12:30 p.m.
- PLACE:** Room 148
- MEMBERS:** Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti
- ABSENT/
EXCUSED:** Reps. Smith, Wills, Ringo, Ruchti
- GUESTS:** Randy Colson, President, Idaho Towing and Recovery Professionals; Lyndon Skogsberg, Owner, Country Repair and Towing; Amy Smith, Vehicle Services Manager, Idaho Transportation Department; Mollie McCarty, Manager, Office of Gov. Affairs, ITD
- MOTION:** **Rep. Shepherd** moved to approve the minutes of April 14, 2009, as written.
Motion carried on voice vote.
- S 1183** **Ms. Amy Smith**, Idaho Transportation Department (ITD), presented S 1183. The ITD was asked to work on a problem regarding disabled or salvaged vehicles. These vehicles, once the license plate is removed, are not properly registered. When towing such a vehicle, operators have had to go through ports of entry, and they've had to get a registration. This bill makes a new category of plates that will work for these vehicles as long as the powering unit (tow truck) is properly registered. The fee would be \$48 per year, which would go into the Highway Distribution Account (HDA). About 150 plates would be purchased annually.
- In response to questions, the following issues were addressed:
- **Ms. Smith** said that if one car is towing another, there isn't a problem if the towed car has its own plates.
 - The ITD met with four people from the towing industry to draft the bill. They spoke several times over the phone and had one face-to-face meeting.
- Mr. Randy Colson**, President of the Idaho Towing and Recovery Professionals, took the podium. He said they began working on this problem in 2007. Different areas of Idaho were interpreting the law differently. A court in North ID allowed a different piece of equipment that got the towed vehicle off the ground to be used so that no permits would be needed. In Eastern Idaho, use of a dealer plate was allowed. The problem is the insurance required to back that up. Towing already carry insurance for the vehicles on their trucks. If they pay also for dealer plate insurance, they pay lots of money each year but may not tow that many salvage cars. Then in February, a court said the operators would need a

\$60 permit.

Mr. Colson said that they are moving cars primarily for the insurance industry who will ultimately bear the cost. Only vehicles being hauled that have tires on the ground create the problem. The ones being hauled so that no wheels touch the ground require no permit. Currently, a truck might haul three cars instead of four, so for every 12 cars, there is an extra trip needed, which results in more fuel consumption and wear on the roads. Equipment is not being utilized as designed.

The license plate is a practical solution. Multiple business will buy multiple plates. Those who move salvaged vehicles have multiple trucks doing this. He said they considered a plate like Washington that bolts to the wrecker. The ITD would rather have the plate on the towed vehicle itself. He said that operators don't care which way it is.

During questions, the following issues were addressed:

- A question was asked regarding why an exemption was not sought instead of a license plate. A license plate can fall off or be misused. Tow trucks are licensed vehicles and when towing, they are not putting another working vehicle on the road. **Mr. Colson** said that they weren't able to get an exemption introduced. The ITD receives about \$1.2 million from \$60 temporary permits, and the Senate was led to believe that tow operators were a major purchaser. However, they really contribute very little. For example, they contributed only about \$420 in North Idaho last year.
- **Mr. Lyndon Skogsberg**, owner of Country Repair and Towing, was asked whether he would prefer an exemption or a new plate. He said that originally, he preferred an exemption. There are exemptions for many things, and the towed car is registered until its license plates are removed. But they are running into problems from the ports of entry, so now he prefers just getting a license plate so that the problem can be solved. When asked who had refused the exemption approach, Mr. Skogsberg said it was the ITD.
- **Ms. Smith** was asked for the rationale behind rejecting the exemption approach. She said that she actually wasn't involved in the issue until this year. She said that dealers who move cars must have a dealer plate, and financial institutions who repossess must have repossession plates. It is a way to track business for law enforcement purposes. Currently, tow owners must pay a \$60 permit every time they move a vehicle; they could move the license plate in this bill from one vehicle to another.

The counter point was made that if a car is moving under its own power, it needs a plate for law enforcement. But if a car is being towed with 2 wheels on ground and the driver is in the towing vehicle, this creates a clear distinction where an exemption seems more appropriate.

