

MINUTES
HOUSE TRANSPORTATION & DEFENSE COMMITTEE

DATE: Thursday, March 08, 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 Killen

GUESTS: E. Don Copple and Heather Cunningham, Davison and Copple; Terry Geis, U.S. Ecology; Colby Cameron, Sullivan, Reberger Eiguren; Chris Kronberg and Greg Laragan, Idaho Transportation Department, (ITD); Zach Hauge, Capitol West; Elizabeth Criner, Northwest Food Processors Association, (NWFPA), Mike Kane, Property Casualty Insurers, (PCI); Curt Fransen and Martin Bauer, Idaho Department Environmental Quality, (DEQ); Roger Seiber, Ada County Highway District, (ACHD); Kerry Ellen Elliott, Idaho Association of Counties, (IAC); Al Freeman, citizen

Chairman Palmer called the meeting to order at 1:31 P.M.

H 619: **Rep. Leon Smith (24)** presented **H 619**. Rep. Smith said this bill eliminates the provision giving local communities the right to prevail over the highway districts in setting speed limits. There has been abuse as small towns have made the speed limit on the main highway through the town 25 mph. This becomes a revenue source for the city. This bill returns that function to ITD who have the engineering staff to do safety studies on speeds. A municipality has the right to contest the speed limit set by ITD. Cities first go to the Highway District to convince them to post a different speed. If there is still a dispute the cities can go to the ITD Board and appeal the decision of the district engineers. The proposed amendment to this bill provides that any alteration of speed limits must be based upon a traffic engineering study approved by the Department. In the event of disagreement between the Department and local authorities, the ITD traffic plan shall be adopted.

The committee asked for examples of cities where the speed limit is too slow. **Rep. Smith (24)** said Highway 95 traffic is slowed down to 25 mph in the Bellevue city limits. There is no justification for that speed on a five lane highway with few pedestrians and no schools. The constable said, in a hearing six or seven years ago, that it would eliminate one-third of city revenue if the speed did not stay at 25 mph.

The committee asked about low speed limits in school zones. **Greg Laragan** Idaho Transportation Department, ITD, replied that school zones are handled by a separate entity and will not be changed by ITD. In answer to how long it would take for a municipality to get an appeal through ITD, **Rep. Smith (24)** said he believed 30 days. The city would notify ITD and then ask to be on the next Board agenda. The committee asked what entity receives the money from ticketing. Rep. Smith (24) replied, if the city police make the stop, the city gets the largest portion. In answer to what streets ITD has authority over, Rep. Smith (24) referenced the section in the bill which gives local authority complete dominion over all city streets but not the main highway.

MOTION: **Rep. Hart** made a motion to send **H 619** to General Orders. **Motion carried by voice vote.** **Rep. Ellsworth** seconded the motion. **Rep Smith (24)** will carry the bill on the floor.

H 628: **Heather Cunningham**, Davison and Copple, presented **H 628**. This bill concerns private property rights. Essentially in the beginning, interpretation of Idaho Code was that highway width outside of cities could be less than 50 feet, if a citizen could establish the road was not maintained by the Highway District and had prescriptive use. However the Halvorson Case decision in 2011, has created a mandatory 50 feet width for all roads in Idaho. Historically the law has been that prescriptive easements are limited to the width actually used. There is no basis to allow governments to take 50 feet of personal property when they have not paid any compensation for that taking and have not used the ground for a roadway. The law says the government has the right to what they have used or maintained in the past, but because of the Halvorson Case, government entities claim they have 50 feet without compensation to the property owner.. The committee inquired if this bill includes service roads next to ditches, and **Ms. Cunningham** said no it does not. **Don Copple**, Davison and Copple, explained there are different kinds of prescriptive roads; this is about public descriptive roads outside of cities. The committee noted that this bill will have a big impact on counties and Highway Districts.

Kerry Ellen Elliott, Idaho Association of Cities (IAC) spoke **in opposition** to **H 628**. Ms. Elliott said the bill would reverse the Halvorson decision. Fifty feet-wide roads should be a minimum standard for maintenance and safety of roads which include rights-of-way. This long-standing width should not be reversed. Ms. Elliott noted that some counties and cities have the ability to enact ordinances for greater rights of way. She said since the State requires counties to improve those roads and funds are limited for counties to buy roads, the taxpayer will bear the burden. Ms. Elliott stated there is a process to determine whether the road is public, and if it does not meet the test, it will not be required to be 50 feet wide.

Rep. Loertscher spoke **in favor** of **H 628**. Rep Loertscher invoked **Rule 38** because he personally has been involved in a dispute on a road through his property. It began with a phone call saying the road had been made public even though historically no money had been spent by the State or county to maintain to road for public use. The Board of County Commissioners tried to validate this road claiming no prescriptive use. There were sections of this road that could not be 50 feet wide because of the terrain. This case took 18 months, the Loertschers won the case, and the road is no longer in question.

MOTION: **Vice Chairman Ellsworth** made a motion to send **H 628** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. King, Smith, Ringo, and Henderson** requested to be recorded as voting **NAY**. **Rep. Bedke** will sponsor the bill on the floor.

S 1313: **Mike Kane**, Property Casualty Insurers Association of America (PCI), presented **S 1313**. Mr. Kane explained the purpose of this bill is to allow an individual to produce proof of automobile insurance by electronic means in appropriate situations in lieu of printed material. This bill gives people the opportunity to prove insurance with an acceptable electronic format as well as paper. There is no fiscal impact to the General Fund.

MOTION: **Rep. Ellsworth** made a motion to send **H 1313** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

S 1319: **Senator Brackett** presented **S 1319** and explained that Idaho Hazardous Waste Act requires facilities to charge a fee for hauling wastes and this money goes into the State General Fund. SIMCO Road near Mountain Home was designed for hazardous waste travel going to their facility. Unfortunately 129,000 pound trucks using the road has required enormous maintenance. This bill remits 5% of those fees to the State Highway District for repairs. A few years ago J.R. Simplot Co. and U.S. Ecology partnered and paved the road, at a cost of \$1.8 million.

Terry Geis, U.S. Ecology of Idaho, spoke in favor of **S 1319**. Mr. Geis explained that U.S. Ecology owns 29% of the hazardous waste market. We bring in waste by rail and gondola cars and then truck it using SIMCO Road to U.S. Ecology. Over the last eight years \$2.5 million has been given to Idaho in fees. Of that amount, 97% has gone to the General Fund and some of the money is for county emergency services. Since SIMCO Road was improved more business have moved to this area.

The committee asked what kind of waste is brought into Idaho. **Mr. Geis** said waste is from Army Corp of Engineers, Bureau of Land Management, Department of Defense and U.S. Government. Beyond that it is from clean up of contaminated soils such as the Hudson River in New York, which has PCP contamination. Committee asked if U.S. Ecology charges the clients. Mr. Geis said the State actually charges the codified fee. There is a tax on every ton of material, depending on the type of material. The committee asked if U.S. Ecology has had Department of Environmental Quality (DEQ) look at the nuclear wastes. Mr. Geis said the tipping fees are used for real scrutiny of the environment by the Hazardous Waste Division of Idaho DEQ. The committee suggested an increase of fees, however Mr. Geis explained the market is competitive and in order to maintain 29% of the market, raising fees is not the best option. The committee also noted that the improved SIMCO Road has been a huge benefit for the State for those traveling to Strike Dam for camping and recreation as well as improving the business economy.

Rep. Nonini made a motion to send **S 1313** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wills** will sponsor the bill on the floor.

S 1231: **Senator Curt McKenzie** presented **S 1231**, which comes from Canyon County Emission Testing and allows for repair waivers or hardship waivers when a vehicle does not pass inspection and must be repaired. If vehicle owner pays at least \$200 on repair and the vehicle still does not pass, the owner has one year waiver. This bill limits the financial burden on individual Idahoans as a result of mandatory emission testing and repair. This bill would cap the cost of repair to \$250.00 each year.

The committee asked about the number of cars that will get waived which could shift the burden on other areas that might go into emission non-compliance. **Senator McKenzie** replied that it is a very small number. The hardship waiver and cost waiver are currently DEQ Rules, established and set up by the Environmental Protection Agency. This bill places the Rules in Idaho Code.

MOTION: **Rep. Bedke** made a motion to send **S 1231a** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. King** made a substitute motion to hold **S 1231** in committee.

AMENDED SUBSTITUTE MOTION: **Rep. Hagedorn** made an amended substitute motion to send **S 1231** to General Orders. **Rep. King** seconded the motion.

Committee suggested this be put into statute but have a maximum limit on waivers per vehicle which fall into this category.

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

Chairman Palmer called for a vote on the substitute motion to send **S 1231** to General Orders. Role Call vote was requested. **Amended substitute motion failed by a vote of 2 AYE, 9 NAY. 4 Absent/Excused. Voting in favor of the motion: Rep. King and Rep. Ellsworth. Voting in opposition to the motion: Reps. Palmer, Smith (24), Bedke, Wills, Nonini, Hagedorn, Bateman, Henderson, and Nettet. Reps. Wood (35), Hart, Ringo and Killen were absent/excused.**

**VOTE ON
SUBSTITUTE
MOTION:**

Chairman Palmer called for a vote on the substitute motion to hold **S 1231** in committee. **The Substitute Motion failed by voice vote. Reps. King and Ellsworth** requested to be recorded as voting **NAY**.

**VOTE ON
ORIGINAL
MOTION:**

Chairman Palmer called for a vote on the original motion to send **S 1231** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Crane** will sponsor the bill on the floor.

ADJOURN:

There being no further business before the committee the meeting adjourned at 3:40 P.M.

Representative Palmer
Chair

Jane Clark
Secretary