

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, January 24, 2012
TIME: 1:30 P.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, Werk, and Bilyeu
ABSENT/ EXCUSED: all present

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman Hammond** convened the meeting at 1:32 p.m., and asked the secretary to take a silent roll. The Chairman welcomed members of the FFA Club at Vallivue High School in Caldwell, and explained the Administrative Rules review process the Committee will undertake today. Traditionally, Administrative Rules review is the responsibility of a Committee's Vice Chairman, and with that **Chairman Hammond** turned the meeting over to **Vice Chairman Brackett**.

ADMINISTRATIVE RULES PROCESS: **Vice Chairman Brackett** laid out the process for today's review. Two dockets (39-0301-1101 and 39-0316-1101) will be moved to the top of the agenda to accommodate Senators not able to participate in the entirety of the hearing. The Committee will then move through the remaining dockets in the order they appear on the agenda.

Vice Chairman Brackett asked Regina Phipps, Idaho Transportation Department's (ITD) Vehicle Size and Weight Specialist, to present the first two dockets.

DOCKET NO. 39-0301-1101: Rules Governing Definitions Regarding Overlegal Permits – The passage of House Bill 228 in 2011 expanded the exemptions associated with the transporting of implements of husbandry by an owner or their designated agent, which created a need to define "designated agent" which had not been done previously. If approved, this rule will become final and effective at the end of this session. There is an added definition of the "designated agent" and "overall length"; and changes from "escort" vehicle to "pilot" vehicle. There are additional minor "cleanup" changes as well. Ms. Phipps stood for questions.

QUESTIONS: **Senator Corder** has concerns about the resulting problem to agriculture in defining "designated agent." Ms. Phipps stated the "designated agent" has to be a relative or an employee of the farmer (someone on the farmer's payroll). That person can be designated by the farmer to drive the implement of husbandry and still have the same exemption. A commercial hauler would not be considered an employee of the farmer. **Senator Corder** asked about the definition of "farmer" and if a rancher or someone else would be excluded from the definition. The Senator read definitions of "farmer" as presented on his laptop, and believes the definition is not sufficient. Ms. Phipps stated ITD interpreted "farmer" as the person who owns the farm, owns the land, or a broad use of the word. It could be a tree farm, a dairy farm, or any number of options. **Senator Corder** wanted to know how that will be determined when there are so many variables.

Ms. Phipps said that was the reason "designated agent" is not defined as any particular thing or every particular thing. ITD is trying to narrow the definition down to a smaller focus area; and they know it will be difficult. This is the bill that was passed last year, and ITD is working to define and interpret the intent as best they can. It will take some fine tuning. ITD's definitions and interpretations will be provided to any local law enforcement or to the State Police if requested so they can determine they are following within those guidelines. **Senator Corder** understood the difficulty and reminded the Committee he had voted "no" on this legislation last year.

Chairman Hammond asked if the chief purpose of this rule is to allow a farmer, for expediency when there is an equipment breakdown and there is a sensitive time-line involved with harvests and being operational, to take the equipment to be repaired rather than have someone come out to the farm. This avoids a bureaucratic permitting process. Ms. Phipps responded that his scenario was correct. H228 changed it so that those certain circumstances are now in Idaho Code. **Chairman Hammond** wanted to know if this was a major problem in terms of enforcement. Ms. Phipps said it could be because farming is very complicated and farm equipment is much bigger now and takes up the entire highway. They are not required to have pilot cars, oversized signs, or any flagging. It can pose a safety concern, and it can be difficult to determine who is required to meet the requirements, who is a farmer, who can be exempted, and who can not.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Bair** moved to approve Docket No. 39-0301-1101. **Senator McGee** seconded the motion. The motion passed with two dissenting votes (**Senator Corder** and **Senator Keough**).

DOCKET NO. 39-0316-1101: Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads – With the passage of House Bill 228 in 2011 it is necessary to update the farm exemptions listed in this rule for transporting implements of husbandry between farm operations and a repair/maintenance facility or a dealership/sales facility. Additional changes confer a benefit by allowing motor carriers to use the more widely accepted industry standard (10-foot wide trailer) to haul a non-reducible load smaller than 10-feet wide on the trailer. The 24-foot width restriction on the Interstate has been removed to reduce the impact on two-lane highways. The 10-minute limit on interruption of traffic has been deleted to eliminate any conflict with the traffic control plan provisions in IDAPA 39.03.11, "Rules Governing Overlegal Permittee Responsibility and Travel Restrictions." Section 100.05 of that rule requires that the permittee submit a traffic control plan prepared by a licensed engineer or certified traffic control supervisor when operating on two-lane highways and exceeding specified dimensions. Upon approval, this rule will become final and effective at the end of this session. Ms. Phipps stood for questions.

QUESTIONS: **Senator Corder** had a question regarding over-width hauling and what the change in statute allows; and what the change is from an incidental change to the "unladen movement of." Ms. Phipps said Idaho Code allows anything over 8 feet 6 inches to require a permit. The reason for the change to 10 feet is that 10 feet is now the standard trailer. Many construction companies use this standard because they have 12 to 14 foot pieces of equipment that they would rather haul on a 10 foot trailer than a legal-width trailer. This change allows them to use a 10 foot wide trailer rather than trying to find a smaller 9 foot trailer, because 9 feet is no longer the industry standard. **Senator Corder** asked about trailers that are added-on to make them wider and then used to haul balers unladen. He stated he didn't understand why people are given the option to be and remain wide.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Bair** moved to approve Docket No. 39-0316-1101. **Senator McGee** seconded the motion. The motion passed with three dissenting votes (**Senator Bilyeu**, **Senator Corder**, and **Senator Keough**).

Vice Chairman Brackett asked Dan John, Tax Policy Supervisor at the Idaho State Tax Commission, to present the next docket.

DOCKET NO. 35-0105-1101: Idaho Motor Fuels Tax Administrative Rules – This rule provides an adequate amount of time for the State Tax Commission to determine whether a fuel distributor is delinquent; and time to notify the fuel distributor that its bond exemption will be terminated if the delinquency is not paid. Fuel distributors need time to obtain a bond if they are not able to pay delinquencies. A fuel distributor's license is immediately revoked if it does not have a bond or a bond exemption.

When a company is engaged in selling motor fuels, they need to be licensed and have a bond. There are all sorts of exemptions for bonding. Without this rule change, if delinquent, a distributor's license would be immediately taken away which means they are out of business. Without a notification of delinquency time line in place, this was too harsh a consequence. The change implements a notification time line from currently zero time to 90-days. Mr. John stood for questions.

MOTION: With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Chairman Hammond** moved to approve Docket No. 35-0105-1101. **Senator Keough** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Amy Smith, ITD's Vehicle Services Manager, to present the next two dockets.

DOCKET NO. 39-0203-1101: Rules Governing Vehicle Dealer's Principal Place of Business – This rule provides criteria for record types and allows records to be retained physically or electronically. It allows for files to be stored off-site following 30-day notification to ITD, with the provision that records must be produced within three business days upon request by ITD. It requires electronic records be searchable; they be kept secure, preventing unauthorized access and in such a manner that they cannot be altered. It amends dated telephone criteria and revises sections 001 through 006 to meet requirements of the Office of the Administrative Rules Coordinator. Ms. Smith stood for questions.

QUESTIONS: **Senator McGee** asked if these changes were a result of changes in technology. Ms. Smith said that the changes follow other technology requirements.

Senator Bilyeu asked for a more specific definition of the off-site secure location. Ms. Smith said it could be one single location instead of each dealership location.

Senator Bair wanted to know if the term "telephone" has been expanded beyond installing a land line, but restricts the business to be listed in a directory. Ms. Smith said that as long as the number is associated with the business name, it does not matter if it is located in a paper directory or an online directory.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator McGee** moved to approve Docket No. 39-0203-1101. **Chairman Hammond** seconded the motion. The motion passed by a unanimous voice vote.

**DOCKET NO.
39-0247-1101:**

Rules Governing Revocation of Vehicle Registration for Failure to Comply With a Motor Vehicle Emission Inspection Ordinance – House Bill 326 in 2011 eliminated the requirement to forfeit and the need to repay registration fees when a registration is revoked for failure to comply with an emission test, therefore, this rule is no longer needed. The legislation changed the manner of how revocations and reinstatement of vehicle registrations for failure to comply with emission testing are processed. ITD is no longer a part of the process, nor is repayment of registration fees a requirement of reinstatement. All applicable language is now included in Section 39-116B, Idaho Code, making this rule unnecessary, and allowing it to be repealed in its entirety. Ms. Smith stood for questions.

MOTION:

With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Senator McGee** moved to approve Docket No. 39-0247-1101. **Senator Winder** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Ed Pemble, ITD's Driver Services Manager, to present the next two dockets.

**DOCKET NO.
39-0270-1101:**

Rules Governing Restricted Driving Permits – This rule change replaces a fee with a code reference because the fee has been codified; updates terminology; removes restricted driving permit provisions for drivers under the age of 17 for consistency with graduated licensing laws; removes time limitations for application for a restricted driving permit; and adds prescribed subsections to meet requirements of the Office of Administrative Rules. The rule removes "non-resident" from the list of those to whom restricted permits cannot be issued. A time period restriction is being removed as a customer service courtesy. Under-17 drivers is being added to the list of those who shall not receive a restricted permit. Finally a specific fee amount for a restricted permit is stricken and the statute is referenced instead. With that, Mr. Pemble stood for questions.

QUESTIONS:

Senator Bair wanted to know if with the removal of the \$35 fee from Section 49-306(10)c if there is a fee amount given or if it is decided at the discretion of ITD. Mr. Pemble said it does state a fee of \$65.

MOTION:

With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Winder** moved to approve Docket No. 39-0270-1101. **Chairman Hammond** seconded the motion. The motion passed by a unanimous voice vote.

**DOCKET NO.
39-0272.1101:**

Rules Governing Administrative License Suspensions – House Bill 61 in 2011 brought the Administrative License Suspension (ALS) program in Sections 18-8002 and 18-8002A, Idaho Code, into compliance with a 2010 Idaho Court of Appeals ruling regarding the seizure of the license and the issuance of a temporary permit to an out-of-State licensed driver who refuses to submit to, or submits to and fails, evidentiary testing for the presence of alcohol or drugs, in violation of Section 18-8004, Idaho Code. The bill removes the requirement to seize any license and issue a temporary permit whether the driver is licensed in-State or out-of-State. The ALS procedure will be less complex and more efficient for law enforcement officers and ITD to administer. It will also allow the driver (whether licensed in-State or out-of-State) whose license is otherwise valid and current, to proceed with a photo ID in their possession that remains valid and current until a starting suspension date. It adds additional time for subpoena service and a proof of service requirement. With that, Mr. Pemble stood for questions.

QUESTIONS: **Senator Keough** asked about the new notification language regarding email. She wanted to know if there were safeguards in place in case an email fails to be delivered. Mr. Pemble stated that a tracer can be placed on the email and they can look at the record to see if it was sent. If a hearing date is set, they can look at this information. **Senator Keough** indicated she had a concern because sometimes emails don't work and a trail can be fabricated.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Bilyeu** moved to approve Docket No. 39-0272-1101. **Senator Bair** seconded the motion. The motion passed with one dissenting vote (**Senator Keough**).

Vice Chairman Brackett asked Lynn Rhodes, ITD's Driver's License Program Supervisor, to present the next two dockets.

DOCKET NO. 39-0275-1101: Rules Governing Names on Drivers' Licenses and Identification Cards – This revision disallows issuance of a driver's license in one name and issuance of an identification card in another name, thereby preventing establishment of two identities. It also conforms to the one-person/one-record requirement for Department of Motor Vehicles (DMV) modernization and confers a customer benefit. The revision deletes the 26 character name limitation and provides for name formatting flexibility that aligns with current cultural practices and additional formatting procedures for long, complex names. This will clarify requirements for applicants, whose marital status has changed and provide for associated name changes. Name formatting conventions will be more clearly stated, more easily accommodated, and processed more quickly. Driver license examiners will have clearer guidelines for formatting requested name changes. It will also reduce the number of phone calls and faxes between ITD and county driver license examiners, improving efficiency. With that, Ms. Rhodes stood for questions.

QUESTIONS: **Senator Bilyeu** wanted to know why a married applicant could not include more than one hyphen in their name. Ms. Rhodes said that current capabilities in computer programs do not allow for more than one hyphen. **Senator Bilyeu** suggested that as long as it is within the 26 character maximum, the number of hyphens should be irrelevant.

Senator Keough asked if legislator identifications could be used for establishing identity, and would it be a problem if the name on the identification appeared differently than the name on a drivers license. Ms. Rhodes said it would not make a difference.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Werk** moved to approve Docket No. 39-0275-1101. **Senator Bilyeu** seconded the motion. The motion passed by a unanimous voice vote.

DOCKET NO. 39-0276-1101: Rules Governing Driver's License Renewal-By-Mail Process – This proposed rule allows for future electronic driver license renewal procedures and deletes referenced to outdated procedures, such as providing renewal stickers for application to the back of film-based driver license cards. Film-based driver licenses with renewal stickers have not been issued for several years. All driver licenses are now digitized. An electronic online renewal process is expected to be implemented in the future as part of DMV modernization. Also deleted is reference to the outdated requirement to go to a driver's license office to have a social security number removed. Social Security numbers have not been used as the driver's license number since 1996. The lawful presence requirement supports Section 49-303(14), Idaho Code. With that, Ms. Rhodes stood for questions.

MOTION: With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Chairman Hammond** moved to approve Docket No. 39-0276-1101. **Senator Werk** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Carl Main, ITD's Traffic Services Engineer, to present the next docket.

DOCKET NO. 39-0341-1101: Rules Governing Traffic Control Devices – As required in Section 49-201(3), Idaho Code, the Idaho Transportation Department adopts a manual and specifications for a uniform system of traffic-control devices consistent with the provisions in Title 49 for use on highways within the State. To meet that requirement, this rulemaking adopts and incorporates by reference, the 2009 edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the Federal Highway Administration of the U.S. Department of Transportation, with an effective date of January 15, 2010, with conforming additions, as specified in the rulemaking, and approved by Federal Highways Administration/Idaho. With that, Mr. Main stood for questions.

QUESTIONS: **Senator Winder** asked if oversight of railroad crossing signage and whistle requirements were part of this rule or if it was another process. Mr. Main stated it was part of another process.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Keough** moved to approve Docket No. 39-0341-1101. **Senator Bilyeu** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Regina Phipps, ITD's Vehicle Size and Weight Specialist, to return to the podium to present the fee docket.

DOCKET NO. 39-0321-1101: Rules Governing Overlegal Permit Fees – The Idaho Legislature provided clear direction to ITD in their approval of Section 100 of this rule, "Costs to be Borne by Permittee." This section states that administrative costs incurred in the processing, issuance, and enforcement of overlegal permits will be borne by the permittees and not by the general traveling public through the expenditure of highway use funds. The permit program is currently experiencing a revenue shortfall and it is necessary to raise certain fees to cover administrative costs. New language also provides for reimbursement of actual costs incurred for extraordinary services associated with planning and/or movement of overlegal loads moving under the requirements of a traffic control plan. There is a current shortfall in recouping the cost of the program; this rule will help alleviate that shortfall. With that, Ms. Phipps stood for questions.

MOTION: With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Chairman Hammond** moved to approve Docket No. 39-0321-1101. **Senator Winder** seconded the motion. The motion passed by a unanimous voice vote.

ADJOURNMENT: **Vice Chairman Brackett** announced that Transportation Administrative Rules review was completed for this legislative session and turned the gavel back to **Chairman Hammond**. The Chairman thanked the Vice Chairman for his work. With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:40 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary