

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, February 09, 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** called the meeting to order at 1:30 p.m. and asked the secretary to take a silent roll. The Chairman said the Committee would begin by hearing two gubernatorial appointments to the Idaho Transportation Board (ITB), but the votes on the appointments would occur at the next meeting of the Committee. The Chairman welcomed Jerry Whitehead to the Committee.

GUBERNATORIAL APPOINTMENT: Jerry Whitehead is the President of Western Trailers Company in Boise. He introduced himself as a fifth-generation Idahoan who has spent the last forty years in the manufacturing business; he manufactures semi-trailers. The Associated Press calls him a 'trucking advocate.' He has served on the ITB for three years; before that he served on the Motor Carrier Advisory Committee and various other organizations associated with the trucking industry. He concluded by stating that this was a short version of a long story and he would be happy to answer any questions.

QUESTIONS: **Senator Keough** asked Mr. Whitehead what he saw as his role as Chairman of the ITB. Mr. Whitehead stated that his role is to look after the needs of the whole State. The Chairman of the ITB works at the pleasure of the Governor, so he wants to please the Governor. He believes his real responsibility is to look after the needs of the State of Idaho as far as transportation is concerned. He will attempt to guide and correct the Board and the Department as best he can.

Senator Winder offered his congratulations and welcomed working with him.

Senator Corder congratulated Chairman Whitehead.

Senator Keough stated that we have a long history of unfair taxation for trucks. We've been actively involved in the formulation of and negotiation of what we have today, which, to a certain degree, is inequitable. She was curious as to what role the new Chairman thought he might play in trying to bring the negotiating members back to the table to talk about and ensure our system is fair and balanced, and that each truck pays their fair share of the costs. Mr. Whitehead said this has always been a real problem with him because half of trucking businesses are resource based and less than half are the over-the-road businesses. He believes they need to be brought together and looked at. He would like to play a role in accomplishing that, but he is unsure what that role would be. He would look after the interests of the industry, and also the interests of the Idaho Transportation Department (ITD). It's no secret that ITD is underfunded. He thinks the steps taken by the Board have turned ITD into a

more responsive, leaner Department. Trucking is part of that, but he would work to the best of his ability to make it fair.

With that in mind, **Senator Winder** asked that the new Chairman look into and bring back a report at some point on the Ton Mile Taxation case because it was not part of the court case that found for the trucking agency. He believes it needs to be looked at. Mr. Whitehead said he would with one condition, that a new name be found for it. It has been named the Ton Mile Taxation for a long time; he believes a new name would make it easier for everyone.

Chairman Hammond said that he recently spoke to the Caldwell transportation committee and even they talked about this specific issue. The challenge of tracking is easier with new technology than it used to be, and the members of that committee felt a need for a more fair way to pay their fair share.

Senator Corder suggested that it simply be renamed 'the fair tax.'

Senator Bilyeu asked the new Chairman if he would share what he is hearing and seeing about additional federal transportation dollars; and would they be available for bridges and infrastructure. Mr. Whitehead stated that at this point, there is no answer yet on funding. No one really knows what Washington, DC will do. He hopes they will let the Department pick the projects rather than the folks in Washington, DC.

Chairman Hammond added that he had attended a conference in Washington, DC that addressed this particular issue. Frankly, Congress is all over the board on this and it is very hard to track down where they want to go. There seems to be no central mission for the national transportation system.

Senator Bilyeu asked about the conditions of our bridges and wanted to know if that would be something Mr. Whitehead would be specifically looking at. Mr. Whitehead said that ITD has identified items to be addressed of which some are bridges. They will be repaired and replaced as best they can. He thinks ITD should stick to their list on bridges because that list was developed on science and needs and not on wants.

With no further questions, **Chairman Hammond** thanked Mr. Whitehead for his willingness to assume the position of Chairman of the ITB. Mr. Whitehead asked if he could introduce Dwight Horsch.

GUBERNATORIAL APPOINTMENT: Mr. Whitehead began his introduction of Dwight Horsch of Pocatello by stating that he understands how difficult it is to get people to do this job. Mr. Whitehead was concerned about replacements for Board members who are retiring after many years of service. Mr. Horsch is definitely one of the better people to take on this task. He brings an extensive knowledge of agriculture and his knowledge of his district.

Chairman Hammond thanked Mr. Whitehead and asked Mr. Horsch to take the podium. Mr. Horsch thanked Mr. Whitehead for introducing him to the Committee; he then introduced his wife Kathy who was accompanying him. He and his family are farmers in Aberdeen where his father homesteaded over 100 years ago. After graduating from Kansas State University and serving in the Airforce and Air National Guard during the Viet Nam War, he returned home to help his family with harvest. That was forty-one years ago and he still lives in Idaho. While he served in the legislature, he did not serve on either the House or the Senate transportation committees. In 1983, he had an opportunity to work with Representative John Sessions who was the Chairman of the House Transportation Committee on the Ton Mile Tax. They had gone through the entire Idaho Code dealing with truck weights before getting it passed. It was amended three times that session; two of which he voted for. It is now unrecognizable; it's

fluid, it moves. Even though the faces of the legislature change, the work done here stands. This is the way he approaches the appointment to the ITB. It's not about him personally; the work the Board does collectively is important. It is an honor to have the Governor and Lieutenant Governor even consider nominating him to this Board. He doesn't know if it's a pleasure, but it is definitely an honor. With that, he stood for questions.

QUESTIONS:

Having gone through Mr. Horsch's resume, **Senator Werk** truly appreciates all the years of service and sacrifice Mr. Horsch has given, even after serving in the legislature. Mr. Horsch thanked the Senator.

Chairman Hammond commented that Mr. Horsch will bring a lot of institutional memory, knowledge, and wisdom, and thanked Mr. Horsch. The Chairman reminded the Committee that a vote on these appointments would be made at the Committee's next meeting.

S1231:

Chairman Hammond welcomed **Senator McKenzie** to the Committee. **Senator McKenzie** thanked the Chairman and presented S1231.

This bill addresses changes to the vehicle emissions testing program. The Senator spoke with DEQ with respect to this change and an amendment. He will be recommending S1231 be sent to the amending order. It applies to only Ada and Canyon counties at this time. Since the program was passed in 2008 it has created a hardship by owners of older vehicles. They get their vehicle tested and it fails; then they have to go through the repair process. He explained how this has happened to him personally with the vehicle he drives to work that has 230,000 miles on it. He replaced the catalytic converter that cost \$500, and it still didn't pass. He got a waiver for one year. Next year he will have to make the repairs again. Under current rule, there are two ways to deal with the situation: (1) there is a financial hardship; and (2) there is a cap on the amount you have to pay to get the repair done. Under the rule it was \$200. This puts that rule into Code.

The change **Senator McKenzie** would propose in the amending order is that the required five-year program review that goes to the Director of the Department of Environmental Quality (DEQ) who makes a determination whether to continue the program, modify it, or terminate it, would be to have that review brought to the legislature. The legislature would make that determination about the program's future. He discussed this with the Director of DEQ. This proposal is sponsored by the Canyon County legislators in the House and in the Senate. Canyon County was hit particularly hard by the recession, people drive older cars there, and 20% of the county is below the poverty line. This is a big issue there. He requested that S1231 be sent to the amending order. The Senator stood for questions.

QUESTIONS:

Senator Werk stated that fundamentally, the vehicle emissions program is meant to take vehicles off the road that can't pass inspection. The reason we're doing it is because we have an air quality issue. He asked to be walked, step-by-step, through the language as to who gets a waiver, and how long they get a waiver, and how many years someone can be 'waivered' under this provision. **Senator McKenzie** said it was a year waiver based upon making the repairs of at least \$200. It is very confusing. DEQ has been working through applying the rule and working with people who fit into a hardship with repair costs and are having a hard time getting an exemption. This change would mean that if you spent at least \$200 to repair the problem and failed, the vehicle owner would get a one-year waiver. Eventually, this problem fixes itself as older cars get off the roads. **Senator Werk** doesn't understand why we need to take something that is currently a rule and put it into statute. What is the advantage of having it as a statute? **Senator McKenzie** said that the legislature sets the policy. We review rules, but we don't modify them. Our authority over rules, as the State Supreme

Court said, is we can either accept them or reject them, we cannot change them. **Senator McKenzie** believes this is more of a policy issue. As the State imposes 'clean air,' the cost is imposed on specific citizens. Basically we're telling them that if they're going to drive an older car, they're required to have it repaired if they want to keep it on the roadways. **Senator Werk** asked if the language in this bill is similar to the language in the rule. **Senator McKenzie** said there is a slight change in the language.

Chairman Hammond wanted to make sure he understood the intent that low-income folks who drive older vehicles that do not pass inspection must make a good-faith effort to eliminate the problem, but you recognize that its an older car, of lesser value, and you can't expect them to spend \$2,000 to make the necessary repairs. So, this is a good-faith effort to remedy the situation. He asked if he had characterized it correctly. **Senator McKenzie** said that is correct. In some places there is a dollar cap for repairs for older cars. With no further questions, the Chairman asked for a motion.

MOTION: **Senator McGee** moved that S1231 be sent to the amending order. The motion was seconded by **Senator Keough**. **Senator Werk** stated that the language indicates there could be waiver, after waiver, after waiver. He believes it is very confusing. With no further discussion, the Chairman called for a vote. The motion passed by a unanimous voice vote. **Senator McKenzie** will carry S1231 on the Senate floor.

H367: **Chairman Hammond** invited John Krause, Transit Program Manager at the Idaho Department of Transportation (ITD), to the podium to present H367.

Mr. Krause introduced himself and told the Committee that every five years ITD renews a continual Executive Order (EO) with the Office of the Governor designating ITD, and its Director, as the recipient of Federal Transit Administration program funds. He pointed out that they should have a copy of the last EO in their materials for review. A finding identified through ITD's Zero-Based Budgeting (ZBB) process recommended that this long-standing designation be codified rather than mandated through continual EOs. This change will eliminate the time intensive process of producing a new EO every five years as well as providing consistent authority strengthening program compliance. Federal Transit Administration funding associated with this designation totals approximately 75% of the total funding regularly allocated to Idaho each year. Codifying this does not change any internal processes or authority, but it simply makes this designation to ITD permanent. The Committee had no questions for Mr. Krause.

MOTION: **Senator Keough** moved that H367 be sent to the Senate floor with a do-pass recommendation. **Senator Werk** seconded the motion. With no discussion, the motioned passed with a unanimous voice vote. **Senator Keough** will carry H367 on the Senate floor.

RS21119: The Chairman asked **Senator Keough** to present her RS.

The Senator began by introducing Heather Wheeler, Director of the Community Transportation Association of Idaho (CTAI), who is one of the lead co-sponsors of this legislation. This RS replaces an existing section of Idaho Code that currently houses the Interagency Working Group and merges it with the Transportation Advisory Council into a new agency called the Idaho Mobility Council. Those two councils have already been working as the Idaho Mobility Council for about one year. It also outlines the responsibilities and adds new organizations who have not participated in the past. The purpose is to make sure that all the State agencies in Idaho that have a hand in public transportation are getting together and talking about how to leverage the resources that they have to better serve Idaho, and to use those dollars and resources effectively. This is just one more step in trying to accomplish that goal. There were no questions for Senator Keough.

MOTION: **Senator Bair** moved that RS21119 be sent to print. **Vice Chairman Brackett** seconded the motion. With no discussion, the motion passed by a unanimous voice vote.

RECOGNITION: **Chairman Hammond** recognized and welcomed former Senator and President Pro Tem Bob Geddes to the Committee. He thanked him for joining us today.

RS21130: **Chairman Hammond** called Michael Kane, representing AAA and Property Casualty Insurers Association of America (PCIA), to the podium to present this RS.

This is texting legislation. He assured the Committee it is not designed to conflict with the current texting bill, S1274. His clients intend to support that bill and provide testimony. This RS deals with a different form of texting; texting while engaged in a moving violation – such as speeding or going through a stop sign or signal. If texting is dangerous, texting while speeding is even more dangerous. This proposal would enhance moving violations while texting. It is very similar to S1274, but what is missing is the law enforcement exemption. It would enhance the penalty for violators to \$100; it is currently at \$33.50. If there is a hearing, more information will be provided about why they believe it is appropriate. The definitions in the legislation have been reviewed quite heavily for more than a year, and it is backed by law enforcement, the cellular phone association, and the automobile association. Mr. Kane stood for questions.

QUESTIONS: **Senator Werk** asked if this would be a secondary violation because a driver is doing something else and it adds an additional fine. Are they complimentary or do they run over each other? Mr. Kane said they do not run over each other. If someone is pulled over for speeding, they can also be cited for no insurance. This says if you are texting while speeding then the penalty is higher; it is not double jeopardy. **Senator Werk** continued that if a person was pulled over for texting while driving, if the other bill passed, and there is an infraction with that and they happen to be speeding, would they get cited for texting, or driving, or speeding. Mr. Kane said that drivers can be cited for speeding now. If the texting bill passes, they can be cited for texting and speeding. In his bill, you can be charged for speeding at a higher penalty. Theoretically you could be cited for both. There were no further questions.

MOTION: **Senator McGee** moved that RS21130 be sent to print. **Senator Werk** seconded the motion. With no further discussion, the motion passed by a voice vote with two dissenting votes.

RS21153: The Chairman asked **Senator Corder** to present his RS.

Senator Corder said this RS is brought to the Committee by John Deere Company. It addresses which vehicles are registered vehicles and which are not. Right now, farm equipment is not a registered vehicle and enjoys an exemption from that. But some construction equipment, forestry equipment, and lawn and ground equipment are still registered. This bill will allow us to have that discussion about what is the appropriate policy. **Senator Corder** stood for questions.

QUESTIONS:

Senator Keough noted for the record that she may have a conflict on this legislation.

Senator Werk noted that the other equipment is right now caught in a registration web and are paying some kind of fee, and if they're removed there will be some kind of fiscal impact. **Senator Corder** said he suspects that is correct, but he is not sure. He said he would get that answered when it comes back for a hearing. **Senator Werk** said the information would be helpful, since the Statement of Purpose states there will be no impact on the general fund. **Senator Corder** said registration fees wouldn't impact the general fund. **Senator Werk** said it would still be helpful to have the information. There were no further questions.

MOTION:

Senator McGee moved that RS21153 be sent to print. **Senator Bilyeu** seconded the motion. With no further discussion, the motion passed by a unanimous voice vote.

RS21193C1:

The Chairman asked **Vice Chairman Brackett** to present his RS.

Vice Chairman Brackett stated that the Idaho Hazardous Waste Act requires that commercial hazardous waste be charged a fee for disposal. Fees of 5% are remitted to the County where the facility is located for the emergency response programs. Currently, approximately \$2.4 million are generated with 95% going to the State Treasurer. The only commercial hazardous waste facility in Idaho is the U.S. Ecology facility located in Owyhee County. RS21193C1 amends the Idaho Hazardous Waste Act by providing an additional 5% of the fees to the local highway district and 5% to ITD's highway fund for construction and repair of the roads impacted by the trucks carrying the waste to and from the facility. The Vice Chairman cited a road map supplied in the Committee's information packets. The access road is located in Elmore County, which currently receives no funding for maintenance of Simco Road. The roads are currently in need of repairs. Without those repairs, the route will have to go through Mountain Home, making access longer, adding to transportation costs, and creating a public safety issue with the trucks travelling through the city. The Vice Chairman explained the fiscal impact and reduction in general funds being reallocated and stood for questions.

QUESTIONS:

Senator Werk asked if the road being discussed goes into ITD's regular process to determine if repair and maintenance is required on the road. Vice Chairman Brackett stated that Simco Road is not part of the State highway system.

Senator Bilyeu asked for clarification on whether the fees currently go to the County. **Vice Chairman Brackett** said that 5% of the fees collected go to Owyhee County, where the facility is located. This would amend the Act so additional funds would go to the local highway district and ITD. **Senator Bilyeu** asked if he is not concerned about the original 5% going to the County and if the County was taking care of the roads. **Vice Chairman Brackett** said the funds are not adequately maintaining the roads. **Chairman Hammond** suggested that Elmore County receives relatively no funds for the maintenance. **Vice Chairman Brackett** agreed and stated that Elmore County is short of funds.

Senator Corder asked if some of these funds would now be going to Elmore County that currently doesn't get any of the original 5% of the fees paid. Elmore County built Simco Road under an agreement with U.S. Ecology and J.R. Simplot Co. and have never been reimbursed nor received any monies to maintain that road which is the primary road U.S. Ecology uses. These new funds would be designated to the local highway district to maintain that road. **Vice Chairman Brackett** thanked Senator Corder for providing the additional information and clarification.

MOTION: **Senator McGee** moved that RS21193C1 be sent to print. **Senator Corder** seconded the motion, and disclosed as possible conflicts that this road was built while he was Chairman for the local highway district and that his daughter works for U.S. Ecology. With no further discussion, the motion passed by a unanimous voice vote.

DISCUSSION: **Chairman Hammond** told the Committee he had been invited to report on the activities of the Senate Transportation Committee to the Joint Finance and Appropriations Committee. He asked for input from the Committee. There was no input offered.

ADJOURNMENT: With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:26 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary