

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Wednesday, February 15, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
- ABSENT/  
EXCUSED:** Rep. Ellsworth
- GUESTS:** Randy Colson, Idaho Towing and Recovery Professionals; Woody Richards, Attorney/Lobbyist; Lamont Anderson, Attorney General's Office; Lt. Col. Ralph Powell & Sharon Lamm, POST, Idaho State Police (ISP)
- Chairman Wills** called the meeting to order at 1:33 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes from the February 7, 2012 meeting. **Motion was carried by voice vote.**
- Chairman Wills** recognized **Drew Nelson**, House Page, for her service during the first half of this session.
- H 531:** **Dawn Peck**, Manager of the Bureau of Criminal Investigation, ISP, presented **H 531**. She said that after further review by the agency, the language in the bill contained errors and fell short of the statutory goal and ISP would like to pull the bill and introduce a replacement RS.
- UNANIMOUS  
CONSENT  
REQUEST:** **Rep. Killen** requested unanimous consent to pull **H 531**. There being no objection, consent was granted.
- RS 21304:** **Dawn Peck**, ISP, presented **RS 21304**. She explained that **RS 21304** will replace **H 531** because the language in **H 531** was confusing and inadequate to accomplish the ISP's goal for the bill. The only change is to § 49-202 (2)(q), to the word "transfer," clarifying that this is a one time fee for vehicle title transfer that will be used to support the Idaho Public Safety and Security Information System (more commonly known as "ILETS"). This proposed legislation proposes to establish a fee on the issuance or transfer of each vehicle title which will provide a stable funding source to support and maintain ILETS. ILETS primary mission is to provide a dedicated, secure, reliable, high-speed communications system that enables the public safety and criminal justice communities to fulfill their missions of protecting and serving Idaho citizens. The ILETS Board has recognized that the current funding structure is inadequate to sustain daily operations and infrastructure need and monies earned from this fee would go into an ILETS dedicated fund to be used for ILETS maintenance and usage costs.
- In response to committee questions, **Ms. Peck** stated that total annual funds earned from this fee collection would be about \$4 million. Yearly cost to keep the system running is about \$2.7 million/year. She clarified that there would be an excess, but the Board is trying to build the fund to be able to pay for a replacement part if/when it is needed and to make sure that they do not have to ask for increased funding for ILETS in the near future for this purpose. Committee members requested a list of all the fees involved with this.

**Ms. Peck** stated that a fee is assessed when any title transfer is made, even if the vehicle was a gift. Also, on page 6, line 41, "all access fees collected under the provision of this chapter," she said that these fees are outlined in IDAPA 480. The access and system usage fees were raised in 2007 to an amount counties felt they could absorb. The Board feels this is not enough to maintain the system, and currently ISP is covering 48% of the costs, where they should be covering 25%.

**Amy Smith**, a Vehicle Services Manager for the Idaho Dept. of Transportation (IDT), explained the breakdown of the title fee. The committee expressed concern about the fees listed on the first two pages of the RS and questioned where the fees, other than to ILETS, were going to be distributed. **Ms. Peck** stated that the Idaho Code section that has been changed is the IDT title section, it is not for the ILETS system.

**Rep. Sims** invoked **Rule 38** stating a possible conflict of interest as she is an automobile dealer, but will be voting on **RS 21304**.

**MOTION:**

**Rep. Smith** made a motion to introduce **RS 21304**.

**Ms. Peck** stated that she will advise the Department of Transportation (DOT) Advisory Board about the substance of the bill. In regards to the "other vehicles" listed on page 2, **Ms. Smith** said that this could be a boat or trailer, technically not a motorized vehicle. In regards to the language she stated that this is just left over language, as all these "other" vehicles would be included here, so the "other" is likely unnecessary.

**VOTE ON THE MOTION:**

**Motion was carried by voice vote.**

**H 403:**

**Lt. Col. Ralph Powell**, ISP, presented **H 403**. He explained the purpose of this bill is to create a requirement for tow truck drivers who contract with the ISP to have criminal background checks through both the FBI and Idaho criminal databases. There is a public expectation that the tow truck driver has gone through some kind of background check, and ISP would like to send a tow truck driver that does not have a criminal record that includes any of the disqualifying crimes. The intent is to make this process safer for those who are having their cars towed, under the direction of the ISP.

In response to committee questions, **Lt. Col. Powell** stated that ISP is interested in crimes committed against persons and serious property crimes when examining someone's background. For example: battery, burglary, rape, etc. He explained ISP is adding the federal review to the state check that is already being used. He emphasized that it is a more comprehensive check because it is nationwide, not just for the state of Idaho. In regards to the doubling of the fees to tow truck drivers, he said the addition is the cost of using the FBI fingerprint-based check.

**Lt. Col. Powell** explained the payment for the background check would not apply to every employee of the tow-truck company, but would apply only to the owner and all drivers that will be responding to the scene. **Lt. Col. Powell** deferred to **Dawn Peck**, ISP, for a question about the fee increase, which was authorized to \$25.00 for the fingerprint based check (increased from \$10.00). She stated that the fingerprint based check is important because it is a positive identification. Total fees would be about \$41 for each responding tow-truck driver.

In regards to the ability of the state to use the substance of the FBI background checks, **Lt. Col. Powell** said that the authority to conduct a state background check is governed by FBI rules and there must be a statute that authorizes ISP's use of the FBI database. He deferred to **Ms. Peck**, and she said Title 67, Chapter 30 governs authority to do state background checks.

**Randy Colson**, President of the Idaho Towing Recovery Professionals, stated his concern is with the timing of the fees required. He said he would like the fee application to happen at the time of hire. He also said there is no standard of measure to apply this to and there needs to be a requirement in writing. He emphasized that they are seeking a measured guideline so that tow truck companies are able to comply.

In response to committee questions, **Mr. Colson** stated that the AAA background checks do not have access to the FBI database. He said that he would be satisfied with at least one check through the FBI based system, though it is not possible to transfer federal information, and AAA can verify that the check was completed. In regards to the City of Boise evaluation, the check is annual, meaning that any crimes for the next 12-month period would be undiscovered. He emphasized that he, as a business owner, is paying attention to the quality of his employees.

When asked if the City of Boise would be willing to accept the background check from ISP and not require an additional check, **Lt. Col. Powell** said the ISP check is completed once at the time of hire, however, Boise City requires annual checks and he does not know what they might be willing to accept in the future. In regards to timing of the background check, there isn't a particular time in mind and this bill stems from a particular incident in Oregon, where a tow truck driver used by the ISP that had various convictions in Oregon, which were not detected in the Idaho database search.

In regards to committee concerns over whether this is an ongoing problem, **Lt. Col. Powell** stated the national background check provides a comprehensive criminal check and ISP has no current intention of changing the policy to include itemized specifics as far as "disqualifying crimes" go. Also, the ISP procedure on tow truck operators does not spell out the specific qualifications and ISP conducts a case-by-case analysis when they conduct a background check. The committee expressed a concern that there are no qualifications codified somewhere. Lt. Col. Powell stated that if the applicant is denied approval, they have the opportunity to meet with ISP to redress their concerns. He added that tow-truck drivers do not have to be on the rotation list used by ISP.

When questioned, **Mr. Colson** stated that he was not involved in drafting this bill. In regards to suggested changes to the bill, he would like the background check to be conducted at the time of application to the ISP tow truck pool, and he would like to see clarification on timing and definitions of disqualifying crimes.

- MOTION:** **Rep. Killen** made a motion to send **H 403** to the floor with a **DO PASS** recommendation. **In favor** of the motion, **Rep. Luker** made a request to add various standards to this, but overall he supports the bill due to public safety concerns. **Rep. Perry** stated **in opposition** to the motion, she is likely not to support the bill because of the fear that certain drivers will be excluded, the high cost, lack of standards, and lack of strict time frames for check requirements.
- SUBSTITUTE MOTION:** **Rep. Bateman** made a substitute motion to hold **H 403** in committee. In support of the motion he stated that Idaho is a small state and these fees and other issues are of great concern to Idaho's citizens.
- AMENDED SUBSTITUTE MOTION:** **Rep. Hart** made an amended substitute motion to hold **H 403** in committee for a time certain, no longer than one week, for parties to get together and come up with better language.

**ROLL CALL  
VOTE ON THE  
AMENDED  
SUBSTITUTE  
MOTION:**

**Chairman Wills** requested a roll call vote on the amended substitute motion to hold **H 403** in committee for a time certain. **Motion passed by a vote of 8 AYE, 6 NAY and 1 absent/excused. Voting in favor of the motion: Vice Chairman Luker, Reps. Smith(24), Nielsen, Shirley, Hart, Bolz, McMillan, and Perry. Voting in opposition to the motion: Chairman Wills, Reps. Bateman, Sims(Ingram), Burgoyne, Jaquet, and Killen. Rep. Ellsworth was absent/excused.**

**H 403** will come before the committee on Thursday, February 23, 2012.

**H 532:**

**Sharon Lamm**, POST/ISP, presented **H 532**. She stated this will amend Idaho Code to allow POST counsel to collect and spend fees earned from POST dormitory usage. The fees are structured to recoup costs associated with use of training equipment from non-law enforcement institutions. POST academy rooms are available to non-POST entities. POST charges \$10.00/night/room which benefits POST and saves lodging costs for those who are using the room.

**Ms. Lamm** next provided responses to committee concerns from the RS hearing. She said that in regards to concern about exemptions from the bed tax, all charges for room occupancy that are exempt from sales tax, are exempt from the room tax. Over 99% of POST customers receive the tax exemption and the remaining customers are from out-of-state. In 2011, POST collected \$32,000 in dormitory fees. She emphasized that law enforcement agencies throughout the state benefit from the use of the facility for the training they are required to complete in order to retain their certifications. In FY2011 POST collected \$80,000 from POST-associated users and without this charge in place, POST would have to bill these agencies about \$20,000 annually for their usage.

**MOTION:**

**Rep. Shirley** made a motion to send **H 532** to the floor with a **DO PASS** recommendation.

In regards to an audit on the taxes being taken out, **Ms. Lamm** stated POST has been audited in the past. The committee was concerned that a law enforcement agency has been doing something they are not yet authorized to do, she said that this is one of the areas that needed to be addressed.

**VOTE ON THE  
MOTION:**

**Motion was carried by voice vote. Rep. Shirley** will sponsor the bill on the floor.

**S 1265:**

**Brent Reinke**, Director of the Idaho Dept. of Corrections (IDC), presented **S 1265**. He handed out copies of IDC's standard operating procedures. He explained the lessons learned from the November 18, 2011 execution which was the first in many years. **S 1265** addresses pre- and post- execution procedure. The purpose of the bill is to clarify that after the execution the death warrant is to return to the district court, which is consistent with the statute.

**MOTION:**

**Rep. Nielsen** made a motion to send **S 1265** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote. Rep. Nielsen** will sponsor the bill on the floor.

**S 1266:**

**Lamont Anderson**, Attorney General and Chief of the Capital Litigation Unit, presented **S 1266**. He said this bill addresses "how" and "when" a warrant of execution is obtained. It clarifies that the state of Idaho, the Idaho Supreme Court, and Federal Courts can impose a stay of execution. Section 2 addresses procedure for obtaining the death warrant, which occurs after unitary review by the Idaho Supreme Court. Remittitur is executed by the Idaho Supreme Court, but the word "prosecutor" has been changed to the "state." He explained that after a death warrant is obtained, death sentence inmates are reviewed by federal courts. If a stay is obtained, then a mandate is issued by the 9th Circuit Court of Appeals. After this, it is possible to get a second death warrant. There also may be a situation where the Dept. of Corrections has not been able to complete an execution by the time allotted by the court. In this case, the bill allows the department to obtain another warrant from the district judge with an explanation of why the execution has not been completed. This prevents a death sentence inmate from skirting the death sentence because of a timing issue.

In response to committee questions, **Mr. Anderson** said § 4, line 35, changed from "must" to "may" because the death sentenced inmate is not actually brought into court. In the case that the district court wants to inquire why that warrant was not carried out, this change removes the requirement that the inmate has to be present during this inquiry. In regards to whether a judge would want to make an inquiry, he clarified that the judge must make an inquiry and stated it would be hard to imagine a situation where the district judge would not want to sign an additional death warrant. In regards to the timing of the issuance of the death warrant, he said constitutional speedy trial requirements would govern this. Regarding line 37, the "special specified time," Mr. Anderson stated that this is prior language from the statute and means the warden shall execute the death warrant as specified by the district judge.

**MOTION:**

**Rep. Perry** made a motion to send **S 1266** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 3:23 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary