

MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Tuesday, March 20, 2012
- TIME:** 1:00 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators Keough, Corder, Winder, Bair, Rice, Werk, and Bilyeu
- ABSENT/ EXCUSED:** all present
- 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.
- CONVENED:** **Chairman Hammond** convened the meeting at 1:00 p.m. and asked the secretary to take a silent roll.
- GUBERNATORIAL APPOINTMENT:** **Chairman Hammond** asked the Committee for a motion on the gubernatorial appointment of Julie D. DeLorenza of Boise to the Idaho Transportation Board commencing on March 12, 2012, and expiring on January 30, 2015. The Committee had heard the appointment at their previous meeting.
- Senator Keough** moved to send Ms. DeLorenza's appointment to the floor with the recommendation that she be confirmed by the Senate. **Senator Bair** seconded the motion. The motion passed by a unanimous voice vote. **Senator Winder** will carry the appointment on the Senate floor. **Chairman Hammond** introduced and welcomed Idaho Transportation Board member, Jim Coleman, to the Committee.
- H619:** **Chairman Hammond** also welcomed former House Transportation and Defense Committee Chairman and former Chairman of the Idaho Transportation Board, **Representative Leon Smith**, to the Committee to present H619. He said it deals with returning the setting of speed limits in municipalities from cities and back to the Idaho Transportation Department (ITD). Pages 11 and 12 gives that authority and provides for traffic safety studies be done before establishing those limits. Cities can appeal the process if they take issue with ITD's decisions. The Association of Idaho Cities (AIC) is comfortable with the legislation.
- QUESTIONS:** **Senator Keough** noted she was in the Senate when the original legislation was enacted and supported it because ITD was not listening to cities' concerns. She said that there are issues when a highway goes directly through a town, but bypassing cities creates problems. She also recognized that the speed trap issue is problematic. She is concerned about the appeals board being the same body that didn't listen when the legislation was enacted. **Representative Smith** stated he could not give assurances as to what the ITD Board would do, but noted the Board was attentive to school zones on highways and thought they would also be attentive to city concerns.
- DISCUSSION:** **Vice Chairman Brackett** asked about page 11, line 38 regarding non-residential areas of not more than 65 mph. He wanted to know how that limit is reached. **Representative Smith** indicated that 65 mph was the top speed allowable on any highway. **Vice Chairman Brackett** said that pushes limits in urban districts.

MOTION: **Senator Winder** indicated there were abuses of this authority happening without analysis of safety that make driving difficult. He then made a motion to send H619 to the floor with a do-pass recommendation. The motion was seconded by **Senator Corder**. The motion passed by a voice vote with two dissenting votes cast by **Senator Bilyeu** and **Senator Keough**.

H583: **Senator Winder** presented H 583 regarding access easements. Changes in property use may mean access agreements no longer apply, and the fair market value of property may change based on access. This legislation states that if an access easement right of use is rejected by ITD or another authority it would be considered a taking and reasonable value would be paid. Often no restrictions are placed on access over several years. **Senator Winder** gave examples of where and how this was taking place. This will help deal with the problem and protect the property rights of the individual. The rules currently being considered by the Department deal with access, but not takings of access.

QUESTIONS: **Senator Werk** questioned the installment of policy within the definition in the statute, and stated that it seems to be an improper insertion of property rights and takings, which would be more appropriate in a separate section of code. **Senator Winder** indicated this was the code insertion suggested by the Legislative Services Office (LSO), and this right of access is protected by the Constitution. The Senator stated this simply ensures that if ITD restricts access, it will be considered a taking and the owner is due just compensation. **Senator Werk** asked if **Senator Winder** was the author, to which **Senator Winder** said that he worked on it with LSO.

Senator Corder pointed out a spelling error in the final sentence of the fiscal note of the Statement of Purpose. **Senator Winder** said he would correct that problem.

TESTIMONY: Don Copple explained he is a lawyer who deals with the issue, representing private property owners. Mr. Copple indicated this is a difficult issue because of the different kinds of rights of access. This issue deals with rights when the State has taken a right-of-way, but exempts a special area for access. Several recent cases have seen the courts rule this as a property right different from the general access rights every piece of property has to the highway. He supports this bill because it establishes the rules clearly for the State.

Heather Cunningham indicated she was a lawyer in Mr. Copple's practice, dealing with property rights. The bill stems from ITD not recognizing access rights when they are being used by the property owners. She provided examples of how the issue is currently being addressed. Ms. Cunningham explained problems for property owners that did not have the ability to go to court to fight ITD, because of the application of deeded access. Ms. Cunningham indicated deed rights were being ignored when it came to private property access rights, and this legislation was the only way to resolve the issue.

