

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, March 21, 2012

**TIME:** 1:00 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 1:00 P.M.

**H 542AA:** The **Chairman** said that public testimony would be taken on **H 542aa**, starting with the people who had signed up at Monday's meeting and did not have an opportunity to testify due to time constraints.

**TESTIMONY:** **Mr. Haden Claiborne, Past President and current Board Member of the Boise ATV Trail Riders Association**, was the first to testify. He said there are approximately 125 members of that group and they are also members of the Idaho State ATV Association, with 2,500 members statewide.

**Mr. Claiborne** said the primary reason for the club is to educate the members as to how they should act when out on the trails and roads. Training is for youth and adults on the proper use of ATVs, safety measures, and environmental factors and promoting ATV etiquette.

Over the last three years, 60-70% of the trails have been lost and that is one reason **Mr. Claiborne** is concerned. He referred to the ATV Travel Plan Map, which he later gave to the Chairman, explaining how important it is for their members to acquaint themselves with the trails available for riding. **Mr. Claiborne** feels the federal government is taking away more trails, while the public is buying more ATVs and that makes for more congestion. For the past five years, he has been working with the federal government to help resolve some of the problems.

He asked for the Committee's support in passing H 542aa.

**TESTIMONY:** **Director Virgil Moore, Idaho Department of Fish and Game**, spoke next. He indicated that Ms. Sharon Kiefer had explained the Department's technical comments at a previous meeting. He feels the issue here is about hunter allocation. The decision, relative to this bill today, is: "Should the Commission be able to continue with this authority to regulate hunters who are using motorized vehicles off public roads?"

This issue was before this Committee last year, then it was before the Interim Committee. He feels the Department and Commission have been honest to the process that came out of the Interim Committee and the moratorium on implementing any additional motorized hunting rule restrictions on hunters was implemented. The policy on commenting on travel plans, on all kinds of federal activities, was amended by the Commission and they can no longer take a pro or con stance. **Director Moore** said that they made a commitment to the ATV community (to the hunters that use ATVs) to review, for modification, the motorized hunting rule because there are some confusing aspects of that. They want to give hunters an opportunity to request or seek modification of those motorized hunting rules for the issues that they have concerns with.

**Director Moore** feels that the issue of travel planning is a separate piece and is something that they work on separately to provide comments on. They are moving forward and are about half completed with the plans for the 10 million acres in southern Idaho.

**Senator Tippetts** said that he appreciates the efforts of the Department to reach some middle ground. The Senator agrees with the Director that it is a hunter allocation issue, but is concerned about the difficulty of enforcing it, as well as the interpretation of the rule. His primary concern is that if there is a need to reduce hunting pressure in a given area, this seems to be an inappropriate way to do it because of who is eliminated (older, but not disabled). **Director Moore** replied that the hunter population is aging and the use of aids to hunting is a continuing subject for the Commission to deal with.

**Senator Brackett** read from an email that he had received regarding ATVs driving across 8 million acres of BLM land that does not have travel plans and asked the Director to comment. **Director Moore** said that in looking at BLM's travel plans on the website, they have 11.2 million acres in the state, with 1.2 million acres in north Idaho and 10 million acres south of the Salmon River. As near as the Director could tell, they have in the process for designated travel plans, about 4.1 million acres of the 10 million acres. This overlays in the areas where there have been closures. He stated that they haven't overlaid their units onto BLM's travel plan to see how many of the units have the motorized current restrictions fall into areas that do or don't have travel plans. As to the 8 million acres, they probably refer to the plans that are in process, but not completed. **Senator Brackett** inquired if there are restrictions going cross-country on BLM land. The **Director** replied that BLM lands are open to cross-county travel until the travel management plans are implemented, unless there is a special closure. **Senator Brackett** inquired if Forest Service lands were different. **Director Moore** said that it is different and that the Forest Service is nearing the completion of the travel planning process for southern Idaho with designated routes; however, northern Idaho is still in the process of travel planning, but is outside of the effect of this motorized hunting rule.

**Senator Siddoway** asked for clarification of when hunters might be in violation, regarding hunters "going hunting" and hunters "going to set up or remove a campsite." **Director Moore** said that clarification of the rule is needed. When they are transporting equipment to a campsite, they are not in violation. When out driving on a public road and you spot game, after stopping and getting out of the right-away, you can shoot. On a trail in an area that has a motorized hunting rule, you cannot get off the ATV and shoot. That is the distinction between the two.

**Senator Siddoway** then asked if H 542aa passes and there are no restrictions other than what is already in place, what will be the biological effects and will some units have shortened seasons? **Director Moore** said there would have to be adjustments. One area is the Diamond Zone that is heavily used by elk hunters. The motorized hunting rule was implemented there to reduce vulnerability to elk by hunters to forestall the need for controlled hunt. Without that, there could be a controlled hunt and shortening of the season. Most of the mortality in that zone is man-caused, not predator issues.

**TESTIMONY:** **Mr. Craig Mickelson** indicated that he is here on his own personal time, representing the **Idaho Conservation Officer's Association** (game wardens). He does not represent IDFG. He said the Association strongly opposes H 542aa as it would impede the role of IDFG to manage game populations. By regulating hunters who use OHV's, IDFG can best regulate the game harvest. This bill would reduce the ability of conservation officers to properly manage and protect wildlife. The current Idaho Fish & Game motorized vehicle rule does not affect nor restrict non-hunting Off Highway Vehicle users.

The adverse affects of this bill:

1. Would prohibit IDFG from restricting the use of motorized vehicles as hunting tools.
2. Undo limitations on the Conservation Officers ability to manage OHV hunters on federal and state lands.
3. Will increase conflicts between traditional hunters (by foot or horseback) and hunters using OHVs (motorcycles, ATVs, UTVs).
4. Will lead to increased big game harvest.
5. Will lead to more controlled hunts (limited draw).
6. Will lead to less income in smaller communities that rely on big game hunting dollars.

**TESTIMONY:** **Mr. David Claiborne, President of the Idaho State ATV Association**, stated that H 542aa has been well-covered. He feels the issue is whether hunters should be allowed to travel on right-of-ways designated as open by the owner of land. He also feels IDFG does not have the authority to trump landowner decisions. Mr. Claiborne said that IDFG is not a travel manager, but a wildlife manager. He is in support of this legislation.

**TESTIMONY:** **Mr. Herbert Pollard** testified on his own behalf. A copy of his testimony is attached; however, to summarize his testimony, he said this is the wrong time and the wrong legislation, and probably the wrong reason to forward this bill. He recommended that H 542aa be held in Committee this session and that the sponsors be asked to look at the overall issue and come back with a comprehensive approach at some future date.

**TESTIMONY:** **Mr. Benjamin Davenport**, representing the **Idaho Outfitters and Guides Association (IOGA)**, said they are aware that this issue has become even more polarized since last session. They had hoped that the two agencies would be able to work together to address the concerns with the motorized hunting rule as the Interim Committee had suggested. IOGA has a number of hunt outfitters who operate in management units with the non-motorized rule, and also have outfitters who utilize ORVs in their operations according to the existing rule.

**Mr. Davenport** said it appears there is a certain amount of misunderstanding of the rule. It seems appropriate to address the rule as IDFG has committed and to give time for the Interim Committee's recommendations to take effect. Their concern is that elimination and/or severe modification of the existing rule will undoubtedly lead to loss of opportunity and more controlled hunts for guided and self-guided hunters. Guided and self-guided hunters have already endured vast amounts of lost opportunity since wolf reintroduction. He urged elected leaders to allow the IDFG to continue to keep its existing motorized rule in place.

**TESTIMONY:** Next to testify was **Senator Corder**. He thanked Representative Boyle for trying to come up with some solutions and he concurs with what she has written and said.

He said that one thing is for certain and that is things will continue to change. One of the most compelling arguments when he got into the debate was that hunters with ATVs were the problem – driving the game back. In his area, those people are in the minority. It is the non-hunters with ATVs causing the problem.

**Senator Corder** told the Committee that he didn't think they wanted to be in the business of managing game, so they authorize IDFG to do that. By allowing an agency to use a rule to manage the game, is not right. He stated that if the rule had not been accepted, then IDFG would have been forced to manage the game with all the other tools they have. He feels the Legislature should set the parameters for the agencies, then tell the agencies to go do their job. The Senator also feels that the management of game cannot be the same statewide, so he questioned why a rule should apply to the state as a whole.

His position is that it is an equity issue and you can't treat these two classes of riders differently, no matter what the stated purpose is. As a legislature, he feels they should not have accepted the fact that an agency is allowed to write a rule of which there is no statutory authority. The Senator said that if IDFG is allowed to do it, then he is going to require the same latitude for Health and Welfare, the Department of Agriculture, and other agencies.

**TESTIMONY:** **Mr. John Caywood, representing the Ada County Fish and Game League**, said that IDFG has plenty to do without looking for extra work involving ATVs. He wants to let the Department do what they need to do.

**WRAP-UP:** **Representative Boyle** thanked the Committee for spending two days on the bill. She said that she went to the Idaho Department of Parks and Recreation and asked them specifically about BLM land – even if there is not a travel plan in place. She was told one is still limited to the existing routes statewide, no cross-country travel, unless specifically named places like the Sand Dunes. **Representative Boyle** said the reason this rule is so contentious is because the public isn't certain what roads are open or closed and the bottom line is that there is no statute authorizing the IDFG to do this. As for closing hunting units or going to controlled hunts, if the game population is that fragile, then that is what the Fish and Game should be doing.

**MOTION:** **Senator Tippetts** made the **motion** to send H 542aa to the floor with a do pass recommendation. The motion was **seconded** by **Senator Brackett**. **Senator Stennett** asked for a **roll call** vote.

**DISCUSSION:** **Senator Tippetts** said that he appreciated the efforts made by the Department in the interim and they made a good-faith effort to reach a solution. He served on the Interim Committee and said he wasn't very optimistic, wondering if they could find "middle-ground." The Senator said the Committee worked hard to find a solution, but there didn't seem to be one to be found on this issue. One concern of his is how they will be allocating the hunters that have an area and who will be cut out of the process. Another concern of Senator Tippetts is the enforcement of the rule. He asked "How do you know when someone is travelling with a gun, whether they are hunting or not?" He is sympathetic to the position that the conservation officers are put in and the conflict that is being created with the public. Based on those issues, the Senator said there was a need to do something different and that is why he is supporting the bill.

**Senator Cameron** said that he is really struggling with this bill and that he agrees with almost everything that Senator Tippetts said. On one hand, he feels there needs to be some level of Fish and Game involvement and on the other hand, the rules that are in place are hard to work with, hard for the public to understand, and hard to be enforced. The Senator said that, in his opinion, the correct public policy lies somewhere in between this bill and where we currently are. He doesn't feel the current language in the current rule and regulation is the correct public policy, but for Fish and Game to have no authority may not be the correct policy either. He said that he was hopeful that some of the other land-use folks would interject and enter into the debate, but he has not heard from any of them.

**Senator Siddoway** said that he opposes the bill and can appreciate the situation that it puts the Department in, as well as the campers, hunters, and ATV users in the state. He feels this bill has some biological ramifications. The Senator stated that the Commission could be left hanging as they might not have the opportunity to react to what will ultimately become a bill or no bill. He then suggested that the bill be held in committee and reconvene the Interim Committee. As for the Department, Senator Siddoway said that they have made a good faith effort and is willing to go further to work things out. With the ungulate numbers down, it is easy to say, restrict the seasons. He feels the opportunity to hunt should be left open, then restrict the access to those hunters. Machines make hunting available, but if the wildlife is over-harvested, then there is a need to restrict the use of those machines and Senator Siddoway said that he will be voting no.

**Vice Chairman Bair** said that he will be voting against this bill also. This bill was brought on the premise that it is not supported statutorily. He rejects the notion that the Department does not have statutory authority to make rules, to make rules to regulate the method of take of animals. He read from the Attorney General's letter, dated October 11, 2011, the following: "In addition to the overarching grant of authority given the Commission in Idaho Code § 36-103(b) to administer state wildlife policies, the Commission is "authorized and empowered" to "administer the policy as declared in section 36-103" by, among other things, promulgating rules or proclamations establishing "when under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken." Idaho Code § 36-104(b)(2). The Commission may also adopt temporary rules imposing "such restrictions and conditions upon hunting, angling or trapping" as the Commission finds "necessary for the preservation, protection, or management of any wildlife of this state." Idaho Code § 36-104(b)(3).

