

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 19, 2012

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

ABSENT/ EXCUSED: None

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.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. He announced that the meeting needed to be concluded by 2 P.M. to allow the Education Committee to meet, due to the Legislature reconvening at 3 P.M. Wednesday's meeting (3/21) will begin at 1 P.M.

He then asked **Representative Boyle** to present H 542aa.

H 542AA: **Representative Boyle** said this bill is regarding ATV legislation which has been contentious since 2002. This past year, an ATV Task Force was formed of which she and Senator Bair were named co-chairmen.

She provided handouts to the Committee consisting of Travel Planning 101; Common Questions and Answers to H 542aa; and an opinion from the Attorney General's Office, which she referred to during her presentation and all are attached.

The Task Force met in August and September, 2011. At the conclusion of their meetings, they asked the Attorney General's Office to provide an opinion regarding a statutory basis for the Commission motorized vehicle rule for hunters. A response was received on October 11, 2011 that stated their opinion found the motorized vehicle use restrictions rule has undergone legislative review on multiple occasions and while that is not a definitive determination that the rule is authorized by statute, it serves as an advisory opinion that the rule conforms with legislative intent.

Representative Boyle said the issue she has is that the motorized vehicle rule for hunters is not tied to a statute, and as a legislator, she feels all rules need to be backed by statutes.

She stated that in 2002 when the Idaho Department of Fish and Game (IDFG) promulgated this rule, there was a lot of ATV cross-country travel on both BLM and Forest Service land. Then in 2005, the Chief of the Forest Service stopped the cross-country travel and issued a nationwide Travel Management Rule of USFS roads, trails and areas by type of vehicle, and if appropriate, by time of year. In Idaho, the travel planning process and subsequent USFS decisions have closed 70% of the 18,000 trail miles on USFS land. The IDFG rule affects 2,100 miles of the remaining 5,900 miles deemed "open" by the USFS.

Senator Werk said that having been on the Task Force, his impression was that the restriction of the use of ATVs is the means for the IDFG to manage game populations. He asked **Representative Boyle** how it might impact other aspects of management by taking this tool away? She replied that there is not a statute that allows them that rule, plus the rule has so many exceptions in it that it really isn't a management tool. **Senator Werk** then questioned the wording being stricken from H 542aa, Section 36-1101, sub section 1, line 21. He feels it provides them with authority. **Representative Boyle** responded by referring to the AG's letter, page 5, paragraph 2 that covers Idaho Code § 36-1101, that makes it perfectly clear that an ATV is not a weapon. **Senator Werk** feels that the passage of this bill will result in unintended consequences. **Representative Boyle** said that "the removal of this rule will not change anything out there on the ground, biologically, that isn't happening right now."

Senator Cameron stated that after visiting with some constituents, Commissioners, and other folks, that some are saying that the Department and the Commission heard the concerns of this Committee last year, heard the concerns of the Interim Committee, and made adjustments in their procedures and policy. Also, that this bill is not needed, because of those adjustments and we need to let that play out. He asked **Representative Boyle** to respond to his remarks. She said that "the compromise was to place a moratorium on that, and the rule is not tied to statute, and it is very, very confusing for both hunters and recreationists. It is only prolonging the confusion."

Senator Cameron then indicated that the argument that resonates a little bit with him from the performance of this bill is that by not allowing the Department to have the ability to regulate off-road use, then the Department's reaction would be to lower the number of tags available to the hunting public, and to change from an open season to a draw season in order to protect the number of animals taken in a season. **Representative Boyle** said that Fish and Game had an opportunity with Travel Planning to say what roads and trails that they want to close. There is no off-trail use anymore. They can additionally ask for other closures with the Forest Service. **Senator Cameron** then asked Representative Boyle if she believed with the passage of this act that it will force the Department to change hunting opportunities for hunters. **Representative Boyle** said no, she did not.

TESTIMONY:

Ms. Sharon Kiefer, Deputy Director, IDFG, testified in opposition to this bill. She provided a copy of her testimony, along with a map of hunt units with motor vehicle restrictions, and a copy of a letter to Director Nancy Merrill, Idaho Department of Parks and Recreation and Director Virgil Moore, Idaho Department of Fish and Game from Ernest Lombard, Board Chairman, IDPR and Tony McDermott, Chairman, Idaho Fish and Game Commission outlining the areas where the two agencies can work together to develop solutions and policies that will benefit all the citizens of Idaho. All documents are attached.

To summarize Ms. Kiefer's testimony, following is the last paragraph of her presentation: "Allowing de facto management of wildlife and hunting via federal travel plans that are not specific to majority hunter preferences may be OK with some and is certainly facilitated by House Bill 542aa. The Commission disagrees with this policy approach and does not support this bill. They believe the course of policy should be fulfilling their commitments to gathering input about rule revision and rule evaluation prior to any further Commission or legislative decision about the proper role of motorized vehicle restrictions for hunting."

Senator Cameron said that he was torn with this issue and he needed Ms. Kiefer to walk him through the current position of IDFG with regard to regulating ATVs. His understanding is that ATVs will be treated as any other vehicle on established roadways and asked if that was correct. **Ms. Kiefer's** response was yes, that ATVs are treated the same as any vehicle on established roadways that support full-size vehicles. He then asked if he was on his ATV with a gun, on an established roadway, and saw a deer on the ridge, that he could stop, get off the ATV, take his weapon and legally hunt the deer (provided he had the proper tag and license). Ms. Kiefer said that on an established roadway, it was legal. But if it was a trail, a single track trail that could only support a motorcycle or bicycle, then it would not be allowable under the rule. **Senator Cameron** then inquired about a "previously traveled roadway" for vehicles, but currently is not a traveled roadway due to overgrowth and/or erosion and asked how that would be treated. **Ms. Kiefer** said that a road that has essentially been abandoned and is no longer designated in any way for a full-size vehicle would not fall within the current context of the rule.

Senator Siddoway asked Ms. Kiefer if there are hunting units in the state that currently have access denied by the department and would this bill, in her opinion, open those lands or would they remain under the same stipulations that the landowner held? **Ms. Kiefer** said the landowner is the decision-maker and with or without this bill, the department can, for hunters, overlay on top of that landowner. What this bill cannot do is to take away the baseline decision of that landowner for motorized use. For example, if the Forest Service has a trail that is closed to motorized use, and if this bill passes, that does not change.

Senator Siddoway asked Ms. Kiefer to name an instance (if this bill passes) that will open up access that isn't currently opened now. **Ms. Kiefer** replied that she prefaced that by saying access specifically for motorized hunters. Those who are motorized recreationists are not affected one way or the other. In these units that do have motorized restricted hunts, if this bill passes, that motorized restriction would go away, and there may be new types of other restrictions. He then asked what kind of "other restrictions" would most likely be? **Ms. Kiefer** said the staff and Commission would need to go through and review each of those hunts on a hunt-by-hunt basis to determine what the proper tools would be. This is about limiting access and harvest vulnerability, so they will be using other types of tools that would limit hunting access, whether it is weaponry, number of days of hunting, etc., or the type of animal you could hunt.

LETTER:

A letter from **Fish & Game Commissioner Randy Budge** was given to the Committee members stating that the Commission made a good faith effort and agreement with IDPR and fully kept their end of the bargain by:

1. putting a moratorium on the expansion of the rule;
2. reviewing and rewriting the rule with their input to provide simplicity and clarify;
3. proceeding to evaluate and document the biological effectiveness of the rule; and
4. passing the new IDFG policy mandating that before land management decision making agencies IDFG cannot take any position for or against and must only evaluate the impacts on wildlife and their habitat and if they are negative provide direction on how they can be mitigated.

TESTIMONY:

Written testimony was submitted by the **Idaho Conservation Officer's Association** in opposition to H 542aa.

TESTIMONY:

Written testimony was submitted by the **Idaho State ATV Association, Inc.** in support of H 542aa.

ADJOURN: **Chairman Pearce** adjourned the meeting at 2 P.M. and reminded the Committee that Wednesday's meeting will begin at 1:00 P.M. and discussion of H 542aa will be continued.

Senator Pearce
Chairman

Juanita Budell
Secretary