QUESTIONS: **Senator Rice** asked how many cases Ms. Cunningham had litigated regarding this issue. She indicated approximately 12.

TESTIMONY: Duane Sessions, Dennis Dillon Auto Group, discussed the recent overpass project on Orchard in Boise, which impacted them, and gave the history of the land owner on that property. He explained the legal process they had to go through to determine the access rights as part of the property value. There were no questions for Mr. Sessions.

Patrick Dobie, Engineer and Traffic Planner, discussed his research and familiarity with the issue. He supports the proposed change. His research found ITD sells and exchanges access rights, while denying use of access.

Jim Coleman, Vice Chairman of the Idaho Transportation Board, stated his remarks do not represent a formal position of the Board, the Board has not discussed the legislation or taken a position. ITD has modified the strategic plan to add safety, economic opportunity and mobility. He discussed how adding economic opportunity forced the Board to look at what they can do to stimulate the economy. An access management and control system was determined to impact economic opportunity. The Board appointed a subcommittee which developed new rules for access to enhance mobility, safety, and economic opportunity, and are prepared to put forward those rules, which will probably eliminate 99% of disputes of what is access and what isn't. Mr. Coleman indicated this would not address existing access easement issues, and he personally supports the premise of this legislation. Access rights should not be extinguished without just compensation, however, the access right was granted based on the use of the property, not on unlimited access. ITD understands there are rights to access, but those must be regulated, balancing rights of property owners versus the public at large. Mr. Coleman believes H583 trumps this responsibility. Changing access uses will impact safety and mobility of highways, this bill gives unlimited use access not subject to current rules and regulations. It eliminates the ability of ITD to protect public safety, mobility, and economic opportunity. If this bill passes, the State will have to pay because this bill ignores historical property uses.

QUESTIONS:

Senator Werk asked if this legislation was viewed as an overreach in that it grants use of easements that weren't necessarily anticipated. Mr. Coleman said that was the problem in that changes of use of land changes access issues. H583 grants unlimited use, which the State cannot regulate unless it pays the property owner. **Senator Werk** asked about safe access after change of use, if this legislation would require paying those property owners at current market value based on current development. Mr. Coleman deferred to Chris Kronberg, Deputy Attorney General assigned to ITD, who indicated he was not speaking on behalf of the Attorney General. Mr. Kronberg said that right-of-way contracts also interfere with access uses, and deeds contain unspecified use. The language in the bill supersedes sections of code that require ITD to consider safety of highway operations. ITD does not dispute property rights, but must look at economic impact of regulation, reasonable expectations of property owners when they purchased the property, and the nature of the governmental action. Mr. Kronberg gave an example of issues on State Highway 69. **Senator Werk** stated this goes from an issue of taking to an issue of safety and compensation, and asked how many cases are going to court, what were the outcomes, and how many cases aren't going to court for lack of funds. Mr. Kronberg indicated he was aware of two cases that had gone to court and explained them.

Senator Rice asked who prepares the deeds that contain these easements. Mr. Kronberg stated his understanding was that ITD prepared those.

**CLOSING
REMARKS:**

Senator Winder closed by saying ITD was heading in the right direction, but was afraid rules would not address this issue, which led to H583. **Senator Winder** indicated that providing an access easement without specifying use could be regarded as an argument in the property owners favor. He does not believe the State will have to pay if they follow their policies and work with the landowners. They have the right to regulate the safety of the highway.

QUESTIONS:

Senator Werk asked if this issue was isolated to ITD, or if it applied to other jurisdictions. **Senator Winder** stated this practice was peculiar to ITD, but could apply in other jurisdictions.

MOTION: **Senator Bair** moved that H583 be sent to the Senate floor with a do-pass recommendation. **Senator Rice** seconded the motion. With no further discussion, the motion passed by a unanimous voice vote. **Senator Winder** will carry the bill on the Senate floor.

S1372: **Senator Winder** indicated this legislation deals with time frames of bid dates precluding public records requests to gain information in those sealed bids from submission to award.

TESTIMONY: Steve Price, General Council for the Ada County Highway District, stated the bill simply deals with procurement law that didn't get dealt with in a previous session, and closes a loophole.

MOTION: **Vice Chairman Brackett** moved that S1372 be sent to the Senate floor with a do-pass recommendation. **Senator Werk** seconded the motion. With no discussion, the motion passed by a unanimous voice vote. **Senator Winder** will carry the bill on the Senate floor.

ADJOURNMENT: With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:01 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

Erin Bennett
Transcriber