"Generally speaking, the restriction of motorized vehicle use while engaged in hunting falls within the Commission's expansive authority to establish 'by what means...the wildlife of this state may be taken' ...." Idaho Code §§ 36-103, 36-104.

**Vice Chairman Bair** then said that he wanted to speak about the Interim Committee of which he was co-chairman. It was commissioned by the Pro Tem and the Speaker of the House and the Committee met twice, with some good things coming out. One of the issues was that the Department and Commission had overstepped their bounds in making recommendations for road closures with federal land agencies. In speaking with Commissioner Budge, they agreed that the policy needed to be changed. It has now been changed and when the plan is open for comment, IDFG will provide the cause and effect of the travel plan regarding wildlife. It will be up to the landowner to make that final decision on what road closures will remain. The Department has already adopted, as policy, a heading on letters or responses to a federal agency will be the following words: "The purpose of these comments is to assist in decision-making by providing technical information addressing potential effects on wildlife, and wildlife habitat, on how these adverse effects need to be mitigated. It is not the purpose of Idaho Fish and Game to support or oppose this proposal."

**Vice Chairman Bair** stated that other good things came out during the meetings of the Interim Committee. The Department agreed to revisit the rule and they will begin that process shortly, so as to make the rule more clear and concise. They will also place a moratorium on road closures. If they should, in the future, find a necessity in an area to limit access, they have agreed to open roads in other areas in order to keep a "no net" increase in road closures. The Department has agreed with Parks and Rec (IDPR) that they will improve trail and road signs. The Department has agreed to study the effects of the motorized vehicle rule and will submit to both Resource Committees (Senate and House) a copy of their findings. The Vice Chairman said that lastly, they cannot ignore the biological effects that this will have on the wildlife herds. He then encouraged a "no" vote on the bill.

**Senator Brackett** said that last year there was a similar bill and he made the motion to hold that bill in committee. The reason he did was because at that time, it was his feeling there was some middle ground; however, that legislation did not find it. He feels the Interim Committee did not solve the issue this past year. The cross-country issue is an overstatement on the part of the BLM ground. Senator Brackett said H 542aa is not a perfect bill, but it will move the process forward. If there are problems, they can revisit the issues. He asked for support of this bill.

**Senator Heider** stated that he supports what Vice Chairman Bair and the Interim Committee have done. However, his constituents have asked for his support of the bill and he will be voting for it.

**NOTE:** Included in the attachments is a list of approximately 60 people who phoned and/or e-mailed the Senate Resources and Environment office opposing H 542aa.

**ROLL CALL VOTE:** A roll call vote had been requested. Voting **aye** were Chairman Pearce, Senators Cameron, Brackett, Heider, and Tippetts. Voting **nay** were Vice Chairman Bair, Senators Siddoway, Werk, and Stennett. The **vote was 5-4**, with the majority voting in favor of the bill. **Senator Corder** will be the **sponsor**. **Senator Cameron** asked to be recorded that he **may or may not vote in favor** of the bill on the Senate floor.

**MINUTES:** **Senator Brackett** said that he had read the minutes of March 14, 2012 and made a **motion** that they be accepted as written. The motion was **seconded** by **Senator Tippetts**. The motion **passed** by unanimous voice vote.

**MINUTES:** **Vice Chairman Bair** said that he had read the minutes of March 16, 2012 and made a **motion** that they be accepted as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**H 458:** **Ms. Sharon Kiefer, Deputy Director, IDFG**, presented H 458. She said this bill would add a wolf tag to the existing Sportsman's Pak license package (the Sportpak) including fee adjustment for the added tag. Tags in the Sportpak are priced at about 63% of full price if purchased separately. IDFG estimates revenue benefits to the Fish and Game fund of about \$50,000 assuming sales of the Sportpak do not change dramatically. A copy of her full testimony is attached.

**MOTION:** **Senator Siddoway** made a **motion** to send H 458 to the floor with a **do pass** recommendation. **Senator Cameron seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Tippetts** will be the **sponsor**.

**ANNOUNCEMENT:** **Chairman Pearce** announced that there will not be a meeting on Friday, March 23, but there will be one on Monday, March 26 beginning at 1 P.M.

**ADJOURN:** The meeting was adjourned at 2:15 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary