

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 01, 2012  
**TIME:** 1:30 P.M.  
**PLACE:** Room WW54  
**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour  
**ABSENT/ EXCUSED:**

**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.

**Chairman Darrington** called the meeting to order at 1:32 p.m. and asked if there were minutes to approve.

**MOTION** **Senator Nuxoll** moved, seconded by **Senator Malloy**, that the minutes of **January 25, 2012** be approved, as amended. The motion carried by **voice vote**.

**Chairman Darrington** said **S 1221** had been pulled off today's Agenda at the request of the sponsor.

**RS 21013**

**Relating to the Traffic Safety Education Program. William L. Flink**, Division Administrator of the Idaho State Police, explained this legislation is to enable counties and cities to establish traffic safety programs, which law enforcement officers may offer at their discretion to traffic violators in lieu of issuance of a traffic violation citation. The option to attend the traffic safety education program would be voluntary and participation would serve as a refresher course in safe driving for motorists who chose to attend them. Counties and cities will be allowed to charge a fee for such programs, however the program fee could not be greater than the established fine for the traffic citation. A portion of those fees would be dedicated to the peace officer standards and training fund and to the ISTARS technology fund. This measure is intended to keep these plans solvent while providing a community policing and traffic safety tool for participating jurisdictions. An individual who fails to attend a traffic safety education program after voluntarily accepting the option may be charged with the original infraction. Mr. Flink requested that **Mr. Jerry Mason**, Association of Cities, address the cities' position on this proposed legislation and **Chief David Moore**, Blackfoot Police Department, comment on their position.

**Mr. Mason** stated that one key feature is that the proposal is voluntary on all fronts. It's voluntary as to whether a city or county chooses to implement the traffic school. It's voluntary as to whether an officer chooses to offer the traffic school to a motorist. It's voluntary whether a motorist chooses to accept the option. Some cities have been doing this, for example, Post Falls has been doing it for almost ten years. The citizens reaction to this has been gratifying. Many motorists have said they were glad to be educated on the changes that have come about. **Chairman Darrington** commented that the funding would be at the same level as if they had received the citation. **Chief Moore** said they support the legislation, and he added that the traffic safety school's prime target is the older generation that have not been through drivers training in a lot of years and were unaware of changes in the laws and also the younger group that are just learning good driving habits.

**Senator Malloy** asked who had authorization to certify schools or programs. **Mr. Mason** said no one, but the police department was having their police officers take national safety council "train the trainer" education. It's an opportunity for law enforcement to build some community relationships with individuals. **Senator Malloy** asked if a private entity wanted to start a school, how would they become authorized to run these programs. **Mr. Mason** said there were a number of private providers that the Idaho Department of Transportation certify at the state level to provide traffic education to take points off of someone's record.

**MOTION** **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 21013**. The motion carried by **voice vote**.

**S 1253** **Relating to Service by Publication.** **Senator Bart Davis** explained this bill allows the Court to enter an order after it considers either a supporting affidavit or verified complaint. When a summons and complaint is unable to be personally served, that service can be done by publication.

**MOTION** **Senator Mortimer** moved, seconded by **Senator Nuxoll**, to send **S 1253** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

**Chairman Darrington** turned the meeting over to **Vice Chairman Vick** to preside over the Rules Review. **Vice Chairman Vick** stated that the first rule of the Idaho Peace Officer Standards & Training Council, Docket No. 11-1101-1102 was going to be withdrawn because of the errors in it, but they had learned that could not be done. **Mr. Flink** will explain the rule and point out the technical corrections and the Committee will take action accordingly.

**DOCKET NO.**  
**11-1101-1102** **Rules of the Idaho Peace Officer Standards & Training Council - Mr. Flink** explained this rule requires the POST Division Administrator to report decertification proceedings to the POST Council on a regular basis; identifies the conduct that may constitute cause for decertification; requires an officer charged with a felony or misdemeanor to notify his agency head within five business days; requires an agency head to notify POST within fourteen days of learning of the charge; allows an agency head intending to hire a decertified officer to petition the Council, ten years after the date the officer was decertified, for reconsideration for law enforcement officer employment; and establishes the due process procedures. There was a flaw in this process; a piece left out of the Attorney General's (AG's) rule and what the subsection says is "that any agency that promulgates its own procedure shall include in rule and adopt its own procedure of findings of fact that states the reasons why the relevant portion of the AG's rules were inapplicable to be used under these circumstances." Mr. Flink said they had failed to put the reason 'why' into the rules.

**Senator Davis** asked what if they approve the rule and upon sine die it becomes a temporary rule. **Dennis Stevenson**, Administrative Rules Coordinator, said that was a possibility. **Senator Davis** asked if the Idaho State Police would be required, if the Committee approved the rule, to follow a rule that does have a fatal flaw in it. **Mr. Stevenson** said that might make for a difficult issue. **Vice Chairman Vick** asked if they would have to bring that temporary rule before the Committee. **Mr. Stevenson** replied that they would not.

**Vice Chairman Vick** asked Mr. Flink what the effect would be if they approved this rule without Section .091 and .092. **Mr. Flink** said that would be consistent with what the House Judiciary & Rules Committee did.

**MOTION** **Senator Bock** moved, seconded by **Chairman Darrington**, to approve **11-1101-1102** with the exception of sections .091 and .092. The motion carried by **voice vote**.

**11-1101-1103**      **Rules of the Idaho Peace Officer Standards & Training Council. Mr. Flink** explained the existing rule in reference to felony conviction allows the POST Council to grant a waiver if the crime has, by statute, been reduced to a misdemeanor or decriminalized. This exceeds statutory authority.

**MOTION**            **Senator Mortimer** moved, seconded by **Senator Lodge**, to approve **11-1101-1103**. The motion carried by **voice vote**.

**11-1102-1101**      **Rules of the Idaho Peace Officer Standards & Training Council for Juvenile Detention Officers. Mr. Flink** explained this rule allows a POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities to qualify for Juvenile Detention certification without having to meet the minimum hearing and vision standards again.

**MOTION**            **Senator Malloy** moved, seconded by **Senator Nuxoll**, to approve **11-1102-1101**. The motion carried by **voice vote**.

**11-1106-1101**      **Rules of the Idaho Peace Officer Standards & Training Council for Misdemeanor Probation Officers. Mr. Flink** explained that there are five counties that contract for misdemeanor probation officer services. This rule change allows POST to certify Misdemeanor Probation Officers employed by a private contractor.

**MOTION**            **Senator Lodge** moved, seconded by **Senator Mortimer**, to approve **11-1106-1101**. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:30 p.m.

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Senator Darrington  
Chairman

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Leigh Hinds  
Secretary