- **Ms. Smith** was asked whether vehicles with other exemptions are always being driven or if they could also be towed. She said it could be either way. For example, a repossessed vehicle could be either towed

or driven.

- The point was made that a dump truck with an extra axle for handling heavier loads does not require a special license to have that extra axle on the ground. However, with this bill, we are considering adding a license plate for an extra axle. The issues are at the ports where the rules are being inconsistently enforced. Perhaps we should instead clarify the rules. Tow trucks could be authorized to tow and have the extra axle.

Ms. Smith said that ITD's interpretation of the rules is that towing (of a vehicle without license plates and with wheels on the ground) is operation of an unregistered vehicle so it is prohibited. To change rules, they would have to bring the issue back to the Legislature. Because tow operators need something right away, this bill is a compromise. She said that perhaps it needs amending, but she couldn't say for sure.

A question was raised regarding whether the committee could implement a temporary rule. **Ms. Smith** said she believed that any rule change would need to be based on a change in existing legislation. No legislative change has yet occurred to prompt a rule change.

- A point was made that the need is to make the towed vehicle legal for law enforcement. To make things legal, the committee could pass the bill, Or, an exemption could be included in Idaho Code 49-426. We could issue a memo to the ports of entry this summer to solve the issue for this year until we could do the exemption next year.

The question was raised about how law enforcement would know about an exemption. The answer was that there are many exemptions in code. In many (though not all) cases, the vehicles still have to have a visible license plate.

- **Ms. Smith** was asked what the registration is based on when a wrecker is licensed and whether there really is anyone that does not understand the purpose of a wrecker. She said that registration is based on the gross combined vehicle weight rating, and most do understand the wrecker's purpose.
- The discussion shifted to the issue of insurance. **Ms. Smith** asked **Mr. Colson** to address this. He said that the need for a license plate is recent. He doesn't know why the ports of entry have decided to start enforcing things the way they are starting to, and they are getting the Idaho State Police to interpret things the same way. They haven't been doing this for the 20 years he has been in business.

Mr. Colson said that he is currently exempt for a primary move. If he picks up a salvage car and stores it, things are fine. However, when he moves the car from storage to a different place, unless he has a license plate or an exemption, he must pay \$60 for a permit. He said that operators are not going to be willing to pay this, so they'll just stop moving the vehicles. When asked whether an exemption or license plates would be better, **Mr. Colson** said they are about the same.

Either way, they just need to be able to get through the ports of entry.

Regarding the insurance, **Mr. Colson** said that when he tows a vehicle, he carries insurance that covers the vehicle. However, a dealer license plate was designed for car dealers who move vehicles from one lot to another. The insurance carrier requires that if you have a dealer license plate, you must have "X" amount of insurance for a working car that is moving.

So while the tow truck insurance covers a towed vehicle, if operators must also have a dealer plate, they have to pay insurance for that too.

MOTION: **Rep. Bedke** moved to **send S 1183 to General Orders**.
The motion was **seconded by Rep. Roberts**.

Rep. Hagedorn said that we should urge the ITD to send out a memo to clarify what enforcement should be for wreckers and tow trucks. It doesn't seem right to make tow truck drivers purchase an extra license plate because of inconsistent enforcement issues.

Rep. Wood concurred and said we should not make them wait another year to resolve this issue.

The **motion to send to General Orders carried on voice vote**.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 1:20 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

- DATE:** April 20, 2009
- TIME:** 11:30 a.m.
- PLACE:** Room 148
- MEMBERS:** Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti
- ABSENT/
EXCUSED:** Rep. Bedke
- GUESTS:** Amy Smith, Vehicle Services Manager, Idaho Transportation Department
- MOTION:** **Rep. Mathews** moved to **approve the minutes of April 17, 2009, as written.**
Motion carried on voice vote.
- S 1182a** **Ms. Amy Smith**, Vehicle Services Manager, Idaho Transportation Department (ITD) took the podium for **S 1182a**. She explained that the Senate asked the ITD to research the approval process for special license plates in other states to see if there were some additional parameters that could be placed on getting new ones approved. This bill is a compilation of what they discovered. It would affect the process for future license plates only. It would not affect any that were approved in this legislative session or before. She mentioned the following major points of the bill:
- Any organization that wants a new license plate introduced to a legislative session must complete the application process by September 1 before the session starts.
 - The organization must be a state agency or a nonprofit, and the nonprofit status must be verified. The organization must have a chapter in Idaho, provide its articles of incorporation, contribute to the welfare of others, and must not be offensive or discriminatory.
 - The license plate cannot represent a political party, promote religion or anti-religion, or promote a product. If the license plate displays a trademark, the organization must have permission to use it.
 - All organizations must have a financial plan for the proceeds. This has never been in place before.
 - The organization must appoint an individual to work with the department, provide a \$1,000 deposit for administrative costs, and submit the names and corresponding fees for 250 vehicle owners who have indicated that they will purchase the new license plate. The fees will be refunded if the legislation to create the plates does not pass.
 - The organization must prepare an annual report to the ITD to account

for the funds they receive. The Department will compile the reports for the Legislature.

- The ITD has rule-making authority for the program.

Ms. Smith said that originally, the bill specified that the license plate application would go through the ITD and then go directly to the Governor. It was amended so that the proposal would come through the Legislature before going to the Governor.

During questions, the following issues were addressed:

- Responding to a question about how the \$1,000 figure was determined, **Ms. Smith** said it was really a guess. It would likely cost at least that much if they had to refund 250 fees.
- Ms. Smith said that the reason for the legislation is that the legislature gets proposals every year and there are already license plates for which there is no accountability regarding how the money generated is being spent. Two license plates are being cancelled this year because they didn't receive the sales minimums.
- Responding to a question, **Ms. Smith** said that she didn't know of any organizations with current license plates that would not meet the qualifications described on page 4.
- Regarding who would decide whether the organization contributes to the welfare of others and isn't offensive etc., **Ms. Smith** said that there is rule-making authority to come up with the parameters. The ITD has had to do this with the messages on personalized plates. The bill states that the organization has the right to a hearing process if they are turned down.
- This legislation would not affect any bills passed during this legislative session. In the case of the permanent trailer plates, even if that legislation gets held until next year, there are no fees going to a special organization, so they wouldn't be affected.
- Concern was expressed regarding what could be construed as being offensive or religious. For example, some people might find an organization like the NRA offensive. And the Masons might be considered a religious group. Questions about military groups were raised, but **Ms. Smith** said that the ITD does not consider military license plates to be the same as plates for community organizations.

MOTION:

Rep. Hart moved to **hold S 1182a in committee**. He said that he thinks the bill could create a "thought police" problem.

Several other committee members concurred by saying that while the accountability and information gathering provisions of the bill are good, the potential for creating "red tape" was too high. Belief was expressed that a better bill could be crafted that kept the good parts of this one. Some said that the problem was in allowing new license plates in the first place, but others said that people really like the various plates and they

do generate funds for the Highway Distribution Account.

The motion to **hold S 1182a in committee carried on voice vote.**

Rep. Roberts said that there was an amendment ready for **S 1183** that includes the wrecker vehicles in exemptions. He will ask someone from law enforcement about whether they could approve.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 11:52 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: April 22, 2009

TIME: Upon Floor Adjournment

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Reps. Smith, Roberts, Bedke, Jarvis, Labrador

GUESTS: None signed in

Chairman Wood called the meeting to order at 10:55 a.m.

MOTION: **Rep. Ringo** moved to **approve the minutes of April 20, 2009, as written.**
Motion carried on voice vote.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 11:00 a.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: April 27, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Rep. Bedke

GUESTS: Alan Frew, Division Administrator, Motor Vehicles Division, Idaho Transportation Department (ITD); David Tolman, Admin., ITD; Amy Smith, Vehicle Services Manager, ITD; Darrell Manning, Chairman, ITD Board; Scott Stokes, Deputy Director, ITD; Dennis Tanikuni, Legislative Advisor; Zach Hauge, Legislative Advisor; Keith Allred, President, The Common Interest; Martin Bilbao, Legislative Advisor; Ryan Fitzgerald, Legislative Advisor; Skip Smyser, Legislative Advisor; Erin Armstrong, Risch Pisca

Chairman Wood called the meeting to order at 1:55 p.m.

H 334 **Rep. Roberts** presented **H 334**. He stated that the bill is not about vehicle registration fee increases. It is about administrative fees for the Department of Motor Vehicles (DMV) within the ITD. The main points he brought out about the bill were as follows:

- The Legislative Intent section, line 21: The first monies raised should be expended for any revenue deficit or shortfall that the DMV has as of June 30, 2009. Next, monies should be used for improvements to the DMV's technology operations. For example, DMV has a hardware system upgrade, but they are still using the old COBOL software. Any monies remaining after the first two items should be used for other technology items, including an electronic pavement management system.
- Line 31 specifies a fee review about every five years.

There are fee changes in various places, and some fees have not changed since 1978. Rep. Roberts yielded the podium to **Alan Frew** to go over the fee changes.

Mr. Frew took the podium and highlighted the following:

- On page 7, line 1, the fee change is for a restricted driving permit, which requires school attendance for people under 17.
- Page 8 includes an increase for a motorcycle endorsement skills test, which is typically administered by a third party who would get the increase. These third parties haven't received an increase since 1994.
- Line 19 shows an increase for the Class D skills test, also typically

administered by a contractor who would get the fee. The last increase was in 1997.

Mr. Frew provided a handout, which is attached to these minutes. He emphasized the following from it:

- Overall, the DMV has asked for fee increases of about 75% across the board. The first page shows the agencies that rely on information from the DMV. Examples include the Idaho State Police, Department of Health and Welfare, Federal Motor Carrier Safety Administration, and the Idaho Supreme Court.
- The second page provides high-level detail of the fee increases. The most recent increases range from 1978 for the Vehicle Dealer License renewal to 2001 for some Dealer Licenses.
- The third page shows surrounding states and what they charge for a Certificate of Title. This fee has not increased since 1991. The low is Utah at \$6.00; the high is Oregon at \$55.00. Idaho is currently at \$8.00, and the bill proposes to increase it to \$14.00. The bottom of the page shows the result of a survey of all states and the average of \$15.00.
- The fourth page shows surrounding states and what they charge for a Duplicate Title. The last increase was in 1991. The U.S. average is \$16.11; Idaho is currently at \$8.00, and the bill proposes to increase it to \$14.00.
- The fifth page shows surrounding states and what they charge for a Dealer License and a Dealer License renewal. The last increase for a Dealer License was in 1985. Oregon charges \$1,003; Montana charges \$30; Idaho currently charges \$125 for a Dealer License, and the bill proposes to increase it to \$200.
- The sixth page outlines the Identification Card fee proposal. About 10,000 per year are issued. While it doesn't look like the increase is only 75%, the portion that would come to the ITD is about that. The DMV currently loses \$1.04 for every one issued. After the proposed increase and after paying for the cost of the card, the net receipt would be 38 cents.

During questions, the following issues were addressed:

- **Mr. Frew** explained that the County Current Expense fund is retained by the county because they act as an agent for the ITD. The money for "Locals" goes through the formula and is distributed to cities, counties, and highway districts for their roads.
- **Mr. Frew** said he didn't know how long the DMV had been losing \$1.04 per card. It has come to light during the last couple of years while they have been more closely investigating their programs that some programs have been losing money.
- **Mr. Frew** said that they don't "fine tune" on a per card basis to figure

out the way that the costs are covered. They do know that there are costs for printing, mailing, and other operations. The DMV has categories such as commercial vehicles, drivers' services, and vehicle services. They do know approximately where they are within those programs.

Mr. Frew then went back to explaining the handout, and he highlighted the following:

- On the seventh page of the handout is the Driver's License fee proposal. Again, while it doesn't look like it is close to a 75% increase, it is for the fees realized by the Highway Account. The handout shows the breakdown. Some fees, such as for motorcycle safety, go to the Department of Education for running the program. The net receipt for the State Highway Account would be \$4.77, compared to the current \$1.63. The State Highway Account money is apportioned to the ITD for operations. The DMV needs \$18 - \$20 million for operations.
- On the eighth page is a summary of uses. Current 2010 revenue is \$15.5 million plus \$1.1 million from a federal grant. Direct and indirect costs are \$22.5 million. So \$6 million dollars are being taken from highways to operate the DMV.

During questions, the following issues were addressed:

- The DMV is not receiving any stimulus money to provide for one-time equipment costs or any ongoing needs.
- The first \$6 million realized by the fee increases would address shortfalls in the DMV. A question was asked about whether the 5% salary cut was covered or the holdbacks. **Mr. Frew** said all forecasts were based on the assumptions listed on the bottom of page 8, which are that current revenue and expenses stay flat and the cost of doing business increases by about 3% starting in FY 2011. He believes that the language in the bill is clear about how the money will be used. Responding to another question, Mr. Frew also said that if you were to look back over the last five years, revenue would show an increase until about September of last year, at which time it flattened out. Growth for the five years has been about 3%.
- The picture on the last page of the handout (page 9) shows the old hardware equipment that the DMV no longer uses. However, the operating system for these is still being used.
- **Rep. Mathews** indicated that he had a checklist from the Office of Performance Evaluations that deals with information and technology projects. **Mr. Frew** indicated that he would like to see the checklist.
- A question was raised about the cost of the new DMV system, which is estimated at \$29 million. **Mr. Frew** said that he is hoping they can do better than that amount. This is a "not to exceed" number. It represents both hardware and software—the software and the infrastructure that carries it. He estimates that it will require at least \$1.5 million each year to maintain the system. Also, the \$800,000

appropriation for highway system technology represents maintenance for that system, and the Joint Finance-Appropriations Committee has already passed the \$9.1 million funding of the maintenance management system.

He explained that while they do have current staff for the current system, in the short term, they will have to operate both systems (old and new) concurrently. They need to work the bugs out of the new system before they discard the old one. Also, the current system operates on COBOL, which no one learns anymore. They have nine programmers, and they currently run things on a mainframe environment. They will move to a Microsoft system, and there will be fees for that and for periodically upgrading the system.

He said they are hoping to obtain what they need for less than the \$29 million because a system that cost \$17 million is being used in the state of Vermont. While there is not uniformity among states for how they do things, they will be contacting the vendor for that system to see if a similar system would work for Idaho.

- Mr. Frew mentioned Senate Bill 1134, which requires the ITD to provide an annual report in January of each year on progress that they make on getting the DMV system modernized.
- A question was asked about the purpose of a motor vehicle suspense account of \$3 million that was in a 2006 financial audit. **Mr. Dave Tolman** answered by saying that this money comes in from counties for registration and other things and stays there until the ITD can determine where to distribute it. For example, money might be distributed from it to Fish and Game because the money was generated from their specialty plate. No expenses are taken from the account.

There is also a manufacturing account, and a \$3 per plate fee goes there to pay for the contract with Correctional Industries.

- Answering a question about cost savings by using the digital, rather than embossed license plate system, **Mr. Frew** said that they have experienced cost avoidance. The digital system has allowed them to avoid the rising materials costs that they knew they would experience under the old system.

MOTION:

Rep. Hagedorn said that we are subsidizing the DMV from money for roads and we need to make the DMV whole. He **moved to send H 334 to the floor with a DO PASS recommendation.**

Rep. Roberts complimented Alan Frew for the detail and organization in presenting the justification.

Chairman Wood said that this has been good for the committee to get a more thorough idea of what the costs are, which would also be helpful in explaining things back home.

Rep. Nonini said he would support the motion but was frustrated with the answer to how long they've been losing money.

Chairman Wood said that they have done a good job, though, of digging into the costs. And the audit also helps to get us working closer with the department.

The motion **to send H 334 to the floor with a DO PASS recommendation carried on voice vote.**

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:43 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: May 5, 2009

TIME: 2:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Reps. Smith, Roberts, Bedke, Wills, Labrador, Shepherd, Ruchti

GUESTS: None signed in

Chairman Wood called the meeting to order at 2:33 p.m.

MOTION: **Rep. King** moved to **approve the minutes of April 27, 2009, as written.**
Motion carried on voice vote.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:35 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: May 7, 2009

TIME: At call of the Chair

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Reps. Roberts, Wills, Shepherd, Ringo

GUESTS: None signed in

Chairman Wood called the meeting to order at 12:53 p.m.

S 1130 **Rep. Bedke** began presenting **S 1130**. He said that the bill encourages operators to be fully licensed. The bill is expected to have a positive fiscal impact.

Rep. Wood wondered about car carriers who are not registered in Idaho and how they would be affected.

Rep. Hagedorn explained that some vehicle owners get a temporary permit and keep it as long as they can until they get stopped. Then they get a new one and run on that one as long as possible until they get stopped. This just keeps going on for some owners.

Sen. Corder arrived and took the podium. In response to Rep. Wood's question, he said that carriers who are IRP are permitted already. He referred to line 15 on page 2, which states that the limit does not apply to transporters and wreckers.

MOTION: **Rep. Labrador** moved to **send S1130 to the floor with a DO PASS recommendation.**

Sen. Corder further explained the bill by saying that the bill helps stop people from taking advantage of current policy and stop illegal use of temporary permits. To the extent that it is possible, we will have a significant revenue source by stopping the illegal use. It will encourage carriers to take advantage of what the State provides. For example, if they have fewer than 2,500 miles, they can already do a full registration at \$255 for any weight category. If less than 7,500 miles, an entire year is \$475. Many people think that temporary permits are cheaper, but they really are not, especially after they have already purchased three temporary ones.

In response to a question, **Sen. Corder** said he didn't know how many temporary permits the Idaho Transportation Department (ITD) sells each year.

Also in response to a question, **Sen. Corder** said that for carriers that frequently cross borders, such as the Idaho/Utah border, temporary permits can be used, but it is cheaper to put Idaho on the registration than to keep getting temporary permits.

Motion to send S1130 to the floor with a DO PASS recommendation carried on voice vote.

S 1182a

The decision was made to go ahead and also consider **S 1182a**.

Chairman Wood explained that this bill from Sen. McGee was one we heard before regarding requirements for requesting new specialized license plates. New amendments are being proposed that would create another version of the bill. The requirement of having 250 prepaid ones seemed cumbersome. Also, in order for the bill to not interfere with Rep. Hagedorn's trailer license plate bill, it needs to specify that a new plate would be specifically for motor vehicles.

Rep. Bedke explained that the bill with proposed amendments is part (though not the major part) of the agreement with the Governor, but the House has made no guarantees about its passage. The amendments address most of the concerns we had when we first heard it. It tightens the criteria and they aren't too onerous. We have many specialty plates and these are good changes.

Chairman Wood said that bill specifies a prequalification process. You have to do several things to apply for a specialty plate. She said she wasn't trying to promote it, only explain it.

MOTION:

Rep. Bedke moved to **send S 1182a to General Orders with attached amendments.**

The motion was **seconded by Rep. Hagedorn.**

Rep. King said that she wanted to know more because she couldn't remember the details of the bill. **Chairman Wood** read Section 49-102D through item 2(d) regarding the prequalification process, which was enough for Rep. King to remember the previous discussions.

Rep. Hagedorn said that he talked to Amy Smith from the ITD. She worked with Sen. McGee and made sure the bill was done right according to code. Many of the phrases came out of other states' bills. The only changes we are recommending are the specification that new specialty plates are for motor vehicles, and a reduction of the preselling criteria. The original bill wanted 250 plates paid for up front. Now the requirement is that the organization be a 501c3 and pay \$1,000 up front.

Chairman Wood highlighted the following: 1) The Department shall submit applications to the Chairs of the House and Senate each year. So we will see the applications first. 2) There will be an annual report regarding expenditure of the money that is raised. We've never been assured that the money raised has gone where it was intended.

Rep. King pointed out that anyone can write a report that says the money is going where it is supposed to and wondered if something in the bill would require an audit. **Chairman Wood** read part 6 of 49402D, but said

that this doesn't specify an audit.

**VOTE ON
MOTION**

The motion to **send S 1182a to General Orders with attached amendments carried on voice vote.**

ADJOURN:

There being no further business before the committee, **Chairman Wood** adjourned the meeting at 1:25 p.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: May 8, 2009

TIME: 9:00 a.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Nonini, Hagedorn, Jarvis, Labrador, Mathews, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Reps. Hart, Smith, Roberts, Wills, Shepherd, Ringo, Ruchti

GUESTS: Benjamin Davenport, Legislative Advisor

Chairman Wood called the meeting to order at 9:00 a.m. and explained that the purpose of the meeting was not to formally hear **S 1147** but just to get some information about it.

S 1147 **Sen. Winder** provided information regarding **S 1147**. He explained that the design-build concept was a recommendation in the Office of Performance Evaluations' audit of the Idaho Transportation Department (ITD). The design-build method of project design, development, and construction would save money and time on specific projects. The concept is not new; it is being used all over the country. Utah has used it for many years. It enabled them to complete projects for the Olympics on time and on budget. The technique allows for a one-source contracting entity, which might a single large one or a combination of independent contractors.

He said that during the bill drafting, they found it would be easier to allow the ITD and stakeholders to promulgate rules and get approval on those over several months, rather than to try to specify how everything should exactly work in the bill. The ITD will work with all interested parties and the public in making rules for design contracts.

During discussion, the following issues were addressed:

- **Sen. Winder** said that design-build would not be used for all projects, but would be good for a variety of them. One example is the Ten-mile interchange. They've gone through a process and then bid it out. They could have had a design team and a construction entity come together on it. He also mentioned the Henry's Lake area. Because of seasonal constraints, design-build could have been used there.
- Regarding how construction companies that don't have engineering services would be affected, Sen. Winder referred to line 21 on page 1, which says that the design-build firm can be a sole proprietorship, partnership, limited liability partnership, joint venture, corporation, etc. If a contractor doesn't do design, he or she can work with a local design entity to create a joint venture and make a proposal to

participate in the program. Rules would set up how they would qualify and how they would interact with the ITD.

- Sen. Winder explained that a limited liability is a way to set up a specific legal entity for participation of different parties. It is not necessarily a joint venture, which is usually project specific. A limited liability might be ongoing.
- When asked if a joint venture could involve cities, counties, and the State, Sen. Winder said he would be surprised if it took this form. But there may not be any prohibition against it.

The point was made that locals and counties can sometimes do work cheaper than the State can. If they work together, the State could perhaps save money. Sen. Winder said that there are memorandums of understanding between the ITD and counties for things like snow removal. So there are ways to do this. But for some larger projects with federal money, there may be restrictions.

- A point was made that there is a weakness with inspections. Some projects are breaking down too quickly. Locals complain because they think they are not getting high quality. Sen. Winder said that there is an expectation that you get a higher quality project with design-build because there is only one party responsible. The builders and designers can't blame each other for problems. In low bid situations, there may be shortcuts and you can't always catch them.
- Sen. Winder said that because the bill allows a variety of ventures, smaller contractors can participate. The Association of General Contractors has a large percentage of small contractors. On a large job, several smaller contractors, such as pavers, concrete workers, etc., could join together. The hope is that while smaller contractors may not be able to compete on their own, by joining together, they can. Sen. Winder said that they would not have to be union contractors.
- In response to a question about page 2 line 35, which states that no less than 30% of any design-build contract awarded shall be self-performed by the design-build firm awarded such a contract, Sen. Winder said that this is to avoid the situation of a carpetbagger contractor piecing things together with no accountability and no professional ability to do the project.
- A question was raised about whether we could have a rule requiring the effectiveness to be measured—a comparison of design/build projects vs. non design/build projects. Sen. Winder said he hadn't thought of that for this bill, but it could be part of the rule-making to require an evaluation over, say, five years.
- In response to a question, Sen. Winder said that the State would still have to go through right-of-way requirements to qualify for federal dollars. Another entity might be able to do this, but he thinks that is unlikely.
- A question was asked about whether the 30% restriction would

prevent, for example, a Nevada company from making a joint venture with local Idaho companies. Sen. Winder said that as he understands it, it would not. As long as the entity formed performed the work and were licensed in the State of Idaho.

Chairman Wood stated that if the bill comes to the House floor, **Rep. Moyle** will be the sponsor.

MOTION
regarding
minutes:

Rep. Labrador moved to **approve the minutes of May 7, 2009, as written.**

Motion carried on voice vote.

ADJOURN:

There being no further business before the committee, **Chairman Wood** adjourned the committee, Sine Die, at 9:42 a.m.

Representative JoAn Wood
Chairman

Cindy Williams
Secretary