

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 27, 2012
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, 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 and asked if there were minutes to approve.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll**, to approve the minutes of **February 20, 2012** as written. The motion carried by **voice vote**.

Chairman Darrington stated that he had a letter of unanimous consent from the appropriate committee for the following RS's and asked for a motion to print them all.

RS 21317 Relating to Highways and Right-Of-Way from the Transportation Committee

RS 21314 Relating to Highway Districts from the Transportation Committee

RS 21345 Relating to Personal Property Taxes from the Local Government and Taxation Committee

RS 21332C1 Relating to a Concurrent Resolution stating findings of the Legislature and recognizing the Idaho Digital Learning Academy for its achievements in providing quality online education for Idaho students - from the Education Committee.
Sponsor: Senator Goedde

MOTION **Senator Bock** moved, seconded by **Senator Lodge**, to print **RS 21317, RS 21314, RS 21345, and RS 21332C1**. The motion carried by **voice vote**.

H 449 **Relating to Penalties. Major Clark Rollins**, Idaho State Police, explained this legislation adds a \$20 fine to all violators of the states drug statutes (Title 37, all misdemeanor and felony charges) to ensure continued enforcement and apprehension of these drug trafficking organizations. With the additional \$20 fine on the population base charged with these violations, a dedicated funding source of approximately \$250,000 is created to help offset some of the costs in operating and capital outlay expenses.

The statutes that will be directly affected are: 18-7804, 18-8201, and the following drug trafficking statutes, 37-2732, 37-2732C, 37-2733, 37-2734A, 37-2734B, 37-2734C, and 37-2739A. The same paragraph will be added to each of these sections. It reads:

In addition to any other fine assessed under this section and notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall be assessed against the defendant in the amount of twenty dollars (\$20.00) for each conviction under this section. Such fee shall be paid to the clerk of the district court who shall transmit said fee to the Idaho state treasurer for distribution to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

Chairman Darrington stated that Major Rollins made it clear that it is exclusive to the drug statutes and not to other misdemeanors or felonies. He added that the Statement of Purpose shows approximately 12,500 drug violations a year.

Senator Nuxoll asked if most narcotic cases were investigated by Idaho State Police, the sheriff, or the city police. **Major Rollins** said there were a lot of smaller agencies that did not have a task force. Throughout all districts they work together. **Senator Nuxoll** asked who did most of the work. **Major Rollins** said they tried to focus on the mid to upper-level trafficker while the smaller agency worked the street level. **Senator Nuxoll** wondered why the city and all agencies that helped with investigations weren't being funded. **Major Rollins** said each district works with the local agencies and since most of these cases are intertwined, if the agency is short on funding, the bills are paid by ISP.

Senator Bock asked with these additional fees, what can be done that couldn't already be done. **Major Rollins** said that they hoped to take some of the burden off the taxpayers. They are currently relying on drug donation and seizure. They are trying to get a channel of dedicated funds to assure they have the money. **Senator Mortimer** asked what they had collected from confiscations over the last 2 or 3 years. **Major Rollins** said that varies from case to case. **Chairman Darrington** added that it would also vary from year to year. **Senator Mortimer** asked what were the total fees paid if convicted and how much would this add. **Major Rollins** said he did not have that information.

Michael Henderson, Legal Counsel for the Supreme Court, said in answer to the previous question the fees charged in a felony case are \$225 and in a misdemeanor case about \$137. **Senator Nuxoll** commented that from talking to the police in Lewiston, they needed help with equipment. She said she understood that many of these narcotic cases are investigated by the sheriff and city police department, but there is no guarantee that these funds will go to help them. She will vote no on this bill.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll**, to hold **H 449** in Committee. **Senator LeFavour** said that as a member of the Joint Finance Committee, she has become more aware of the cuts in funds and the stress they are put under.

SUBSTITUTE MOTION **Senator Davis** moved, seconded by **Senator Lodge**, to send **H 449** to the floor with a **do pass** recommendation. **Senator Bock** said this was another bill adding another fee and he was not comfortable with this bill. **Senator Mortimer** voiced his concerns over this legislation. A roll call vote was requested by **Senator Bock**. Chairman Darrington, Senator Davis, Senator Lodge and Senator LeFavour voted aye. Vice Chairman Vick, Senator McKague, Senator Mortimer, Senator Nuxoll, and Senator Bock voted nay. The vote failed 5 to 4.

SUBSTITUTE MOTION **Senator Davis** moved, seconded by **Senator Mortimer**, to send **H 449** to the **14th order** for amendment. **Senator Davis** said the intent would be to allow the sponsor to allocate some of the funds to go to other agencies. **Senator Bock** suggested that this concept should be considered more carefully, and there was still time to create a new bill. The motion carried by **voice vote**.

S 1332 **Relating to Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances.** **Senator Keough** explained this bill adds additional language to Idaho Code § 12-117 to state that in any civil judicial proceeding involving adverse parties, a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses. It also amends the code to cover health districts which are not technically regarded as state agencies. Senator Keough explained the technical correction from \$2,500 to \$25,000. She would yield to Representative Burgoyne for further clarification.

Representative Burgoyne pointed out that the purpose of the original statute 12-117 and the purpose of these amendments is to assure that people, whether they are state agencies, local units of government or individuals who suffer abuses because the other party has done something without factual or legal basis, are protected so their increased cost for attorney's fees and the cost of the action are recovered. He stated that also in the legislation (4) if government agencies are going to sue each other, they should be good stewards of the taxpayer's money and be certain that this is a suit that cannot be avoided.

Hethe Clark, representing himself, said the intent of the legislation was adequately covered and he is in favor of the bill.

Don Copple, Davis and Copple, stated that this legislation restores to 12-117 the primary intent of the statute and he urges a do pass from the Committee.

MOTION

Senator Mortimer moved, seconded by **Senator Nuxoll**, to send **S 1332** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1340

Relating to Costs of Court Ordered Testing. **Seth Grigg**, Idaho Association of Counties, explained the intent of this legislation is to clarify that court ordered testing fee be paid by probationer and not the jurisdiction overseeing the probation. This is the current practice and this will clarify that it is acceptable and conforms with the statute. He stressed there would be no new fees with this and would add stability to the current practice. He would yield to Michael Henderson of the Courts for further clarification.

Michael Henderson, Legal Counsel of the Idaho Supreme Court, explained that Idaho Code, § 19-2608, was a matter that the Court identified as needing the Legislature's attention. It would be helpful to clarify what fees could be assessed to the probationer in addition to probation supervision fees. Mr. Henderson said that Title 19 deals with criminal procedures. Chapter 26 deals with proceedings in district court as opposed to magistrate division of district courts, which could be confusing. Chapter 39 deals with proceedings in Magistrate Court. In summary, Mr. Henderson said it makes clear that you are responsible for the cost of testing if you can pay rather than imposing that cost on the taxpayers. He said it was an opportunity for the Legislature to stress its intention in that regard.

MOTION

Senator Davis moved, seconded by **Senator LeFavour**, to send **S 1340** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Prior to the next bill, **Chairman Darrington** made some comments. He said it came to his attention that in some jurisdictions, cities (not counties) when an officer made a traffic stop the motorists were given an opportunity to accept the summons to a driving school run by the city with a fee charged by the city in lieu of the citation. The officer had the discretion to give a citation or not. The Attorney General's opinion was that the cities did not have authorization to do this. One city sought a private attorney's opinion that indicated they didn't need authority. With conflicting opinions, some cities stopped this alternative action while others continued. Meetings were convened with counties, cities, and courts to work out a piece of legislation. The problem was that when they were cited to driving school, no POST fees were paid and POST revenues would obviously decline. There were also no Idaho State Trialcourt Automated Record System (ISTARS) fees paid to support the computer system. This legislation would indicate that the cities could carry on the practice, but if they have to provide the same fee to POST and ISTARS that would normally be provided if the individual had received a citation. After providing this background, Chairman Darrington introduced William Flink to introduce the bill and speak to the legislation.

S 1275

Relating to the Traffic Safety Education Program. William Flink, POST Administrator, explained the legislation would enable cities and counties to establish traffic safety programs, that allowed a motorist to attend a traffic school in lieu of issuance of a citation for a traffic violation. Attendance at such traffic safety programs would be voluntary and serve as a refresher course in safe driving for motorists who chose to attend them. If a motorist fails to attend after committing to do so, they may be charged with the original infraction violation. The law enforcement officer has the discretion to either issue a citation or offer attendance at a traffic safety school. The legislation also allows counties and cities to charge a fee for such programs and provides that a portion of those fees would be dedicated to the peace officer standards and training fund and to the ISTARS technology fund. The fee could not exceed the cost of the traffic citation.

Jerry Mason, attorney from Coeur d'Alene, representing the Association of Cities, said that for most people the education of driving was one time only. He pointed out that his community started this some ten years ago, and it was well received by all. It simply provides an alternative option and is voluntary for all concerned.

Chief Scot Haug said he is in support of this bill. He said in 2004, Post Falls implemented the first traffic safety program in Idaho. After realizing the benefits of several education based programs, such as DARE (Drug Abuse Resistance Education) and OASIS, which is an anti-domestic violence program and others, they decided to build on these successes. They have educated over 5,000 drivers regarding new traffic laws, the results of risky driving and how to help reduce traffic related incidents in the community. The benefits are (1) a 4 hour educational class vs. a ticket citation, (2) no interaction with a prosecutor, (3) a positive view from the public, and (4) an improved driving base.

Chairman Darrington asked the Chief how the city deals with multiple offenders. **Chief Haug** said the department rule was to allow a motorist to take this course once every 18 months.

Chief Dave Moore, from Blackfoot, said they had followed the lead of Post Falls eight years ago and have had positive results from the traffic education program. The primary targets are young drivers and senior drivers. **Mayor John Evans**, Garden City, also validated the previous comments and added that since 2006 with 5200 participants the positive response from the program has been overwhelming. The most notable response has been from parents of young drivers. **Chairman Darrington** asked if the practice in Garden City was to cite the no-shows. **Mayor Evans** said yes. **Jim Bensley**, Chief of Police, Garden City, would add that since 2006, they have had a 34% reduction of traffic violations.

Lyn Darrington, representing State Farm Insurance, supports this bill, but they had a concern that it would mask infractions and does not give a complete accurate and realistic view of a person's driving experiences.

In conclusion, **Mr. Flink** said this measure is intended to provide a portion to both the ISTAR fund and the POST fund. It is also a good tool for community relations.

MOTION

Senator Bock moved, seconded by **Vice Chairman Vick**, to send **S 1275** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary