

MINUTES
HOUSE TRANSPORTATION & DEFENSE COMMITTEE

DATE: Tuesday, March 06, 2012

TIME: 1:30 P.M. or Upon Adjournment of the House

PLACE: Room EW40

MEMBERS: Chairman Palmer, Vice Chairman Ellsworth, Representative(s) Wood(35), Smith(24), Bedke, Wills, Hart, Nonini, Hagedorn, Bateman, Henderson, Nessel, Ringo, King, Killen

**ABSENT/
EXCUSED:** Representative Hart

GUESTS: Greg Laragan, Jim Coleman, Mollie McCarty, Lee Gagner, and Chris Kronberg, Idaho Transportation Department (ITD); Duane Sessions, Dillon Limited Partnership; Heather Cunningham, and E. Don Copple, Davison and Copple; Max Greenlee, Risch Pisca; Colby Cameron, Sullivan Reberger Eiguren; Kerry Ellen Elliott, Idaho Association of Counties, (IAC)

Chairman Palmer called the meeting to order at 10:35 A.M.

MOTION: **Rep. Ringo** made a motion to approve the minutes of February 28, 2012. **Motion carried by voice vote.**

H 583: **Senator Winder** presented **H 583**. He said that the bill is about fairness and private property rights. It centers on Idaho Transportation Department (ITD) negotiating for the acquisition of right-of-way, as property transitions from, e.g., agriculture land to commercial land. He noted that owners apply to the State for right-of-way access, but in many cases are being denied. He said the bill remedies that by compensating the property owner with the fair market value for their easement. **Senator Winder** said **H 583** does not take away ITD's right to condemn the property, but the Department needs to compensate the property owner.

Senator Winder said there have been many cases along Eagle and Fairview Roads in which farm property has transitioned to commercial. Many businesses have gone to court to obtain easements rights. ITD is losing millions of dollars in litigation because the courts have ruled in favor of the businesses.

Duane Sessions, Dillon Limited Partnership, **Heather Cunningham** and **E. Don Copple**, Davison and Copple spoke in favor of **H 583**. They gave examples of individuals that had deeded rights extinguished by the State because of entrance safety concerns. In the past if a person lived on a State highway, ITD gave deeded access rights instead of paying the property owner. The property owner believed that this language would give access to the highway or road in the future. ITD later decided not to recognize the deeds. Proponents of this bill also stated that since deeds are supported by law a private citizen should not have to go to court to have the deeds recognized. Another example given concerned a land owner on Highway 69. He had seven deeded access easements, one every 660 feet on his property. In 2002, ITD changed access standards to one access easement every mile, on property located on a median four-lane highway.

Mr. Copple, responding to a question about when deeds were first issued, stated the State began issuing deeds in the 1930's and the 1940's and were given authority by the Legislature.

Jim Coleman, ITD, spoke in opposition to **H 583**. Mr. Coleman said ITD has set up an Access Task Force to develop a strategic plan for safety, mobility and economic opportunity. Mr. Coleman believes ITD should not be able to extinguish access easements, but the property owners should not have unlimited access based on the original deed. Mr. Coleman presented an amendment to **H 583** which would strike the word "not" from the statement: "use of easements is not limited to its historical use and any other use legally permitted at the time the owner of the access easement applies for permission to encroach upon a public highway or public right-of-way." He argued that when farm land becomes residential or commercial and the number of vehicles entering the property changes from a few to several hundred a day, the Department should recognize owner's access rights but not unlimited historical access rights.

The committee asked **Mr. Coleman** for an example of the State abusing access rights. He told about a property owner on Highway 95 who had 3 access deeds to his land. When U.S. 95 was expanded to four lanes, the State extinguished those access rights without due compensation. The property owner asked Mr. Coleman's consulting firm for help. The firm could not get those rights back, however, at the beginning of 2012, the owner achieved success. The land became a nine-lot subdivision and access was granted but the property owner paid \$3000.

Senator Winder commended the ITD Board for the new access standards which were a product of the task force. He stated that the bill dealt with the issue of terminated deeds not considered by ITD. He also said this is not about the definition of unlimited access, but is about property owners not being penalized and benefitting from the increased value of property.

The committee asked if there has been any consideration for middle ground evaluation of property to be fair to the Idaho Department of Transportation as well as property owners. **Senator Winder** said acquisition is done with Federal funds and appraisals are done with fairness for both parties.

MOTION: **Rep. Bedke** made a motion to send **H 583** to the floor with a **DO PASS** recommendation. He commented that we respect the public treasury but they cannot wield to power with impunity. **Motion carried by voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

ADJOURN: There being no further business before the committee the meeting was adjourned at 11:50 A.M.

Representative Palmer
Chair

Jane Clark
Secretary