

**AMENDED AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Tuesday, January 17, 2012**

SUBJECT	DESCRIPTION	PRESENTER
Welcome and Introductions	Senate Transportation Committee Page and Intern	Senator Hammond
<u>RS20863</u>	Amends Section 49-654(3), Idaho Code, to provide that speed limits for multi-axle vehicles shall be the same as for all other vehicles.	Senator Hammond
<u>RS20893</u>	Amends Section 49-654 by striking Subsection (3), thereby removing the requirement to restrict the speed of trucks while maintaining the option for posting slower speeds for all traffic as needed.	Representative Hagedorn
Presentation	Idaho State Parks Passport	Nancy Merrill, Director, Idaho Department of Parks and Recreation

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
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MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Tuesday, January 17, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, 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.
- CONVENE:** **Chairman Hammond** called the meeting to order at 1:30 p.m. The secretary took a silent roll. **The Chairman** welcomed the members of the Committee and the members of the audience to the first meeting of the Senate Transportation Committee this session. He proceeded to introduce the Committee's Page, Ben DeMordaunt of Eagle, and Intern, Eric Livermore, of Caldwell.
- The Chairman** turned to the two RS's before the Committee. As sponsor of one of the RS's, he turned the meeting over to **Vice Chairman Brackett**. **Vice Chairman Brackett** asked **Chairman Hammond** to present RS20863.
- RS20863:** **Chairman Hammond** said RS20863 equalizes speed limits for all vehicles on the highway. Its intent is to enhance safety by having all vehicles drive the same speed limit, thereby eliminating frequent lane changes that are currently necessary because of the differences in speed limits. There is no research showing this as a valid measure to enhance safety. The wording of the legislation states that the speed limit shall be the same as for all other motor vehicles. The other RS, sponsored by **Representative Hagedorn**, does the same thing in a slightly different manner. The reason the Committee is reviewing both is to determine which approach is preferred by the Committee. He requested that a vote on this RS be held until after **Representative Hagedorn** has presented his RS. **Vice Chairman Brackett** asked if there were any questions.
- QUESTIONS:** **Senator McGee** asked **Senator Corder** if he recalled a few years ago the discussion about a similar issue and if that discussion presents the same concerns. **Senator Corder** believes this would amend the same section of Idaho Code. In one of those previous efforts the discussion was for every vehicle to travel at 75 mph; and the second effort was at 70 mph, bringing the speed of cars down and the speed of trucks up.
- Senator Werk** asked that if the Committee moves forward with these RS's whether there will be experts available to advise the Committee about studies or background prior to voting. **Chairman Hammond** indicated that would occur.

Senator Corder asked if the Senator expected multi-axle trucks weighing more than twenty-thousand pounds to be travelling at 75 mph on the interstate. **Chairman Hammond** said that the maximum speed limit would be the same for all vehicles. **Senator Corder** stated there are a growing number of trucks that will not achieve 75 mph. They are limited by their computers and controls that keep them from exceeding current speeds because of the speed limits of neighboring States. Studies show that their best fuel consumption is about 63 mph, and it produces the least wear on tires. Trucks physically will not be able to reach 75 mph. **Chairman Hammond** recognized that there are vehicles that are governed technologically to not exceed a certain speed, and there are a number of farm vehicles that cannot reach that speed. This legislative change is still viewed as an opportunity to enhance safety, because the majority of vehicles will be travelling at a common speed. With no further questions, **Vice Chairman Brackett** asked **Representative Hagedorn** to present RS20893.

RS20893:

Representative Hagedorn stated that his bill is almost identical to **Chairman Hammond's** RS. This is an opportunity to get the State out of governing that which businesses would normally govern on their own, whether for technological capabilities or business-related decisions. Those reasons cannot be controlled. The legislature can change the need for a number of vehicles to move slower than the standard traffic, and that will eliminate some issues that have caused some accidents. The Idaho Transportation Department (ITD) will have data and will be asked to speak to those issues for whichever bill the Committee elects to print. **Representative Hagedorn** removed Section 49-654(3), Idaho Code, with the intent of eliminating any confusion for future speed changes. **Vice Chairman Brackett** asked for questions from the Committee.

QUESTIONS:

Senator Corder asked if it was understood that given some of those vehicles cannot achieve the new speed, there is no change in safety. It is correct that the interactions between the more rapid moving vehicles has always been the issue. **Representative Hagedorn** pointed out that there are also cars on the highway that are not able to travel at 75 mph. The more the interactions we can remove, the safer our roadways will be.

Senator McGee asked about the emergency clause, which is different than **Chairman Hammond's** bill, and what the thinking was behind including the clause. **Representative Hagedorn** said it is included because this RS presents a public safety issue. Instead of waiting until July 1, 2012, to implement, it seemed logical to implement it quickly.

Vice Chairman Brackett asked Molly McCarty, Governmental Affairs Manager for ITD, to comment on her observations of the two bills. Ms. McCarty stated that based on the results of the legislative outreach meetings, there is interest in this topic. ITD would have comments on this issue when there is a hearing on the printed legislation. There is information from ITD that could be useful. **Senator Hammond** asked if there was any comment on either draft. Ms. McCarty did not have a response at this time.

Senator Bilyeu asked if there would be an opportunity for an expert to provide information on the number of speeding tickets larger trucks have received in the past few years; and the number of accidents that can be attributed to the various speeds. Given the intent of the bill is to remove 65 mph speed limits for trucks and many cannot achieve that speed, the need for the legislation is questionable. **Vice Chairman Brackett** said that information would be requested for the hearing. The gavel was turned back to **Chairman Hammond**.

MOTION: **Chairman Hammond** recommended the Committee move forward with RS20863 because of the statement "shall be the same as for others" would remain in Idaho Code. **Senator Keough** moved that RS20863 be sent to print. **Senator McGee** seconded the motion. With no discussion on the motion, it passed by a unanimous voice vote.

Chairman Hammond asked for action on RS20893. With no action taken, RS20893 will remain in Committee.

PRESENTATION: **Chairman Hammond** introduced Nancy Merrill, Director of Idaho State Parks and Recreation (ISP&R).

Director Merrill introduced Department staff available for questioning following her presentation. ISP&R is an agency reinvented. They have had a general fund reduction resulting in fewer staff and more visitors. They have an increase in maintenance and services, therefore requiring them to look at new funding strategies.

As a result, they have gone through some fund-raising efforts, developed marketing and business plans, promotions, looked at operating mandates and staffing models. More is being directed to capital improvement, safety, and revenue generation; and they are seeking dedicated funding sources.

ISP&R has looked at other States and liked Michigan's successful State Parks Passport Program model. ISP&R wishes to implement a similar program in Idaho. The Director presented the program to the Committee. It is not a tax or a fee or related to motor vehicle registrations; it is a voluntary purchase of State Park admissions. There is no penalty for not participating. Idahoans would have a choice of participating when reregistering their vehicles by purchasing a ten-dollar State Parks Passport. There is legislation in the Idaho House of Representatives that is being considered. After showing an ISP&R video, the Director stood for questions.

QUESTIONS: **Chairman Hammond** commended the Director and ISP&R for their efforts to be more self-sustaining with this great opportunity for all Idahoans.

Senator McGee concurred with the Chairman's comments. He asked about the methodology used in determining the increase in the number of users. Director Merrill said ISP&R looked at Michigan's model and then conservatively decreased their estimates to 28%. Secondly, they did a survey of Idahoans and asked whether they would be inclined to buy a passport at the time of registering their vehicles; 73% said yes. Based on those two numbers, they dropped their numbers down to 20%. With no further questions, **Chairman Hammond** thanked the Director and her staff.

ADJOURNMENT: **Chairman Hammond** adjourned the meeting at 2:05 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AMENDED AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Thursday, January 19, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20917</u>	Reduces the proliferation of specialty license plates by limiting them to promote State and other public agencies or foundations supporting the interests of State and/or local government.	Senator Hammond
Presentation	Improving roadway safety through speed limit establishment reform. – Introduction of Presenter – Presenter	Paul Steinman, ITD Chief of Operations First Lieutenant Thad Petersen, Michigan State Police
Administrative Rules	Distribution of Transportation Pending Rules Review Book to be presented and reviewed at the Senate Transportation Committee meeting on Tuesday, January 24, 2012	Senator Brackett

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

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MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Thursday, January 19, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators McGee, Corder, Bair, Werk, and Bilyeu
- ABSENT/ EXCUSED:** Senators Keough and Winder were excused from today's meeting.
- 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 1:32 p.m. The secretary was asked to take a silent roll. The Chairman noted that **Senator Keough** and **Senator Winder** were excused from the meeting. **Chairman Hammond** turned the meeting over to **Vice Chairman Brackett** in order for the Chairman to present RS20917 to the Committee.
- RS20917:** **Chairman Hammond** reminded the Committee that this legislation was presented late last year, but floundered in the House. The first concern is that the State is collecting money for private organizations, turning revenues over to those organizations, and there is no accountability as to how that money is spent. The Chairman feels this is not an appropriate function for government. Secondly, the Chairman has literature from other States regarding specialty license plate issues that promote causes not appropriate for State government. Idaho could face similar concerns. The Chairman stood for questions.
- QUESTIONS:** **Vice Chairman Brackett** called for questions. **Senator Corder** wanted to know what the Chairman defined as foundations supporting interests of the State and listed specific councils – the range council, the bee council – as to whether they would qualify. **Chairman Hammond** stated they would be considered as qualifying.
- Senator McGee** asked if collegiate license plates would be approved and if those in existence would be grand-fathered into the legislation. **Chairman Hammond** responded that not only would they be grand-fathered in, but they are of the general public interest of the State.
- Senator Bilyeu** asked how many plates need to be sold for how many years before a specialty license plate is no longer available. **Chairman Hammond** asked Amy Smith, Idaho Transportation Department's (ITD) Vehicle Services Manager, to respond to that question. Ms Smith indicated that there is a three-year introductory period with no minimum sales required. After that, in any two consecutive years, if State sales fall below 1,000 plates, ITD can cancel the plate. **Senator Bilyeu** suggested that as long as the issue is being addressed, the length of time may need to be shortened.
- MOTION:** With no further questions, **Senator McGee** moved that RS20917 be sent to print. **Senator Werk** seconded the motion. There was no discussion on the motion and it carried by a unanimous voice vote. The gavel was turned back to **Chairman Hammond**.

PRESENTATION: **Chairman Hammond** introduced Paul Steinman, ITD's Chief of Operations, and asked him to introduce today's presenter. Mr. Steinman introduced Brian Ness, ITD Director, other ITD staff members, and First Lieutenant Thad Peterson of the Michigan State Police. First Lieutenant Peterson earned a Bachelor of Science degree in economics from Eastern Michigan University, a Juris Doctorate degree from Michigan State University School of Law, and has been a member of the Michigan State Police for twenty-four years. Since 2003 he has been the commanding officer of the Traffic Safety Services Division, and he is a nationally recognized leader in speed limit reform. He serves on the Michigan Association of Chiefs of Police and on the Michigan Traffic Safety Advisory Commission. He has received numerous awards for his work.

Chairman Hammond welcomed the Lieutenant to the Committee. First Lieutenant Peterson's topic of his presentation is 'Establishing Safe and Realistic Speed Limits' that draws from the Michigan State Police experiences where, as a result of the studies, numerous changes in speed limits on roadways have been made across their State. His PowerPoint presentation is on file with these minutes in the Legislative Services Library; or it can be viewed by clicking [here](#).

The State of Michigan has collected fatality rate data since 1940. It shows the number of fatalities per 100 million vehicle miles traveled. The year 1941 marked the highest number of fatalities at around 12. Since then there has been a downward trend; reaching the milestone of less than one fatality per 100 million vehicle miles traveled. This has been a goal for some time. The new goal is to improve on this rate; set at .8 fatalities, with the ultimate goal set at zero.

A key to understanding this presentation is to understand the relationship between speed and speed limits. These terms should not be used interchangeably. Speed limits on roadways can be changed, but not the speed. When speed limits are determined by actual travel speeds, three things happen: (1) compliance rates are maximized; (2) crash rates are minimized; and (3) crashes that do occur are not more severe. The basis for the entire presentation is the risk curve which shows the risk of being involved in a crash, on the vertical axis, and the average speed traveled (above and below) on the horizontal axis. The lowest risk of being involved in a crash is just above average speed where, ordinarily, the 85th percentile speed would be – one standard deviation above average. If you drive at that speed, you have the lowest risk, statistically, of being involved in a crash. This will increase with additional speed, but not as much as if you are one of the slow drivers. This is an important concept as the presentation moves forward.

There is one thing that is directly affected by changing a speed limit upward or downward. That is the compliance rate. If the speed limit is increased, the compliance rate will increase. Conversely, if the speed limit is decreased, the compliance rate will decrease. The topic is counter-intuitive because since 1974 the driving public has been told that "speed kills", "55 saves lives", "drive 55, bring back alive". Those phrases were used to help drivers commit to the national speed limit of 55 mph. Since 1974, we haven't gotten speed limits back up to where they should be or where they were prior to the OPEC oil embargo of the early 70's; let alone where they should be due to the improvements in vehicles, tires, brakes, suspensions, roads, and other factors. These allow us to drive safer, faster today than we could back in 1974.

Speed limits should be established based on the primary, empirical factor, which is the 85th percentile speed. It is the speed that if you set the speed limit at the 85th percentile speed and nobody changes how they drive, the result is 85 percent compliance with the speed limit. This is the primary data point. Other engineering and traffic factors influence traffic and pedestrian movement. There is equipment available that can capture the influencing factors without having marked police vehicles out there affecting the flow of traffic. When speed limits are set at the 85th percentile speed, people are driving at the most similar speeds. It provides the lowest speed variance between vehicles, and thus the lowest crash number and the optimum enforceability. It is the "safest" place to set the speed limit.

First Lieutenant Peterson wrapped up his presentation with specific examples from the State of Michigan; and stood for questions from the Committee.

QUESTIONS:

Chairman Hammond thanked First Lieutenant Peterson for coming before the Committee with this presentation. The Chairman asked if the 85th percentile is established, from the driver's standpoint, based on such factors as the width of the road, the number of ingresses and egresses, the amount of activity, and other factors where lower speed limits would be. He asked for comment on the counter-intuitiveness for drivers who pay attention. The Lieutenant stated that experienced drivers take in all factors that then get calculated back into their subconscious and feed out through their throttle foot. People are actually very good drivers despite the fact that it's popular to say how poorly everyone drives. **Chairman Hammond** added when speed limits are set substantially below the 85th percentile, are impatience and poor decisions made by drivers who feel the speed is not appropriate thereby causing possible opportunities for collisions. The Lieutenant agreed and explained experiences confirming this behavior. The Chairman asked for his comment on S1229 eliminating the different speed limits for cars and trucks. The Lieutenant said that the State of Michigan is working on the same thing. Based on studies, Michigan's speeds were changed, but they continue working on the issue because a lot of trucks have speed limiters set at 68 mph.

Senator Werk asked the Lieutenant about his statement regarding the speed at which people move comfortably on roadways; what about the points at which there is a disconnect between the engineering of the road and the other distractions that occur on the road. Are these factors considered in setting speed limits? The Lieutenant stated that they have found that traffic does account for all obvious factors. There are latent factors that drivers cannot perceive that need to be called out by highway advisory signs. If the speed limit is set lower to account for those factors, then the compliance rate is decreased. Anything to deviate away from the 85th percentile speed causes problems. Drivers tend to take more notice of advisory signs. Reducing speed limits to lower speed does not work. **Senator Werk** asked about the truck issue and asked what the maximum weight for trucks is in Michigan; and are roads set at 80 mph or 75 mph. The Lieutenant believes the maximum weight for trucks is 160,000 pounds. There is a per axle limit of about 11,000 pounds which spreads the load over a number of contact patches. There is a good inspection system in place insuring that brakes function well on trucks. A truck takes about 15% more time to stop than a car. Maximum speed limit on freeways in Michigan is 70 mph; 85th percentile speeds of between 70 and 85, on rural freeways. Changing speed limits on rural freeways would not change travel speeds for cars too much; and likely not too much change in truck speeds if Michigan did away with the differential speed limit. It would be a different outcome if the overall speed limit on freeways was raised to 85 mph.

Senator McGee remarked that the data is counter-intuitive and not what one would expect at all; it is a unique look at speed limits. The Senator wanted to know who sets speed limits in Michigan. The Lieutenant stated that the speed limits on the trunk lines that pass through municipalities are established by the Department of State Police and the Department of Transportation, with political influences coming into consideration. Local control is great for many ways, but for speed limits it's a big problem because constituents don't understand and they want a lower speed limit on the roads that they live and drive on; but they believe the speed limit is not set for them and become upset if they are ticketed. They believe the speed limit is for everyone else that drives fast on their local roads. **Senator McGee** asked what percentage of Michigan roadways need to have this analysis; and requested the same information for Idaho from Mr. Steinman and how the process would work. Mr. Steinman responded that they know that posted speed limit issues exist, but he does not have specific data. The Lieutenant's presentation was the educational piece to develop a knowledge base.

Senator Corder suggested there should be a [link](#) in the minutes to this presentation. With regard to the truck differential, the Senator asked if Michigan has one of the largest differentials in trucks in 15 mph and if they have studied this differential in other States. The Lieutenant indicated he had tried but didn't get many comparisons from other States. He concluded that there would not be much change in trucks' speed because of changes in the speed limit. He agreed that Michigan has one of the larger speed limit differentials for trucks. **Senator Corder** believes there are five States in the country with no differential, but it is not known if they are at their 85th percentile. The Senator was very impressed with the Lieutenant's presentation.

With no further questions, **Chairman Hammond** thanked and commended First Lieutenant Peterson on his presentation. It is very counter-intuitive to what people think. He hopes private organizations will help educate the public as to how speeds are appropriated. Regarding differentiated speeds, perhaps instead of equalized speeds, the discussion should be around the safest speeds that meet that 85th percentile. The Lieutenant agreed wholeheartedly; he hopes to learn from Idaho when those changes are implemented.

Senator Corder had an additional observation. The ratio of the number of trucks per vehicle is critical. He thanked the Lieutenant for discussing trucks' weight and number of axles. Idaho has more weight and axle restrictions than Michigan, but trucks can be safe.

ADMINISTRATIVE RULES PROCESS: **Chairman Hammond** commended **Vice Chairman Brackett** on his work on this year's Administrative Rules that will be presented at the January 24th meeting of the Senate Transportation Committee. **Vice Chairman Brackett** thanked the Chairman and briefly discussed the process that will be followed at that meeting.

ADJOURNMENT: With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:45 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AGENDA
SENATE TRANSPORTATION COMMITTEE
 1:30 P.M.
 Room WW53
 Tuesday, January 24, 2012

SUBJECT	DESCRIPTION	PRESENTER
Docket No.	<u>ADMINISTRATIVE RULES REVIEW</u>	Senator Brackett
<u>35.0105.1101</u>	Idaho Motor Fuels Tax Administrative Rules	Dan John, Tax Policy Supervisor
<u>39.0203.1101</u>	Rules Governing Vehicle Dealer's Principal Place of Business	Amy Smith, Vehicle Services Manager
<u>39.0247.1101</u>	Rules Governing Revocation of Vehicle Registration for Failure to Comply With a Motor Vehicle Emission Inspection Ordinance	Amy Smith, Vehicle Services Manager
<u>39.0270.1101</u>	Rules Governing Restricted Driving Permits	Ed Pemble, Driver Services Manager
<u>39.0272.1101</u>	Rules Governing Administrative License Suspensions	Ed Pemble, Driver Services Manager
<u>39.0275.1101</u>	Rules Governing Names on Drivers' Licenses and Identification Cards	Lynn Rhodes, Driver's License Program Supervisor
<u>39.0276.1101</u>	Rules Governing Driver's License Renewal-By-Mail Process	Lynn Rhodes, Driver's License Program Supervisor
<u>39.0301.1101</u>	Rules Governing Definitions Regarding Overlegal Permits	Regina Phipps, Vehicle Size & Weight Specialist
<u>39.0316.1101</u>	Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads	Regina Phipps, Vehicle Size & Weight Specialist
<u>39.0341.1101</u>	Rules Governing Traffic Control Devices	Carl Main, Traffic Engineer
<u>39.0321.1101</u>	Rules Governing Overlegal Permit Fees	Regina Phipps, Vehicle Size & Weight Specialist

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COMMITTEE MEMBERS

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 Vice Chairman Brackett Sen Corder
 Sen Keough Sen Winder

Sen Bair
 Sen Werk
 Sen Bilyeu

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MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, January 24, 2012
TIME: 1:30 P.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, 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.

CONVENE: **Chairman Hammond** convened the meeting at 1:32 p.m., and asked the secretary to take a silent roll. The Chairman welcomed members of the FFA Club at Vallivue High School in Caldwell, and explained the Administrative Rules review process the Committee will undertake today. Traditionally, Administrative Rules review is the responsibility of a Committee's Vice Chairman, and with that **Chairman Hammond** turned the meeting over to **Vice Chairman Brackett**.

ADMINISTRATIVE RULES PROCESS: **Vice Chairman Brackett** laid out the process for today's review. Two dockets (39-0301-1101 and 39-0316-1101) will be moved to the top of the agenda to accommodate Senators not able to participate in the entirety of the hearing. The Committee will then move through the remaining dockets in the order they appear on the agenda.

Vice Chairman Brackett asked Regina Phipps, Idaho Transportation Department's (ITD) Vehicle Size and Weight Specialist, to present the first two dockets.

DOCKET NO. 39-0301-1101: Rules Governing Definitions Regarding Overlegal Permits – The passage of House Bill 228 in 2011 expanded the exemptions associated with the transporting of implements of husbandry by an owner or their designated agent, which created a need to define "designated agent" which had not been done previously. If approved, this rule will become final and effective at the end of this session. There is an added definition of the "designated agent" and "overall length"; and changes from "escort" vehicle to "pilot" vehicle. There are additional minor "cleanup" changes as well. Ms. Phipps stood for questions.

QUESTIONS: **Senator Corder** has concerns about the resulting problem to agriculture in defining "designated agent." Ms. Phipps stated the "designated agent" has to be a relative or an employee of the farmer (someone on the farmer's payroll). That person can be designated by the farmer to drive the implement of husbandry and still have the same exemption. A commercial hauler would not be considered an employee of the farmer. **Senator Corder** asked about the definition of "farmer" and if a rancher or someone else would be excluded from the definition. The Senator read definitions of "farmer" as presented on his laptop, and believes the definition is not sufficient. Ms. Phipps stated ITD interpreted "farmer" as the person who owns the farm, owns the land, or a broad use of the word. It could be a tree farm, a dairy farm, or any number of options. **Senator Corder** wanted to know how that will be determined when there are so many variables.

Ms. Phipps said that was the reason "designated agent" is not defined as any particular thing or every particular thing. ITD is trying to narrow the definition down to a smaller focus area; and they know it will be difficult. This is the bill that was passed last year, and ITD is working to define and interpret the intent as best they can. It will take some fine tuning. ITD's definitions and interpretations will be provided to any local law enforcement or to the State Police if requested so they can determine they are following within those guidelines. **Senator Corder** understood the difficulty and reminded the Committee he had voted "no" on this legislation last year.

Chairman Hammond asked if the chief purpose of this rule is to allow a farmer, for expediency when there is an equipment breakdown and there is a sensitive time-line involved with harvests and being operational, to take the equipment to be repaired rather than have someone come out to the farm. This avoids a bureaucratic permitting process. Ms. Phipps responded that his scenario was correct. H228 changed it so that those certain circumstances are now in Idaho Code. **Chairman Hammond** wanted to know if this was a major problem in terms of enforcement. Ms. Phipps said it could be because farming is very complicated and farm equipment is much bigger now and takes up the entire highway. They are not required to have pilot cars, oversized signs, or any flagging. It can pose a safety concern, and it can be difficult to determine who is required to meet the requirements, who is a farmer, who can be exempted, and who can not.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Bair** moved to approve Docket No. 39-0301-1101. **Senator McGee** seconded the motion. The motion passed with two dissenting votes (**Senator Corder** and **Senator Keough**).

DOCKET NO. 39-0316-1101: Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads – With the passage of House Bill 228 in 2011 it is necessary to update the farm exemptions listed in this rule for transporting implements of husbandry between farm operations and a repair/maintenance facility or a dealership/sales facility. Additional changes confer a benefit by allowing motor carriers to use the more widely accepted industry standard (10-foot wide trailer) to haul a non-reducible load smaller than 10-feet wide on the trailer. The 24-foot width restriction on the Interstate has been removed to reduce the impact on two-lane highways. The 10-minute limit on interruption of traffic has been deleted to eliminate any conflict with the traffic control plan provisions in IDAPA 39.03.11, "Rules Governing Overlegal Permittee Responsibility and Travel Restrictions." Section 100.05 of that rule requires that the permittee submit a traffic control plan prepared by a licensed engineer or certified traffic control supervisor when operating on two-lane highways and exceeding specified dimensions. Upon approval, this rule will become final and effective at the end of this session. Ms. Phipps stood for questions.

QUESTIONS: **Senator Corder** had a question regarding over-width hauling and what the change in statute allows; and what the change is from an incidental change to the "unladen movement of." Ms. Phipps said Idaho Code allows anything over 8 feet 6 inches to require a permit. The reason for the change to 10 feet is that 10 feet is now the standard trailer. Many construction companies use this standard because they have 12 to 14 foot pieces of equipment that they would rather haul on a 10 foot trailer than a legal-width trailer. This change allows them to use a 10 foot wide trailer rather than trying to find a smaller 9 foot trailer, because 9 feet is no longer the industry standard. **Senator Corder** asked about trailers that are added-on to make them wider and then used to haul balers unladen. He stated he didn't understand why people are given the option to be and remain wide.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Bair** moved to approve Docket No. 39-0316-1101. **Senator McGee** seconded the motion. The motion passed with three dissenting votes (**Senator Bilyeu**, **Senator Corder**, and **Senator Keough**).

Vice Chairman Brackett asked Dan John, Tax Policy Supervisor at the Idaho State Tax Commission, to present the next docket.

DOCKET NO. 35-0105-1101: Idaho Motor Fuels Tax Administrative Rules – This rule provides an adequate amount of time for the State Tax Commission to determine whether a fuel distributor is delinquent; and time to notify the fuel distributor that its bond exemption will be terminated if the delinquency is not paid. Fuel distributors need time to obtain a bond if they are not able to pay delinquencies. A fuel distributor's license is immediately revoked if it does not have a bond or a bond exemption.

When a company is engaged in selling motor fuels, they need to be licensed and have a bond. There are all sorts of exemptions for bonding. Without this rule change, if delinquent, a distributor's license would be immediately taken away which means they are out of business. Without a notification of delinquency time line in place, this was too harsh a consequence. The change implements a notification time line from currently zero time to 90-days. Mr. John stood for questions.

MOTION: With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Chairman Hammond** moved to approve Docket No. 35-0105-1101. **Senator Keough** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Amy Smith, ITD's Vehicle Services Manager, to present the next two dockets.

DOCKET NO. 39-0203-1101: Rules Governing Vehicle Dealer's Principal Place of Business – This rule provides criteria for record types and allows records to be retained physically or electronically. It allows for files to be stored off-site following 30-day notification to ITD, with the provision that records must be produced within three business days upon request by ITD. It requires electronic records be searchable; they be kept secure, preventing unauthorized access and in such a manner that they cannot be altered. It amends dated telephone criteria and revises sections 001 through 006 to meet requirements of the Office of the Administrative Rules Coordinator. Ms. Smith stood for questions.

QUESTIONS: **Senator McGee** asked if these changes were a result of changes in technology. Ms. Smith said that the changes follow other technology requirements.

Senator Bilyeu asked for a more specific definition of the off-site secure location. Ms. Smith said it could be one single location instead of each dealership location.

Senator Bair wanted to know if the term "telephone" has been expanded beyond installing a land line, but restricts the business to be listed in a directory. Ms. Smith said that as long as the number is associated with the business name, it does not matter if it is located in a paper directory or an online directory.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator McGee** moved to approve Docket No. 39-0203-1101. **Chairman Hammond** seconded the motion. The motion passed by a unanimous voice vote.

**DOCKET NO.
39-0247-1101:**

Rules Governing Revocation of Vehicle Registration for Failure to Comply With a Motor Vehicle Emission Inspection Ordinance – House Bill 326 in 2011 eliminated the requirement to forfeit and the need to repay registration fees when a registration is revoked for failure to comply with an emission test, therefore, this rule is no longer needed. The legislation changed the manner of how revocations and reinstatement of vehicle registrations for failure to comply with emission testing are processed. ITD is no longer a part of the process, nor is repayment of registration fees a requirement of reinstatement. All applicable language is now included in Section 39-116B, Idaho Code, making this rule unnecessary, and allowing it to be repealed in its entirety. Ms. Smith stood for questions.

MOTION:

With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Senator McGee** moved to approve Docket No. 39-0247-1101. **Senator Winder** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Ed Pemble, ITD's Driver Services Manager, to present the next two dockets.

**DOCKET NO.
39-0270-1101:**

Rules Governing Restricted Driving Permits – This rule change replaces a fee with a code reference because the fee has been codified; updates terminology; removes restricted driving permit provisions for drivers under the age of 17 for consistency with graduated licensing laws; removes time limitations for application for a restricted driving permit; and adds prescribed subsections to meet requirements of the Office of Administrative Rules. The rule removes "non-resident" from the list of those to whom restricted permits cannot be issued. A time period restriction is being removed as a customer service courtesy. Under-17 drivers is being added to the list of those who shall not receive a restricted permit. Finally a specific fee amount for a restricted permit is stricken and the statute is referenced instead. With that, Mr. Pemble stood for questions.

QUESTIONS:

Senator Bair wanted to know if with the removal of the \$35 fee from Section 49-306(10)c if there is a fee amount given or if it is decided at the discretion of ITD. Mr. Pemble said it does state a fee of \$65.

MOTION:

With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Winder** moved to approve Docket No. 39-0270-1101. **Chairman Hammond** seconded the motion. The motion passed by a unanimous voice vote.

**DOCKET NO.
39-0272.1101:**

Rules Governing Administrative License Suspensions – House Bill 61 in 2011 brought the Administrative License Suspension (ALS) program in Sections 18-8002 and 18-8002A, Idaho Code, into compliance with a 2010 Idaho Court of Appeals ruling regarding the seizure of the license and the issuance of a temporary permit to an out-of-State licensed driver who refuses to submit to, or submits to and fails, evidentiary testing for the presence of alcohol or drugs, in violation of Section 18-8004, Idaho Code. The bill removes the requirement to seize any license and issue a temporary permit whether the driver is licensed in-State or out-of-State. The ALS procedure will be less complex and more efficient for law enforcement officers and ITD to administer. It will also allow the driver (whether licensed in-State or out-of-State) whose license is otherwise valid and current, to proceed with a photo ID in their possession that remains valid and current until a starting suspension date. It adds additional time for subpoena service and a proof of service requirement. With that, Mr. Pemble stood for questions.

QUESTIONS: **Senator Keough** asked about the new notification language regarding email. She wanted to know if there were safeguards in place in case an email fails to be delivered. Mr. Pemble stated that a tracer can be placed on the email and they can look at the record to see if it was sent. If a hearing date is set, they can look at this information. **Senator Keough** indicated she had a concern because sometimes emails don't work and a trail can be fabricated.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Bilyeu** moved to approve Docket No. 39-0272-1101. **Senator Bair** seconded the motion. The motion passed with one dissenting vote (**Senator Keough**).

Vice Chairman Brackett asked Lynn Rhodes, ITD's Driver's License Program Supervisor, to present the next two dockets.

DOCKET NO. 39-0275-1101: Rules Governing Names on Drivers' Licenses and Identification Cards – This revision disallows issuance of a driver's license in one name and issuance of an identification card in another name, thereby preventing establishment of two identities. It also conforms to the one-person/one-record requirement for Department of Motor Vehicles (DMV) modernization and confers a customer benefit. The revision deletes the 26 character name limitation and provides for name formatting flexibility that aligns with current cultural practices and additional formatting procedures for long, complex names. This will clarify requirements for applicants, whose marital status has changed and provide for associated name changes. Name formatting conventions will be more clearly stated, more easily accommodated, and processed more quickly. Driver license examiners will have clearer guidelines for formatting requested name changes. It will also reduce the number of phone calls and faxes between ITD and county driver license examiners, improving efficiency. With that, Ms. Rhodes stood for questions.

QUESTIONS: **Senator Bilyeu** wanted to know why a married applicant could not include more than one hyphen in their name. Ms. Rhodes said that current capabilities in computer programs do not allow for more than one hyphen. **Senator Bilyeu** suggested that as long as it is within the 26 character maximum, the number of hyphens should be irrelevant.

Senator Keough asked if legislator identifications could be used for establishing identity, and would it be a problem if the name on the identification appeared differently than the name on a drivers license. Ms. Rhodes said it would not make a difference.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Werk** moved to approve Docket No. 39-0275-1101. **Senator Bilyeu** seconded the motion. The motion passed by a unanimous voice vote.

DOCKET NO. 39-0276-1101: Rules Governing Driver's License Renewal-By-Mail Process – This proposed rule allows for future electronic driver license renewal procedures and deletes referenced to outdated procedures, such as providing renewal stickers for application to the back of film-based driver license cards. Film-based driver licenses with renewal stickers have not been issued for several years. All driver licenses are now digitized. An electronic online renewal process is expected to be implemented in the future as part of DMV modernization. Also deleted is reference to the outdated requirement to go to a driver's license office to have a social security number removed. Social Security numbers have not been used as the driver's license number since 1996. The lawful presence requirement supports Section 49-303(14), Idaho Code. With that, Ms. Rhodes stood for questions.

MOTION: With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Chairman Hammond** moved to approve Docket No. 39-0276-1101. **Senator Werk** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Carl Main, ITD's Traffic Services Engineer, to present the next docket.

DOCKET NO. 39-0341-1101: Rules Governing Traffic Control Devices – As required in Section 49-201(3), Idaho Code, the Idaho Transportation Department adopts a manual and specifications for a uniform system of traffic-control devices consistent with the provisions in Title 49 for use on highways within the State. To meet that requirement, this rulemaking adopts and incorporates by reference, the 2009 edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the Federal Highway Administration of the U.S. Department of Transportation, with an effective date of January 15, 2010, with conforming additions, as specified in the rulemaking, and approved by Federal Highways Administration/Idaho. With that, Mr. Main stood for questions.

QUESTIONS: **Senator Winder** asked if oversight of railroad crossing signage and whistle requirements were part of this rule or if it was another process. Mr. Main stated it was part of another process.

MOTION: With no further questions and no additional testimony, **Vice Chairman Brackett** called for a motion. **Senator Keough** moved to approve Docket No. 39-0341-1101. **Senator Bilyeu** seconded the motion. The motion passed by a unanimous voice vote.

Vice Chairman Brackett asked Regina Phipps, ITD's Vehicle Size and Weight Specialist, to return to the podium to present the fee docket.

DOCKET NO. 39-0321-1101: Rules Governing Overlegal Permit Fees – The Idaho Legislature provided clear direction to ITD in their approval of Section 100 of this rule, "Costs to be Borne by Permittee." This section states that administrative costs incurred in the processing, issuance, and enforcement of overlegal permits will be borne by the permittees and not by the general traveling public through the expenditure of highway use funds. The permit program is currently experiencing a revenue shortfall and it is necessary to raise certain fees to cover administrative costs. New language also provides for reimbursement of actual costs incurred for extraordinary services associated with planning and/or movement of overlegal loads moving under the requirements of a traffic control plan. There is a current shortfall in recouping the cost of the program; this rule will help alleviate that shortfall. With that, Ms. Phipps stood for questions.

MOTION: With no questions or additional testimony, **Vice Chairman Brackett** called for a motion. **Chairman Hammond** moved to approve Docket No. 39-0321-1101. **Senator Winder** seconded the motion. The motion passed by a unanimous voice vote.

ADJOURNMENT: **Vice Chairman Brackett** announced that Transportation Administrative Rules review was completed for this legislative session and turned the gavel back to **Chairman Hammond**. The Chairman thanked the Vice Chairman for his work. With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:40 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

JOINT
SENATE TRANSPORTATION COMMITTEE
AND
HOUSE TRANSPORTATION & DEFENSE COMMITTEE
1:30 P.M.
WW02 - Auditorium
Thursday, January 26, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>Presentation:</u>		
	Idaho Transportation Department's Annual Report to the Legislature	
	Introduction	Darrell Manning, Idaho Transportation Board Chairman
2011 Focus Areas:	– Realignment	Brian Ness, ITD Director
	– Investing for Performance	Brian Ness, ITD Director
Follow-up:	– Performance Measures	Scott Stokes, ITD Chief Deputy
	– Accountability, Efficiency, Effectiveness	Scott Stokes, ITD Chief Deputy
	– Strategic Plan	Brian Ness, ITD Director
	– Individual Performance Management	Brian Ness, ITD Director

Questions & Answers

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
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MINUTES
JOINT MEETING
SENATE TRANSPORTATION COMMITTEE
HOUSE TRANSPORTATION & DEFENSE COMMITTEE

DATE: Thursday, January 26, 2012

TIME: 1:30 P.M.

PLACE: WW02 - Auditorium

MEMBERS PRESENT: Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, Werk, and Bilyeu

Chairman Palmer, Vice Chairman Ellsworth, Representatives Wood, Smith, Bedke, Hart, Hagedorn, Bateman, Henderson, Nessel, Ringo, King, and Killen

ABSENT/ EXCUSED: Representatives Wills and Nonini

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.

CONVENE: **Co-Chairman Hammond** called the meeting to order at 1:36 p.m., and asked each Committee secretary to take a silent roll. With a quorum present, the Chairman welcomed Idaho Transportation Board Chairman Darrell Manning and invited him to take the podium to introduce Idaho Transportation Department (ITD) staff and presenters.

Chairman Manning thanked the Joint Committee members for all they do for the people of Idaho. Today's presentation marked his final responsibility as Chairman of the Idaho Transportation Board (ITB). Jerry Whitehead, President of Western Trailers Company in Boise, has been appointed by the Governor to become the next ITB Chairman. He praised the work of the ITB in collaboration with ITD in setting goals for the Department and working within set budgets.

There were two major studies completed this year. ITD developed a pavement management system that is operational; and an audit found that salaries for transportation engineers and technicians were so low that Idaho was losing these professionals to other States, particularly Oregon. The federal stimulus package projects and GARVEE funded projects are nearly complete. Chairman Manning ended by introducing ITD's Director, Brian Ness, and its Chief Deputy, Scott Stokes. He explained that the major organizational changes implemented last year at ITD are functioning and have been embraced by ITD employees.

Co-Chairman Hammond thanked Chairman Manning for his service to the State and to the Department, and noted that the Chairman is retiring after 60 years of public service. **Co-Chairman Hammond** said there were many well-deserved well-wishers and expressions of praise for Chairman Manning at his retirement event at ITD.

PRESENTATION: **Co-Chairman Hammond** welcomed Brian Ness, ITD Director, and Scott Stokes, ITD Chief Deputy to the Joint Committee meeting.

**DIRECTOR
NESS:**

Director Ness thanked all the members for their help with transportation issues over the course of the year. Today's annual report to the legislature will show: (1) what ITD is doing; (2) where ITD is going; (3) how ITD will measure their progress; and (4) how that progress will be reported. Last year, ITD focused on five areas: (1) realignment; (2) investing for performance; (3) performance measures; (4) accountability, efficiency, and effectiveness; and (5) individual performance management.

The Governor's realignment initiative was completed in eight months; nine layers of management was reduced to five; and 62 one-on-one supervisory positions were eliminated. Now there is less duplication between districts and headquarters. Decision-making is now closer to where the work is being done, and as a result, accountability and efficiency has increased. All this was accomplished and no employees lost their job. The total savings from this realignment effort totaled \$3.5 million.

Investing-for-performance means that management is holding employees accountable for accomplishing ITD's priorities. ITD invested in the Transportation Asset Management System. It launched on time and on budget; and it determines the most cost effective pavement investments, and tracks and manages maintenance activities. The system was used in 2011 to select pavement preservation projects. ITD is considering a 50-year plan which will ensure that ITD makes good decisions now that will be effective for the future. ITD's fiscal year 2013 budget request is for \$529.5 million; made up of \$260 million in State funds, \$264.8 million in Federal funds, and \$4.7 million from other sources. The debt service of \$54.5 million represents \$50.2 million Federal and \$4.3 million State. No funds are requested from GARVEE bonds. Director Ness referred Committee members to the ITD website to a pie-chart showing how these funds will be expended.

**CHIEF DEPUTY
STOKES:**

ITD's Chief Deputy Scott Stokes took the podium to discuss the status of performance measures. He referred the Committee members to ITD's dashboard website where ITD's status on performance measures are reported and compared to other States.

Mr. Stokes addressed pavement condition and the Department's current pavement strategy. Today, 13% of Idaho's roadways have deficient pavement and it is projected that percentage will climb to 28% by 2021. ITD will need to address this growing problem. Another issue is the status of Idaho's bridges. There are 574 bridges built prior to 1962 making them over 50 years old. In 2021, Idaho will have more than a thousand bridges over 50 years old. ITD is pulling funds from pavement in order to address bridges. As confirmed by the Governor's Task Force on Modernizing Transportation Funding, Idaho's transportation funding shortfall is \$543 million.

Mr. Stokes concluded his part of the presentation by discussing Idaho's declining roadway fatality rate. Over a five-year period, Idaho went from 267 fatalities in 2006 to 169 fatalities in 2011. He stated that all the information presented today regarding ITD's accountability, efficiency, and effectiveness can be found on their website at: <http://itd.idaho.gov>.

**DIRECTOR
NESS:**

Director Ness retook the podium to discuss ITD's new strategic plan. ITD's road-map to becoming the best begins with a new mission statement: Your Safety, Your Mobility, Your Economic Opportunity. The plan includes three goals: (1) to become the best organization by continually developing employees and implementing innovative business practices; (2) to commit to having the safest transportation system possible; and (3) to provide a mobility-focused transportation system that drives economic opportunity.

To achieve the first goal, ITD is developing the best employees and utilizing best practices. ITD's employee turnover rate needs to be reduced; even in a slow economy, ITD is experiencing a 50% employee turnover rate in road maintenance positions. ITD needs to invest in its employees and their salary rates. To achieve the second goal, ITD is focusing on further reduction in the highway fatality rate, reducing serious injuries, and injuries related to impaired driving. The third goal, to improve economic opportunities for the State, will be measured by increased efficiency in transported goods; reduction in travel time for commuting, commerce, recreation, and tourism; and an increase in Idaho's Gross Domestic Product (GDP) with an increase in jobs and business revenues.

Director Ness addressed why mobility matters. Reductions in travel time will benefit tourism and recreation (i.e., shorter shipping times lower the cost of goods, and lower costs make Idaho more competitive). ITD is studying ways to improve Idaho's shipping efficiency and is partnering with the Department of Commerce, the Department of Agriculture, the Department of Labor, and private industry to accomplish it.

In conclusion, Director Ness addressed how ITD is aligning goals with individual employee performance through actions, outcomes, and accountability. The leadership team at ITD has developed measurable strategies for each employee's contribution toward achieving the goals of the Department. Each employee will have a new performance plan beginning July 1, 2012, the start of the next fiscal year. With that the Director stood for questions.

QUESTIONS:

Co-Chairman Hammond thanked Director Ness and Chief Deputy Stokes for their comprehensive presentation and asked for questions from the Joint Committee members.

Senator Corder asked if measuring fatalities was the right indicator to measure. Mr. Stokes said by tracking crash rates and those crashes involving serious injuries, they found that crashes and business hours traveled are down this year.

Representative Ringo wanted ITD to focus on a dangerous section of road near Moscow.

Representative Henderson inquired about the Governor of Michigan's letter requesting increased transportation funding. Director Ness said Michigan wants to raise revenue to do preventative measure so that in the future they won't have to completely rebuild their roads. He referred to Idaho's 13% pavement deficiency as being a situation that needs addressing. In Michigan, the Governor is suggesting raising their revenue enough to attend to some of their roadway problems.

Representative Bedke asked about Idaho's out-of-date rail plan and wanted to hear ITD's plan and challenges in addressing rail issues. Chief Deputy Stokes said that, as outlined in the discussion on ITD's fundamental strategic plan, ITD is focused on bridges and pavement. Rail has had to take a back burner, but with an acquired rail grant, ITD will be developing a rail plan that will likely be updated every three to five years. **Representative Bedke** asked if it would take three to five years to develop a plan. Chief Deputy Stokes said ITD has consulted with the rail industry and they agree with the time line. **Representative Bedke** asked what types of plans are generated at ITD and which plans are mandated to be updated annually. Chief Deputy Stokes pointed out that updated plans are required to qualify for federal funding. The areas include aeronautics, rail, pedestrian, and bicycle. **Representative Bedke** asked where does the money come from to update those other plans. Chief Deputy Stokes did not have an immediate answer, but asked if he could send the Representative that information. He stated he knew it was the most restricted funding available.

Representative Henderson stated that the Twin Falls area was becoming a dairy center because they can overnight freight deliveries to Seattle or Denver, but the condition of bridges is a concern. Director Ness said ITD works with the funding they have. He acknowledged that bridges are getting further behind. ITD is committed to focusing on where the funding can do the most good, and bridges need a focus. If ITD focuses their work on bridges, taxpayers will not see work being done to improve stretches of highway.

Representative Killen asked if there were any steps being taken to redesign the study. Chief Deputy Stokes said ITD reassembled the team to decide what they can do given this is the last year of the study. The analysis will be available at the end of this year.

Representative Wood asked whether the rail industry was helping with developing the rail plan. Chief Deputy Stokes said the rail companies were all very willing to help. **Representative Wood** inquired about a recent newspaper article on payment regarding Highway 75. Director Ness said he had not seen the results of the investigation.

Senator Bilyeu asked what the total amount of American Recovery and Reinvestment Act (ARRA) funds Idaho received over five years, and if the expenditure resulted in adding new jobs and economic development. Director Ness said Idaho receives \$300 million in federal aid each year, but he could not say how many jobs were created. Idaho received \$800 million in GARVEE funding that created just over 13,000 jobs.

Representative King wanted to know if there were minimum wage jobs lost in the \$3.5 million saved. Director Ness said the \$3.5 million was put back into roads with no one losing their job. However, ITD has a 50% turnover rate in maintenance jobs; these salaries need to be increased. It is difficult to retain workers paid \$12 per hour in Idaho when they can go to neighboring States and earn \$17 per hour.

Representative Hart asked about the concern with repairs to bridges and the number of bridges in Idaho over 50 years old. Chief Deputy Stokes explained about the deficiencies in bridges. Many bridges were built in the 1960's and 1970's and they're reaching the 50-year mark at an accelerated rate.

Senator Corder asked if the current pavement strategy to invest \$100 million annually to bridges is already being advanced to bridges. Director Ness said the chart is not adjusted for inflation and some additional amount needs to be invested in bridges. **Senator Corder** asked if ITD had a strategy of going back to gravel roads given the shortfall in funding. Director Ness said there was no strategy at this time. He was hopeful that a budget strategy would develop resolving some of these issues before our roadways return to gravel.

ADJOURNMENT **Co-Chairman Hammond** thanked **Co-Chairman Palmer** and all Joint Committee members as well as all those from ITD. Responses to questions that ITD deferred are included with the final, signed minutes as **Attachment #1**. With no further business before the Joint Committee, **Co-Chairman Hammond** adjourned the meeting at 2:36 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

**AMENDED AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Tuesday, January 31, 2012**

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Appointment of Colleen Marie Back of Boise to the Aeronautics Advisory Board commencing January 31, 2012 and expiring January 31, 2017.	Colleen Marie Back , Greenwich AeroGroup/Western Aircraft
MINUTES	Tuesday, January 17, 2012	Senator Bilyeu and Senator Corder
	Thursday, January 19, 2012	Senator Bair and Senator Werk
<u>RS20993</u>	Adds a new section to Idaho Code that provides infraction penalties for texting while driving, with exceptions.	Senator Hammond
<u>S1243</u>	Amending Section 49-402, Idaho Code, to reduce the proliferation of specialty license plates by limiting them to those promoting State and other public agencies or foundations supporting the interests of State and/or local government.	Senator Hammond
PRESENTATION	Metro Planning Organizations: The Role of MPOs	Matt Stoll , Executive Director, COMPASS

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

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MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, January 31, 2012

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Bair, Werk, and Bilyeu

ABSENT/ EXCUSED: Senator Winder was excused

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.

CONVENE: **Chairman Hammond** called the meeting to order at 1:30 p.m. and asked the secretary to take a silent roll. With a quorum present, **Chairman Hammond** welcomed John DeThomas, Administrator of the Aeronautics Division of the Idaho Transportation Department (ITD), to introduce gubernatorial appointment candidate, Colleen Marie Back of Boise.

GUBERNATORIAL APPOINTMENT: Mr. DeThomas explained that Ms. Back has been nominated by the Governor to the Aeronautics Advisory Board. Her term commences on January 31, 2012 and ends on January 31, 2017. Ms. Back is the Vice President of National Sales for the parent company of Western Aircraft, a major employer in Boise. She is extremely active in many community efforts. For example, as the Vice President for the Aviation Foundation she has been vital to funding efforts and in providing volunteer labor for a new facility at the State operated airport in Garden Valley. She frequently volunteers to perform maintenance on State airstrips in the back-country of Idaho. Her business knowledge, aviation experience, and energy have been instrumental with airstrip advisory boards around the State. **Chairman Hammond** thanked Mr. DeThomas and welcomed Ms. Back to the Committee.

Ms. Back thanked the Committee and expressed how pleased she was to be asked to serve on the Aeronautics Advisory Board. She was raised near Cleveland, Ohio; graduated with honors from Xavier University in Cincinnati. She had a rewarding 15-year career with Proctor and Gamble in finance and business management and sales management. The by-product of that was that she moved frequently along the East Coast, but wanted to live in the Mountain West. She moved to Colorado and began a new career in business aviation; that led her to Idaho where she wants to stay because of Idaho's many attributes. She believes in contributing to community. She spent her first three years in Idaho serving on the Idaho Aviation Foundation Board and is now its Vice President. It raises money and distributes funds to projects that help improve Idaho's unique back-country airstrips and its smaller community airports. The Garden Valley project was a joint-venture done with the State Commission on Aeronautics. In 2006, she founded a mountain club called Idaho Mountain Recreation to help people enjoy the outdoors responsibly.

Ms. Back thinks her background in business management and in aviation specifically will be helpful to serving on the Aeronautics Advisory Board. In her present job as Vice President of Sales for a national aircraft services company, she understands how important aviation is to Congress and in getting things done. With due respect to the importance of the worldwide web, nothing builds more relationships more quickly than being able to look that important-to-your-business person in the eye and shake their hand. Only aviation can make morning meetings in North Idaho and afternoon meetings in Southwest Idaho happen.

Aviation feeds the soul of many. Idaho is nirvana for back-country pilots. Ms. Back has an instrument rated aviation license and owns a Cessna 182. She longed to fly in the back-country when she was still in Ohio, and has taken advantage of this dream now that she lives in Idaho. She is a frequent user of Idaho's many airstrips as a means to enjoying the outdoors. She looks forward to serving on the advisory board.

QUESTIONS:

Chairman Hammond thanked Ms. Back for her well prepared presentation and asked the Committee for questions.

Senator McGee commented on Ms Back's impressive background and noted on her application that she declared her political party affiliation as 'independent.' The Senator then asked for more information on her national aviation association and what her role has been with that organization. Ms. Back said that the parent company of Western Aircraft are members of the National Business Aviation Association (NBAA). It is a large organization that does training, advocacy, and supports business operators throughout the country and the world. They use it for employee training, professional development, and attracting business by working with all the other members of NBAA.

Senator Bilyeu said Ms. Back would be a welcomed addition to the advisory board. She asked her to elaborate on the Garden Valley project. Ms. Back explained it was a joint venture project between the State Division of Aeronautics, the Idaho Aviation Association, and the Idaho Aviation Foundation. The Foundation can provide funds, but it doesn't have labor resources. The Idaho Aviation Association does have labor resources. Years ago, the State identified Garden Valley as a good place to invest in infrastructure, and it's a popular place among pilots for day trips. The Foundation set aside money last year to support this project and then worked with the State, who took on certain goals. **Senator Bilyeu** asked what the difference is in sales management between Proctor and Gamble and her current industry of aviation. Ms. Back said she wanted to apply the techniques she learned at the world's largest advertiser and apply them to her new career in aviation sales.

Chairman Hammond thanked Ms. Back and explained the Committee will not take a vote today, but will take up her nomination at the next Committee hearing.

Senator Werk pointed out that the parameters in statute state that no more than three members shall at any time belong to the same political party. He further stated that, in Idaho, 'independent' is not a political party.

Before moving on to the next agenda item, **Chairman Hammond** introduced the current Chairman of the Idaho Transportation Board, Darrell Manning and the in-coming Chairman, Jerry Whitehead. He welcomed them to the Committee and thanked them for attending today's hearing.

MOTION ON MINUTES:

Senator Corder moved to approve the minutes of Tuesday, January 17, 2012, as presented. The motion was seconded by **Senator Bilyeu**. The Committee approved the minutes by a unanimous voice vote.

Senator Werk moved to approve the minutes of Thursday, January 19, 2012, as presented. The motion was seconded by **Senator Bilyeu**. The Committee approved the minutes by a unanimous voice vote.

RS20993: **Chairman Hammond** turned the gavel over to **Vice Chairman Brackett** in order to present his legislation. He also commented that **Senator Lodge** is a sponsor of the legislation. **Vice Chairman Brackett** invited **Chairman Hammond** to present his legislation.

Chairman Hammond said this legislation is before the Committee because of the growing concern among the public for an activity that ten-years ago did not even exist, and that is texting. It is fine to text, but it is not fine to text and drive at the same time. There have been several attempts in the past to pass texting legislation, but they have all gotten waylaid over issues of language and enforcement. The attempt of this bill is to make it very straightforward and simple to understand. The bill defines what texting is. The bill says that if you are driving and texting, it's an infraction; and if you are caught, you will be fined. It's that simple and straightforward. The Chairman stood for questions.

QUESTIONS: **Vice Chairman Brackett** thanked the Chairman and asked if there were questions from the Committee.

Senator Bilyeu agreed that this legislation is needed even though there are inattentive driving statutes in place. This bill sends a very strong message that texting is not to be allowed in Idaho while you're driving. But she questioned the Statement of Purpose's financial statement that this legislation does not affect the general fund. **Chairman Hammond** said there was no decrease in revenue from the general fund. The increase in revenue is minimal; most of the fines and fees go to the courts.

MOTION: **Senator McGee** complimented **Chairman Hammond** for his efforts on this issue. **Senator McGee** moved to print RS20993. The motion was seconded by **Senator Bilyeu**. The motion passed unanimously by a voice vote.

S1243: **Vice Chairman Brackett** asked **Chairman Hammond** to present S1243. The Chairman reminded the Committee members that he had presented a similar bill last year. The intent of the bill is to limit specialty license plates. There is a concern about the proliferation of specialty license plates. The main issue is the concern of government collecting monies for private entities. This bill would ensure that if a license plate is allowed, funds generated would go to a general public purpose instead of a private purpose. That insures that government is only collecting money for the good of the general public, and that there is an accountability for those funds collected. It is not appropriate for government to collect funds for charitable entities. This bill will limit and control the number of plates out there, which has been an expressed concern by law enforcement. With that, **Chairman Hammond** stood for questions.

QUESTIONS:

Senator Bilyeu commended the Chairman for bringing this bill forward. The Senator wanted someone from the Idaho Transportation Department (ITD) to tell the Committee how many plates we currently have that promote private organizations. Amy Smith, ITD's Vehicle Services Manager, said that the majority of current specialty plates promote private organizations. There are some, like the fishing and wildlife plates, that help government agencies. **Senator Bilyeu** asked where the funds for the peace officer's plate go. Ms. Smith said those funds go to the Peace Officers Memorial that helps with scholarships, fallen officers' families, and other programs. It is not a government program. **Senator Bilyeu** asked if that plate would have qualified if S1243 was part of statute. Ms. Smith did not believe it would have qualified. **Senator Bilyeu** asked about the military plate she brought forward last year for service in the Afghanistan and Iraq wars would have qualified. Ms. Smith said that the military plates fall under a different standard than the specialty plates program. Yes, it would have qualified.

Senator Keough asked if 'foundations supporting the interest of State or local government' in line 15 of page 4 was defined. **Chairman Hammond** said it is intentionally not defined to give flexibility to ITD to discern which plates qualify.

Senator Corder asked about the section that states 'governments' are allowed to be the benefactor of these programs. If we select 'government' to be the only benefactor we may be inviting criticism. **Chairman Hammond** said the best example of how this works is the wildlife plate. The Chairman purchases that plate to advance that cause. Directly, those funds go to the Wildlife Foundation, but indirectly those funds go to promote wildlife issues. The Chairman is comfortable with that because he knows where the funds are going and the purposes for which they are going. He sees it as providing a general good for the public. The Chairman does not believe that an appropriate function of government is to raise money for private clubs and foundations. This is not a disparagement of any of those clubs or their activities or their charitable purposes, but the line needs to be drawn between what is appropriate for government and what is not. He believes if the government is going to collect the funds, then government should be accountable for them. S1243 is the only way he can be assured that the government can be accountable for those funds. **Senator Corder** asked Ms. Smith if given what **Chairman Hammond** just described, if S1243 is passed, would such a wildlife plate qualify. Ms. Smith said that it would qualify because those funds go to the Idaho Fish and Game Department for specific purposes.

Senator Bair asked about page 4, line 16 and suggested the Idaho Code reference was incorrect. Ms. Smith said that the Idaho Code section referenced is a new section that will be added.

Senator Keough asked if this would be a new process for ITD to receive the application and ITD determining whether the license plate would go on to the legislature for approval. She wanted to know if this was the Chairman's intention and cited page 4, line 38, and page 5, line 18. **Chairman Hammond** said that his intent was more of a screening process. He believes that with the criteria outlined in the bill, it would help the Committee by having applications reviewed and screened.

Senator McGee asked Amy Smith of ITD how the process mentioned by **Senator Keough** would work. Ms. Smith stated that the process would begin with her department. If she had questions about an application, she could go to the Director. If an application was denied, that organization could appeal to the Director. **Senator McGee** asked if Ms. Smith's department could independently reject an application. Ms. Smith said that in S1243 there are provisions to develop Administrative Rules, and this could be an issue to look at while developing them. But those decisions are currently made at her level with vanity plates. **Senator McGee** asked if that was the case with determining what requests for vanity plates may be objectionable. Ms. Smith said that it was the case. **Senator McGee** wanted to be assured that if Ms. Smith rejected an application there would be an appeals process for the organization. Ms. Smith indicated that it would be the case.

Senator Corder asked for further clarification and referenced page 5, subparagraph 4. If ITD approves a completed application, it is then forwarded to the Chair of the germane Committee. There does not appear to be a timeline for this process; he also wanted to know if the Committee could not concur with ITD; and, what is the process for sending it back to ITD for final approval. Ms. Smith stated that page 5, subparagraph 4 assumes that ITD has already approved the application and moved it forward to the legislature. ITD would require more legislative approval before they moved forward on implementing the program. **Senator Corder** asked where it assumes that requirement in the bill. Ms. Smith directed the Senator to lines 18 and 19.

MOTION:

With no further questions or additional testimony, **Vice Chairman Brackett** asked the Committee for a motion. **Senator McGee** moved that S1243 be sent to the Senate floor with a do-pass recommendation. **Senator Werk** seconded the motion.

Senator McGee reminded the Committee that this issue has come before it many times in the past. One concern is the controversial license plate ideas showing up across the country. License plates should not be the place to express these types of ideas. **Chairman Hammond** has narrowed the scope of these types of license plates to the point that it is much more appropriate.

Chairman Hammond wrapped up his comments by reminding the Committee there have been other efforts to limit these types of license plates. The challenge with the limitation is where do you define what is and is not appropriate. The purpose of a license plate is to provide identification for a vehicle. The proliferation of many types of plates muddles that intent. Other States are experiencing requests for license plates addressing issues that are not appropriate. This bill will help Idaho avoid having to fight those same issues.

With no further discussion, **Vice Chairman Brackett** called for a vote on the motion. The motion passed by a voice vote with one dissenting vote.

PRESENTATION:

Vice Chairman Brackett returned the gavel to **Chairman Hammond**. The Chairman welcomed Matt Stoll, Executive Director of Community Planning Association (COMPASS), to give the Committee a report on the role of Metro Planning Organizations (MPO) in Idaho.

An MPO is a regional planning entity responsible for transportation planning and approval of U.S. Department of Transportation (DOT) funding for federally designated urbanized areas. They exist in population areas of over 50,000 people. There are five MPOs in Idaho: Kootenai MPO, Lewis-Clark Valley MPO, COMPASS in Southwest Idaho, Bannock Transportation Planning Organization, and Bonneville MPO. COMPASS is an urban area of over 200,000 in population which encompasses northern Ada County. This Transportation Management Area (TMA) is a special designation with enhanced rules.

MPOs exist to provide a forum that brings together all aspects of the regional transportation system in order to achieve a unified voice. They also provide coordination, collaboration, and collective decision-making on regional transportation system investments. They have been established through federal code under Title 23, U.S.C. Section 134(a)(2). It allows an urban area to receive federal transportation funds.

MPOs are governed by a Board of Directors primarily made up of elected officials from cities, counties, and highway districts. There are special members that come from universities, tribes, local transit authorities, and even ITD. In Idaho, MPOs planning areas encompass nearly 60% of Idaho's population and civilian jobs; there are over 800 lane miles of State roadways covered; and there are nearly 7,000 lane miles of local roadways covered. As the local authority, MPOs know local needs and resources, and they collaborate and cooperate with multiple agencies for the common good regionally and across the State.

MPOs develop regional transportation plans, both long-range (20+ years) and short-range (5 years). They prioritize and allocate U.S. DOT funds to address regional transportation needs, improve the local economy, and maintain or improve air quality.

Long-range plans predict travel growth based on future land use, and plan for future transportation programs and projects based on forecasts. They use fiscal constraints which means only projects with a reasonable chance of funding are included. Needed but unfunded projects can be listed in long-range plans. Long-range plans are based on realistic future scenarios, rigorous modeling (that includes variables like travel demand, population growth, economic growth, and air quality), data (from the census, traffic counts, population estimates and forecasts, and the Geographic Information System), and public input. Things considered when making long-range planning decisions include regional dialogue on a vision of the future, data and modeling results, necessities to accommodate future growth and travel demand, and fiscal realities.

Short-range plans are developed as follows: local agencies develop an initial list of potential projects for the next five years; projects are submitted to the MPO and must be consistent with the long-range transportation plan; and projects are prioritized based on preestablished criteria. Short-range plans must be fiscally constrained – their budget must balance; and regional Transportation Improvement Programs (TIP) and ITD's statewide plan must match within MPO boundaries. Agencies submitting projects must get public input initially and as the plan is put together by the MPO.

Challenges facing MPOs include potential changes in federal transportation legislation and air quality issues. MPOs play a key role in transportation planning and investment in Idaho. Mr. Stoll concluded by inviting the Committee to COMPASS's legislative reception scheduled for early February. Mr. Stoll stood for questions.

QUESTIONS: **Senator Corder** asked how much pressure is there regarding the risk associated with the Federal Highway Trust Fund. Mr. Stoll said he was an optimist but believes we should be able to control our own destiny. We should not be dependent upon the federal government to maintain highways. Existing Continuing Resolutions (CR) in Congress have been a benefit in Idaho. The Congressional Budget Office (CBO) indicates that we will exhaust our available dollars by 2013, which will be a problem for Idaho. There does not appear to be a desire at the federal level to deal with the gas tax this election cycle. That means we're into 2013 and the CRs are going to be problematic. If they try to deal with reauthorization now, it is more critical that Senator Crapo work on behalf of Idaho to ensure that State balances are maintained. Rural States in set-asides carry a lot of influence so we should be able to maintain that balance, or it could mean they put it off for two years. **Senator Corder** asked what the role of the MPOs would be with respect to increased revenues on the State level. Mr. Stoll said that COMPASS's role is to advocate for gas tax and, if it can be kept in Idaho, they can minimize the additional costs associated with the federal dollars and requirements and get a greater result. MPO's advocate for increased revenues at the State level. **Senator Corder** asked if there were plans for an aggressive campaign to advocate for increased State revenues. Mr. Stoll said they were working with their legislative consultants in preparing for the 2013 session. There were no further questions.

ADJOURNMENT: **Chairman Hammond** thanked Mr. Stoll for appearing before the Committee. With no further Committee business on the agenda, the Chairman adjourned the meeting at 2:42 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Thursday, February 02, 2012

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Appointment of Colleen Marie Back of Boise to the Aeronautics Advisory Board commencing January 31, 2012 and expiring January 31, 2017.	MOTION
<u>RS20994C1</u>	Adds a new section to Idaho Code relating to liability of land owners who offer the use of their property for motorcycle, motor-driven cycle, or off-highway vehicle instruction and/or testing.	Senator Hammond
<u>S1229</u>	Amends Section 49-654(3), Idaho Code, to provide that speed limits for multi-axle vehicles travelling on interstate highways, in urban districts, on state highways, or in other locations shall be the same as for all other vehicles.	Senator Hammond

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

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MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, February 02, 2012

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, 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.

CONVENE: **Chairman Hammond** convened the meeting at 1:35 p.m., and asked the secretary to take a silent roll. He noted that the first order of business was to vote on the appointment of Colleen Marie Back to the Aeronautics Advisory Board that was heard at the last Committee meeting.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Bilyeu** stated how impressed she was by Ms. Back and moved to approve her nomination and send it to the Senate floor. **Senator Keough** seconded the motion. **Senator Werk** reiterated his concern regarding Ms. Back's political affiliation listed as 'independent,' and stated she was very qualified. With no further discussion, the Committee unanimously approved the motion by a voice vote. **Chairman Hammond** asked **Senator Bilyeu** to carry the appointment on the Senate floor.

RS20994C1: In the temporary absence of **Vice Chairman Brackett**, **Chairman Hammond** turned the gavel over to **Senator Keough** in order to present his legislation. **Senator Keough** asked the Chairman to present RS20994C1 to the Committee. **Chairman Hammond** stated that RS20994C1 simply corrects a current challenge for instructors having to find available property to train clients learning to ride motorcycles or other off-road vehicles. The challenge comes from the property owners with regard to the liability they incur as a result of having them on their property. In particular this applies to motorcycle training due to the amount of land needed to set out a proper training course for students to practice on in order to show efficiency in handling a motorcycle. There is also training needed for other off-road vehicles. The Chairman stood for questions.

MOTION: With no further discussion or questions, **Senator Keough** asked the Committee for a motion. **Senator McGee** moved that RS20994C1 be sent to print. **Senator Bilyeu** seconded the motion. The motion passed by a unanimous voice vote.

S1229: **Senator Keough** asked **Chairman Hammond** to present S1229 to the Committee. While the Chairman took the podium for presenting S1229, **Senator Keough** noted the Committee's packets included correspondence received by the Chairman supporting and opposing S1229. She reminded the audience that there was a sign-up sheet for those wishing to testify.

Chairman Hammond said this legislation is the result of a call from other Senators. Safety is the primary issue of this legislation. Safety is enhanced when all traffic flows at a common speed; not in the context of trucks vs. cars, but in overall safety. The recent presentation by the Michigan State Police on speed regulation data confirmed that changes to uniform speed limits enhanced safety. The information provided was based upon proven data; it wasn't an opinion, it wasn't just beliefs, it was actual data of how changes in speed limits, mostly based upon the 85th percentile rule, actually enhanced safety. He referred to the example of the six-lane highway in Detroit where the speed limit had been 55 miles per hour (MPH); when it was raised to 65 MPH, a much higher level of compliance and a much lower crash rate were achieved. That is contrary to what most believe which is that lower speed limits enhance safety. The problem with lower speed limits is that they often create a level of frustration that creates a less safe environment for those travelling the road. It's really unlikely that common speeds can be achieved, due to the fact that most trucks have speed limiters. Companies that have installed speed limiters have calculated – based upon the load, the length of the truck, the number of axles, etc. – what the most efficient speed is for their trucks. In addition, some drivers will choose to drive a speed lower than the maximum speed allowed. Plus we have the free-will of all drivers who drive a speed that they wish to drive. Common speeds for all vehicles is a challenge. If the gap can be closed between different speeds, a higher level of safety will be achieved. **Chairman Hammond** indicated that he had received a number of letters and testimony about S1229. Most were in favor, but there was also compelling testimony opposing this bill. He referred to the article each Committee member has in their packet from today's Idaho Statesman on speed limits. The conversation on removing the differential on speed limits is a correct one to consider. The issue is not essential for Idaho, but it should be considered. Data is available on each side of this issue. The Chairman stood for questions.

QUESTIONS:

Senator Werk asked what exactly the bill does with regard to an urban and a non-urban area. **Chairman Hammond** said the bill erases and eliminates any differential between cars and trucks; there is only a differential on four-lane highways. **Senator Werk** asked if increasing speed limits on heavier trucks would increase road damage. **Chairman Hammond** suggested that was a question for the Idaho Transportation Department (ITD). **Senator Werk** understood that the Michigan State Police said the speed limit should be set based on the comfort level of drivers. **Chairman Hammond** said there are two different issues: (1) higher speeds don't necessarily result in a lower level of safety and often result in a higher level of safety due to that 85th percentile rule; and (2) the Chairman has specifically asked the Michigan State Police about differential speed limits in some States and the response was that Michigan was not there yet, but they are trying to change that. Michigan is moving toward equalizing their speed limits.

Senator Keough asked if this bill would result in a change in practice because of conservation and technology improvements in vehicles, and/or company policies in place on fleet speed limits. **Chairman Hammond** said that was true to some degree. There are still many trucks on the road driving faster than the posted speed limit; they would likely get a higher level of compliance if there wasn't a differential in speeds. There were no further questions for the Chairman.

TESTIMONY:

Ms. Deborah Johnson, General Manager of Scott Fulcher Trucking in Caldwell; she is originally from Michigan. Ms. Johnson agrees with **Chairman Hammond** that there is a real danger in dual speeds on the freeway; their trucks have been rear-ended many times. But, trucks go slower because they are engineered that way. There will always be a gap between the speed at which cars and trucks are capable of achieving. Ms. Johnson made reference to a recent tragic accident where a car did not realize a truck was slowing down on a steep grade and the driver of the car ran into the back of the truck and was killed. Education could be a solution. Another factor is economics. A third of Ms. Johnson's budget goes to fuel; managing fuel is critical when running on a narrow profit margin. From a safety perspective, under-inflated tires are dangerous at higher speeds. She does not feel changing speed limits is safe. There were no questions for Ms. Johnson.

Mr. Scott Robertson lives in Meridian and is at the hearing as a concerned citizen. There are a number of trucks that have limiters that will keep them from travelling faster. If the speed limit is increased, more trucks will be in the left lane passing other trucks; he cited Wyoming and Utah as examples. Air quality will be affected because at faster speeds, there are more particulates released into the air. This raises health concerns. He believes there is also a safety issue. Mr. Robertson stood for questions. **Senator Werk** asked about weaving in traffic. If there are trucks on the road going 75 MPH and other trucks with limiters going 68 MPH, he believes there will be trucks at different speeds in all lanes of traffic, weaving in and out. Mr. Robertson said that has been his observation on his many road trips outside of Idaho.

Mr. Russell Buschert, a concerned citizen, presented the Committee with a handout. At 65 MPH, a truck with no aerodynamic treatment requires 264 horsepower. For every 35 horsepower, 1.5 gallons more fuel is needed per hour. This is why trucking companies are setting their speed at 62 MPH. For independent truck drivers, the higher the speed, the more fuel will be used. There is no conclusive study on safety and speed. Double the speed, and the stopping distance for a truck is quadrupled. There were no questions for Mr. Buschert.

Mr. Stuart Davis, representing the Idaho Association of Highway Districts, spoke to a personal experience he had recently when returning from Twin Falls. He and his wife were behind two trucks going up a steep grade; one truck was weaving as it tried to pass. A truck cannot pass another truck if they're both travelling at 65 MPH. We need to give trucks the ability to pass another truck and not break the law by having to speed to do it. That is why he is supporting this bill. His Board supports changing the speed limit for trucks, because it will help with safety. Forty-two States in the United States do not have a bifurcated system. Mr. Davis is not aware of any data that conclusively shows, one way or the other, that it is safer. It is not speed that kills, it is deceleration. With trucks, the axle-rate pounds-per-square-inch spread over a number of axles, is 36,500 pounds per axle. When you increase the speed, you're increasing the axle rate of those trucks. At least we are not mandating that you have to drive 75 MPH or at any speed. Mr. Davis was one of the writers of the original change-in-speed-limits bill, but cannot remember why the differential was inserted. Mr. Davis stood for questions. **Senator Werk** asked if Mr. Davis was representing the Idaho Association of Highway Districts or himself. Mr. Davis said he was representing the Association. They voted in January to support this issue before there was a bill.

Senator Keough asked if there were others wishing to testify. **Senator Werk** asked if questions could be directed to ITD. Mr. Greg Laragan, Assistant Chief Engineer—Operations at ITD, took the podium. **Senator Werk** asked for more information about the Idaho study done some time ago about the differential speed limits between trucks and cars. Mr. Laragan said he was not aware of that study. However, between 1996 and 1998 the truck speed and the vehicle speed was 75 MPH on the rural interstates. Before that it was 65 MPH for both, and before that, under the National Maximum Speed Limit, it was 55 MPH. In 1998, it was changed to 65 MPH for trucks. **Senator Werk** asked why that occurred in 1998. Mr. Laragan did not know the answer to that question. **Senator Werk** asked if higher speed limits did more damage to roadways. Mr. Laragan was not prepared to answer that specific question, but previously the Senator had put it in the context of 129,000 pound loads. That weight is not allowed on the interstates, they are restricted to 80,000 pound loads. **Senator Werk** asked who sets the speed limits on the roadways. Mr. Laragan said the Idaho Transportation Board has the authority to set speed limits on the State highway system within the statutory maximum limits that are set in Idaho Code. Mr. Laragan explained the specific speeds within Idaho Code.

Senator Corder thought there may have been a study done right after that change to observe and determine what the effect of the change was. He recalls that the findings were inconclusive. Mr. Laragan confirmed that a study was done at the University of Idaho before the differential speed was put into place. He did not recall there was anything in the study about wear on paved roadways; it was focused on changes in speed limits. He has copies of that study available for distribution if requested. **Senator Corder** recalled that as well. There were no further questions.

**CLOSING
REMARKS:**

Chairman Hammond offered brief closing remarks. He wanted to remind those members most familiar with the Treasure Valley, that there is another interstate in Idaho. The speed limit, except for a short section, is 70 MPH or 65 MPH on Interstate 90 in North Idaho. S1229 was brought forward to try to enhance safety. The Chairman will accept the recommendations of the Committee whichever way it decides, but he thought it was important to hear a discussion on the issue.

MOTION:

Senator Bair moved to send S1229 to the floor with a do-pass recommendation. **Senator Corder** seconded the motion.

DISCUSSION:

Senator Werk stated that he appreciates the testimony and the bill, but is undecided at this point. **Senator Winder** stated that this issue has faced the Legislature and the Idaho Transportation Board for many years since the federal government lifted speed restrictions. He has received information that falls into two categories: (1) the independent trucking community; and (2) the larger trucking entities and the general public that are travelling Idaho's roadways. If the largest fleets will still maintain slower speed limits, nothing will be accomplished by passing this legislation. The general public travelling in smaller vehicles are uncomfortable with faster speeds. There are unspoken rules of speed limits, there is the posted speed and there is the speed at which law enforcement will allow you to drive without giving out tickets. There may be a few people who benefit from this change, but the vast majority would not benefit. **Senator Winder** concluded by stating he would not support the motion.

SUBSTITUTE MOTION:

Senator McGee offered a substitute motion that S1229 be held in Committee. **Senator Winder** seconded the motion. **Senator McGee** added that this is his eighth year on the Committee and this issue has come up before. The Senator has seen lots of evidence and expert testimony presented and sometimes its conflicting testimony. There is no clear conclusion that can be drawn. It is important policy, but there needs to be more of a consensus that its the right thing to do from a safety perspective.

DISCUSSION:

Senator Corder spoke in opposition to the substitute motion. The Senator was very impressed by the Michigan State Police and it has forced him to change some of his predisposed notions. It was clear that people will drive at the speeds they are comfortable with, regardless. Adjusting speeds do not guarantee you will achieve the impact you're hoping to gain. He would like to lower the speed of cars down to trucks; it is the most logical, but it will never be done because it's not practical. The next best thing is to let people do what they will do; they will drive comfortably. In this case, trucking businesses in this State will run at what works best for their business. **Senator Corder** is convinced it doesn't hurt anyone to change the speed limit. There will always be a few that will take advantage at first. It is self-regulating. There was no further discussion.

VOTE ON SUBSTITUTE MOTION:

Senator Keough asked the secretary to take a roll call vote on the substitute motion. The substitute motion to hold S1229 in Committee passed by a 5 to 4 vote. The ayes were: **Senator Keough, Senator McGee, Senator Winder, Senator Werk,** and **Senator Bilyeu;** the nays were: **Chairman Hammond, Vice Chairman Brackett, Senator Corder,** and **Senator Bair.**

ADJOURNMENT:

Senator Keough turned the gavel back to **Chairman Hammond.** The Chairman thanked **Senator Keough** for her handling of the Committee's business today. With no further business before the Committee, the Chairman adjourned the meeting at 2:36 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AMENDED AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Thursday, February 09, 2012

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Appointment of Jerry Whitehead of Boise to Chair the Idaho Transportation Board commencing on February 1, 2012, and serving at the pleasure of the Governor.	Mr. Jerry Whithead, President of Western Trailers Company
GUBERNATORIAL APPOINTMENT	Appointment of Dwight Horsch of Pocatello to the Idaho Transportation Board commencing on June 1, 2011, and expiring January 31, 2017.	The Honorable Dwight Horsch, Pocatello
<u>S1231</u>	Amending legislation providing a one-year waiver for a vehicle not passing emissions inspection.	Senator McKenzie
<u>H367</u>	Five-year codification of the Governor's continuing Executive Order designating ITD as the recipient of Federal Transit Administration program funds.	John Krause, Transit Program Manager, ITD
<u>RS21119</u>	Legislation to merge the Public Transportation Advisory Council and the Interagency Working Group for Public Transportation Systems into one organization.	Senator Keough
<u>RS21130</u>	Legislation defining the term "texting" and providing an infraction penalty of \$100 for violators.	Michael Kane, AAA & PCI
<u>RS21153</u>	Amending legislation to provide that specified operating fees shall not apply to certain types of equipment.	Senator Corder
<u>RS21193</u>	Amends the Idaho Hazardous Waste Act to provide that 5% of fees be remitted to local highway districts for specified services.	Senator Brackett
DISCUSSION	Senate Transportation Committee has an opportunity to report to JFAC on February 16.	Senator Hammond

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

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MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, February 09, 2012

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, 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.

CONVENE: **Chairman Hammond** called the meeting to order at 1:30 p.m. and asked the secretary to take a silent roll. The Chairman said the Committee would begin by hearing two gubernatorial appointments to the Idaho Transportation Board (ITB), but the votes on the appointments would occur at the next meeting of the Committee. The Chairman welcomed Jerry Whitehead to the Committee.

GUBERNATORIAL APPOINTMENT: Jerry Whitehead is the President of Western Trailers Company in Boise. He introduced himself as a fifth-generation Idahoan who has spent the last forty years in the manufacturing business; he manufactures semi-trailers. The Associated Press calls him a 'trucking advocate.' He has served on the ITB for three years; before that he served on the Motor Carrier Advisory Committee and various other organizations associated with the trucking industry. He concluded by stating that this was a short version of a long story and he would be happy to answer any questions.

QUESTIONS: **Senator Keough** asked Mr. Whitehead what he saw as his role as Chairman of the ITB. Mr. Whitehead stated that his role is to look after the needs of the whole State. The Chairman of the ITB works at the pleasure of the Governor, so he wants to please the Governor. He believes his real responsibility is to look after the needs of the State of Idaho as far as transportation is concerned. He will attempt to guide and correct the Board and the Department as best he can.

Senator Winder offered his congratulations and welcomed working with him.

Senator Corder congratulated Chairman Whitehead.

Senator Keough stated that we have a long history of unfair taxation for trucks. We've been actively involved in the formulation of and negotiation of what we have today, which, to a certain degree, is inequitable. She was curious as to what role the new Chairman thought he might play in trying to bring the negotiating members back to the table to talk about and ensure our system is fair and balanced, and that each truck pays their fair share of the costs. Mr. Whitehead said this has always been a real problem with him because half of trucking businesses are resource based and less than half are the over-the-road businesses. He believes they need to be brought together and looked at. He would like to play a role in accomplishing that, but he is unsure what that role would be. He would look after the interests of the industry, and also the interests of the Idaho Transportation Department (ITD). It's no secret that ITD is underfunded. He thinks the steps taken by the Board have turned ITD into a

more responsive, leaner Department. Trucking is part of that, but he would work to the best of his ability to make it fair.

With that in mind, **Senator Winder** asked that the new Chairman look into and bring back a report at some point on the Ton Mile Taxation case because it was not part of the court case that found for the trucking agency. He believes it needs to be looked at. Mr. Whitehead said he would with one condition, that a new name be found for it. It has been named the Ton Mile Taxation for a long time; he believes a new name would make it easier for everyone.

Chairman Hammond said that he recently spoke to the Caldwell transportation committee and even they talked about this specific issue. The challenge of tracking is easier with new technology than it used to be, and the members of that committee felt a need for a more fair way to pay their fair share.

Senator Corder suggested that it simply be renamed 'the fair tax.'

Senator Bilyeu asked the new Chairman if he would share what he is hearing and seeing about additional federal transportation dollars; and would they be available for bridges and infrastructure. Mr. Whitehead stated that at this point, there is no answer yet on funding. No one really knows what Washington, DC will do. He hopes they will let the Department pick the projects rather than the folks in Washington, DC.

Chairman Hammond added that he had attended a conference in Washington, DC that addressed this particular issue. Frankly, Congress is all over the board on this and it is very hard to track down where they want to go. There seems to be no central mission for the national transportation system.

Senator Bilyeu asked about the conditions of our bridges and wanted to know if that would be something Mr. Whitehead would be specifically looking at. Mr. Whitehead said that ITD has identified items to be addressed of which some are bridges. They will be repaired and replaced as best they can. He thinks ITD should stick to their list on bridges because that list was developed on science and needs and not on wants.

With no further questions, **Chairman Hammond** thanked Mr. Whitehead for his willingness to assume the position of Chairman of the ITB. Mr. Whitehead asked if he could introduce Dwight Horsch.

GUBERNATORIAL APPOINTMENT: Mr. Whitehead began his introduction of Dwight Horsch of Pocatello by stating that he understands how difficult it is to get people to do this job. Mr. Whitehead was concerned about replacements for Board members who are retiring after many years of service. Mr. Horsch is definitely one of the better people to take on this task. He brings an extensive knowledge of agriculture and his knowledge of his district.

Chairman Hammond thanked Mr. Whitehead and asked Mr. Horsch to take the podium. Mr. Horsch thanked Mr. Whitehead for introducing him to the Committee; he then introduced his wife Kathy who was accompanying him. He and his family are farmers in Aberdeen where his father homesteaded over 100 years ago. After graduating from Kansas State University and serving in the Airforce and Air National Guard during the Viet Nam War, he returned home to help his family with harvest. That was forty-one years ago and he still lives in Idaho. While he served in the legislature, he did not serve on either the House or the Senate transportation committees. In 1983, he had an opportunity to work with Representative John Sessions who was the Chairman of the House Transportation Committee on the Ton Mile Tax. They had gone through the entire Idaho Code dealing with truck weights before getting it passed. It was amended three times that session; two of which he voted for. It is now unrecognizable; it's

fluid, it moves. Even though the faces of the legislature change, the work done here stands. This is the way he approaches the appointment to the ITB. It's not about him personally; the work the Board does collectively is important. It is an honor to have the Governor and Lieutenant Governor even consider nominating him to this Board. He doesn't know if it's a pleasure, but it is definitely an honor. With that, he stood for questions.

QUESTIONS:

Having gone through Mr. Horsch's resume, **Senator Werk** truly appreciates all the years of service and sacrifice Mr. Horsch has given, even after serving in the legislature. Mr. Horsch thanked the Senator.

Chairman Hammond commented that Mr. Horsch will bring a lot of institutional memory, knowledge, and wisdom, and thanked Mr. Horsch. The Chairman reminded the Committee that a vote on these appointments would be made at the Committee's next meeting.

S1231:

Chairman Hammond welcomed **Senator McKenzie** to the Committee. **Senator McKenzie** thanked the Chairman and presented S1231.

This bill addresses changes to the vehicle emissions testing program. The Senator spoke with DEQ with respect to this change and an amendment. He will be recommending S1231 be sent to the amending order. It applies to only Ada and Canyon counties at this time. Since the program was passed in 2008 it has created a hardship by owners of older vehicles. They get their vehicle tested and it fails; then they have to go through the repair process. He explained how this has happened to him personally with the vehicle he drives to work that has 230,000 miles on it. He replaced the catalytic converter that cost \$500, and it still didn't pass. He got a waiver for one year. Next year he will have to make the repairs again. Under current rule, there are two ways to deal with the situation: (1) there is a financial hardship; and (2) there is a cap on the amount you have to pay to get the repair done. Under the rule it was \$200. This puts that rule into Code.

The change **Senator McKenzie** would propose in the amending order is that the required five-year program review that goes to the Director of the Department of Environmental Quality (DEQ) who makes a determination whether to continue the program, modify it, or terminate it, would be to have that review brought to the legislature. The legislature would make that determination about the program's future. He discussed this with the Director of DEQ. This proposal is sponsored by the Canyon County legislators in the House and in the Senate. Canyon County was hit particularly hard by the recession, people drive older cars there, and 20% of the county is below the poverty line. This is a big issue there. He requested that S1231 be sent to the amending order. The Senator stood for questions.

QUESTIONS:

Senator Werk stated that fundamentally, the vehicle emissions program is meant to take vehicles off the road that can't pass inspection. The reason we're doing it is because we have an air quality issue. He asked to be walked, step-by-step, through the language as to who gets a waiver, and how long they get a waiver, and how many years someone can be 'waivered' under this provision. **Senator McKenzie** said it was a year waiver based upon making the repairs of at least \$200. It is very confusing. DEQ has been working through applying the rule and working with people who fit into a hardship with repair costs and are having a hard time getting an exemption. This change would mean that if you spent at least \$200 to repair the problem and failed, the vehicle owner would get a one-year waiver. Eventually, this problem fixes itself as older cars get off the roads. **Senator Werk** doesn't understand why we need to take something that is currently a rule and put it into statute. What is the advantage of having it as a statute? **Senator McKenzie** said that the legislature sets the policy. We review rules, but we don't modify them. Our authority over rules, as the State Supreme

Court said, is we can either accept them or reject them, we cannot change them. **Senator McKenzie** believes this is more of a policy issue. As the State imposes 'clean air,' the cost is imposed on specific citizens. Basically we're telling them that if they're going to drive an older car, they're required to have it repaired if they want to keep it on the roadways. **Senator Werk** asked if the language in this bill is similar to the language in the rule. **Senator McKenzie** said there is a slight change in the language.

Chairman Hammond wanted to make sure he understood the intent that low-income folks who drive older vehicles that do not pass inspection must make a good-faith effort to eliminate the problem, but you recognize that its an older car, of lesser value, and you can't expect them to spend \$2,000 to make the necessary repairs. So, this is a good-faith effort to remedy the situation. He asked if he had characterized it correctly. **Senator McKenzie** said that is correct. In some places there is a dollar cap for repairs for older cars. With no further questions, the Chairman asked for a motion.

MOTION: **Senator McGee** moved that S1231 be sent to the amending order. The motion was seconded by **Senator Keough**. **Senator Werk** stated that the language indicates there could be waiver, after waiver, after waiver. He believes it is very confusing. With no further discussion, the Chairman called for a vote. The motion passed by a unanimous voice vote. **Senator McKenzie** will carry S1231 on the Senate floor.

H367: **Chairman Hammond** invited John Krause, Transit Program Manager at the Idaho Department of Transportation (ITD), to the podium to present H367.

Mr. Krause introduced himself and told the Committee that every five years ITD renews a continual Executive Order (EO) with the Office of the Governor designating ITD, and its Director, as the recipient of Federal Transit Administration program funds. He pointed out that they should have a copy of the last EO in their materials for review. A finding identified through ITD's Zero-Based Budgeting (ZBB) process recommended that this long-standing designation be codified rather than mandated through continual EOs. This change will eliminate the time intensive process of producing a new EO every five years as well as providing consistent authority strengthening program compliance. Federal Transit Administration funding associated with this designation totals approximately 75% of the total funding regularly allocated to Idaho each year. Codifying this does not change any internal processes or authority, but it simply makes this designation to ITD permanent. The Committee had no questions for Mr. Krause.

MOTION: **Senator Keough** moved that H367 be sent to the Senate floor with a do-pass recommendation. **Senator Werk** seconded the motion. With no discussion, the motioned passed with a unanimous voice vote. **Senator Keough** will carry H367 on the Senate floor.

RS21119: The Chairman asked **Senator Keough** to present her RS.

The Senator began by introducing Heather Wheeler, Director of the Community Transportation Association of Idaho (CTAI), who is one of the lead co-sponsors of this legislation. This RS replaces an existing section of Idaho Code that currently houses the Interagency Working Group and merges it with the Transportation Advisory Council into a new agency called the Idaho Mobility Council. Those two councils have already been working as the Idaho Mobility Council for about one year. It also outlines the responsibilities and adds new organizations who have not participated in the past. The purpose is to make sure that all the State agencies in Idaho that have a hand in public transportation are getting together and talking about how to leverage the resources that they have to better serve Idaho, and to use those dollars and resources effectively. This is just one more step in trying to accomplish that goal. There were no questions for Senator Keough.

MOTION: **Senator Bair** moved that RS21119 be sent to print. **Vice Chairman Brackett** seconded the motion. With no discussion, the motion passed by a unanimous voice vote.

RECOGNITION: **Chairman Hammond** recognized and welcomed former Senator and President Pro Tem Bob Geddes to the Committee. He thanked him for joining us today.

RS21130: **Chairman Hammond** called Michael Kane, representing AAA and Property Casualty Insurers Association of America (PCIA), to the podium to present this RS.

This is texting legislation. He assured the Committee it is not designed to conflict with the current texting bill, S1274. His clients intend to support that bill and provide testimony. This RS deals with a different form of texting; texting while engaged in a moving violation – such as speeding or going through a stop sign or signal. If texting is dangerous, texting while speeding is even more dangerous. This proposal would enhance moving violations while texting. It is very similar to S1274, but what is missing is the law enforcement exemption. It would enhance the penalty for violators to \$100; it is currently at \$33.50. If there is a hearing, more information will be provided about why they believe it is appropriate. The definitions in the legislation have been reviewed quite heavily for more than a year, and it is backed by law enforcement, the cellular phone association, and the automobile association. Mr. Kane stood for questions.

QUESTIONS: **Senator Werk** asked if this would be a secondary violation because a driver is doing something else and it adds an additional fine. Are they complimentary or do they run over each other? Mr. Kane said they do not run over each other. If someone is pulled over for speeding, they can also be cited for no insurance. This says if you are texting while speeding then the penalty is higher; it is not double jeopardy. **Senator Werk** continued that if a person was pulled over for texting while driving, if the other bill passed, and there is an infraction with that and they happen to be speeding, would they get cited for texting, or driving, or speeding. Mr. Kane said that drivers can be cited for speeding now. If the texting bill passes, they can be cited for texting and speeding. In his bill, you can be charged for speeding at a higher penalty. Theoretically you could be cited for both. There were no further questions.

MOTION: **Senator McGee** moved that RS21130 be sent to print. **Senator Werk** seconded the motion. With no further discussion, the motion passed by a voice vote with two dissenting votes.

RS21153: The Chairman asked **Senator Corder** to present his RS.

Senator Corder said this RS is brought to the Committee by John Deere Company. It addresses which vehicles are registered vehicles and which are not. Right now, farm equipment is not a registered vehicle and enjoys an exemption from that. But some construction equipment, forestry equipment, and lawn and ground equipment are still registered. This bill will allow us to have that discussion about what is the appropriate policy. **Senator Corder** stood for questions.

QUESTIONS:

Senator Keough noted for the record that she may have a conflict on this legislation.

Senator Werk noted that the other equipment is right now caught in a registration web and are paying some kind of fee, and if they're removed there will be some kind of fiscal impact. **Senator Corder** said he suspects that is correct, but he is not sure. He said he would get that answered when it comes back for a hearing. **Senator Werk** said the information would be helpful, since the Statement of Purpose states there will be no impact on the general fund. **Senator Corder** said registration fees wouldn't impact the general fund. **Senator Werk** said it would still be helpful to have the information. There were no further questions.

MOTION:

Senator McGee moved that RS21153 be sent to print. **Senator Bilyeu** seconded the motion. With no further discussion, the motion passed by a unanimous voice vote.

RS21193C1:

The Chairman asked **Vice Chairman Brackett** to present his RS.

Vice Chairman Brackett stated that the Idaho Hazardous Waste Act requires that commercial hazardous waste be charged a fee for disposal. Fees of 5% are remitted to the County where the facility is located for the emergency response programs. Currently, approximately \$2.4 million are generated with 95% going to the State Treasurer. The only commercial hazardous waste facility in Idaho is the U.S. Ecology facility located in Owyhee County. RS21193C1 amends the Idaho Hazardous Waste Act by providing an additional 5% of the fees to the local highway district and 5% to ITD's highway fund for construction and repair of the roads impacted by the trucks carrying the waste to and from the facility. The Vice Chairman cited a road map supplied in the Committee's information packets. The access road is located in Elmore County, which currently receives no funding for maintenance of Simco Road. The roads are currently in need of repairs. Without those repairs, the route will have to go through Mountain Home, making access longer, adding to transportation costs, and creating a public safety issue with the trucks travelling through the city. The Vice Chairman explained the fiscal impact and reduction in general funds being reallocated and stood for questions.

QUESTIONS:

Senator Werk asked if the road being discussed goes into ITD's regular process to determine if repair and maintenance is required on the road. Vice Chairman Brackett stated that Simco Road is not part of the State highway system.

Senator Bilyeu asked for clarification on whether the fees currently go to the County. **Vice Chairman Brackett** said that 5% of the fees collected go to Owyhee County, where the facility is located. This would amend the Act so additional funds would go to the local highway district and ITD. **Senator Bilyeu** asked if he is not concerned about the original 5% going to the County and if the County was taking care of the roads. **Vice Chairman Brackett** said the funds are not adequately maintaining the roads. **Chairman Hammond** suggested that Elmore County receives relatively no funds for the maintenance. **Vice Chairman Brackett** agreed and stated that Elmore County is short of funds.

Senator Corder asked if some of these funds would now be going to Elmore County that currently doesn't get any of the original 5% of the fees paid. Elmore County built Simco Road under an agreement with U.S. Ecology and J.R. Simplot Co. and have never been reimbursed nor received any monies to maintain that road which is the primary road U.S. Ecology uses. These new funds would be designated to the local highway district to maintain that road. **Vice Chairman Brackett** thanked Senator Corder for providing the additional information and clarification.

MOTION: **Senator McGee** moved that RS21193C1 be sent to print. **Senator Corder** seconded the motion, and disclosed as possible conflicts that this road was built while he was Chairman for the local highway district and that his daughter works for U.S. Ecology. With no further discussion, the motion passed by a unanimous voice vote.

DISCUSSION: **Chairman Hammond** told the Committee he had been invited to report on the activities of the Senate Transportation Committee to the Joint Finance and Appropriations Committee. He asked for input from the Committee. There was no input offered.

ADJOURNMENT: With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:26 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Tuesday, February 14, 2012

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Appointment of Jerry Whitehead of Boise to Chair the Idaho Transportation Board commencing on February 1, 2012, and serving at the pleasure of the Governor.	MOTION
GUBERNATORIAL APPOINTMENT	Appointment of Dwight Horsch of Pocatello to the Idaho Transportation Board commencing on June 1, 2011, and expiring January 31, 2017.	MOTION
MINUTES	Tuesday, January 24, 2012	Senator Brackett and Senator McGee
<u>S1274</u>	Adds a new section to Idaho Code that provides infraction penalties for texting while driving, with exceptions.	Senator Hammond
COMMITTEE DISCUSSION: S1229	Legislation amends Section 49-654(3), Idaho Code, causing speed limits for multi-axle vehicles to be the same as for all other vehicles. NOTE: A motion to hold S1229 in Committee passed by a 5 to 4 vote on February 2, 2012.	Senator Winder

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond
 Vice Chairman Brackett
 Sen Keough
 Sen McGee
 Sen Corder

Sen Winder
 Sen Bair
 Sen Werk
 Sen Bilyeu

COMMITTEE SECRETARY

Gaye Bennett
 Room: WW33
 Phone: (208) 332-1332
 email: gbennett@senate.idaho.gov

MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Tuesday, February 14, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, 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.
- CONVENE:** **Chairman Hammond** convened the meeting at 1:35 p.m. and asked the secretary to take a silent roll. With a quorum present, he welcomed all guests to the Committee. First on the agenda was to take up the gubernatorial appointments that were heard at the last Committee meeting. They were for Jerry Whitehead of Boise to Chair the Idaho Transportation Board, commencing February 1, 2012 and serving at the pleasure of the Governor; and for Dwight Horsch of Pocatello to become a member of the Idaho Transportation Board, commencing June 1, 2011 and expiring January 31, 2017.
- GUBERNATORIAL APPOINTMENTS:** **Senator Keough** moved to send the gubernatorial appointment of Jerry Whitehead as Chairman of the Idaho Transportation Board to the floor with the recommendation that he be confirmed by the Senate. The motion was seconded by **Vice Chairman Brackett**. The Committee unanimously approved the appointment by a voice vote. **Chairman Hammond** asked **Senator Corder** to sponsor the appointment on the Senate floor.
- Senator Bilyeu** moved to send the gubernatorial appointment of Dwight Horsch to the Idaho Transportation Board to the floor with the recommendation that he be confirmed by the Senate. The motion was seconded by **Senator Winder**. The Committee unanimously approved the appointment by a voice vote. **Chairman Hammond** asked **Senator Bilyeu** to sponsor the appointment on the Senate floor.
- MINUTES:** **Vice Chairman Brackett** moved to approve the minutes of Tuesday, January 24, 2012, as presented. The motion was seconded by **Senator Keough**. The Committee approved the minutes by a unanimous voice vote.
- S1274:** **Chairman Hammond** turned the gavel over to **Vice Chairman Brackett** in order to present his legislation. **Vice Chairman Brackett** thanked the Chairman and asked him to present S1274.

INTRODUCTION: **Chairman Hammond** noted several people present wishing to testify. He would deliver brief opening remarks and would finish after others have testified. He acknowledged several attempts to pass a texting bill in the Idaho Legislature in the past. S1274 is very simple and straightforward. All it does is simply define what texting is. Texting is engaging in review of or manual preparation and transmission of written communications via handheld wireless devices. Texting becomes an infraction and a violator can be cited. **Chairman Hammond** stated he has data which will be shared during his closing comments. S1274 is necessary to call out this specific activity as inappropriate and unlawful. The Chairman said he was willing to take questions now or after others have an opportunity to testify.

Vice Chairman Brackett asked for questions from the Committee.

QUESTIONS: **Senator Keough** asked about the language regarding law enforcement, fire or emergency medical vehicles that would be exempt while engaging in the course and scope of their duties, she wondered if it's defined and how or who would make the determination if they were texting while they were driving, and whether or not it was within the course and scope of their duties. **Chairman Hammond** was of the opinion that the person making the decision as to whether texting had been used appropriately would be the supervisor.

Vice Chairman Brackett thanked the Chairman and opened the meeting to public testimony. Given the long list of people wishing to testify, the Vice Chairman asked those testifying to keep their comments concise. **Vice Chairman Brackett** welcomed **Senator Lodge** to the Committee.

TESTIMONY: **Senator Lodge** thanked the Vice Chairman and the members of the Committee. New technological advances are just a part of how our children grow up – using cell phones when they're really young and finding apps to play games. At 18 months, her granddaughter knew how to use her father's cell phone, and at 24 months she ordered a Strawberry Shortcake video from Netflix. Our youth do not fear technology; but with that exuberance, they do not understand the dangers of using social media while driving a motor vehicle. **Senator Lodge** said she visited with our high school Senate Pages after each one of the texting bills that came before us in the past. Each commented they would continue texting while driving because they knew they could do it, and they could not see the dangers of it. They are invincible at that age. Since that time, more and more families have been impacted by texting while driving. We must write laws specifically to address the problems that we have. Texting is a problem we must address before we lose any more promising young citizens who do not realize the tremendous dangers to themselves and to others. **Senator Lodge** introduced her neighbors, Clay and Shawna Sauer and their children Hudson, Emerson, Josh, and Whitney (Ethan was not available this day). About three weeks ago, they lost their beautiful daughter and sister to texting while driving. Their daughter was fatally injured on the freeway near Mountain Home. The Senator thanked this courageous family for appearing before the Committee; the Senator asked permission to allow them to address the Committee.

Shawna Sauer addressed the Committee. On January 14, 2012, her 18 year old daughter, Taylor, died in a tragic car accident on the West bound lanes of I-84 at mile post 108 near Hammett, Idaho. This accident was attributed to texting and being on a social media site, Facebook, while driving. Taylor slammed into the back of a tanker truck that was doing 15 miles per hour up the hill that evening. Taylor was using her phone on the freeway with very few cars and lots of open space – probably considered by many to be a somewhat safe place. That was not the case that evening. She was on her way home for the long weekend from Utah State University in Logan, Utah, where she attended college. Taylor was a very intelligent and caring young woman. She was salutatorian of her 2011 high school class, and was awarded a distinguished student award by KTVB. She was involved in many community activities and loved helping the Susan G. Komen Foundation.

The Sauer family strongly feels there needs to be a law that specifically states that texting and driving is illegal. It will get more teenagers' attention than the current coverage of the inattentive driving law. Teenagers need things spelled out. They honestly don't feel that texting is inattentive, since they feel they are so proficient at it. Thus they feel they are not being distracted; they are not breaking the law.

The Sauers have been contacted by families from several States sending their condolences; they too lost children due to texting and driving. They have visited with several teenagers since Taylor's death about this issue. They are looking at things very differently now, after losing one of their dearest friends to something that they have all engaged in. This tragedy has touched their lives and the lives of their loved ones. It has truly made them realize that you play with your own life and quite possibly the lives of others when you text and drive. But what about the kids that didn't know Taylor; or have never dealt with the loss of a loved one or a friend at the hands of texting and driving? By having a law in place that specifically adds texting and driving, we believe it will act as their reminder. We understand that many say a texting bill is too hard to enforce, but saving one life is worth passing the law. What if that one life was your daughter, or your granddaughter, or your best friend? The pain we have endured since Taylor's accident has been quite unbearable; we don't want any other families to have to go through this pain. If you do not act, the pain of losing a child due to this media addiction will only get worse. We cannot stop the advances of technology; kids will continue to live their lives in the realm of social media.

Even the older generation has joined the ranks of the youth in thinking they must be constantly connected, whether through texting, Facebook, or emailing. It is believed that getting that last email in while driving to work saves valuable time in their lives. We strongly feel there must be a bill that spells out both texting and social media, like Facebook, can be dangerous; reading posts without texting can be just as distracting. She wishes society could go back to simpler times, when we could rely on parents to sit down and talk to their kids about these important issues, but it just isn't that way anymore. Because of that, laws need to be in place to keep our children safe. Please consider this testimony when you look at this bill. Please remember the loss their family will endure for the rest of their lives. As a family, they are doing their part; they hope they can count on the members of the Committee to do theirs. With that, Mrs. Sauer stood for questions.

Chairman Hammond offered the Committee's condolences and commended the family's strength in sharing their tragedy. The Chairman noted the importance of Mrs. Sauer's plea to act before it happens to anybody else.

Brian Zimmerman of the Idaho State Police (ISP) said he was familiar with the Sauer Family case. The Idaho State Police supports S1274. It is clearly written, easy to understand, and easy for those on the road to enforce. In years past, inattentive driving was utilized, but there were times that technology made it more difficult to enforce. An officer has to clearly see poor driving for inattentive driving to be enforceable. S1274 provides an infraction, and texting only needs to be observed to be enforced. ISP can enforce this law.

QUESTIONS:

Senator Werk questioned the enforceability of S1274. Mr. Zimmerman stated that texting simply had to be witnessed. If reading or sending a text is seen happening, they can take action – pull over the driver and write the ticket. Unlike the inattentive driving code, where poor driving would need to be observed. Driving straight and texting would not be enforceable under the inattentive driving code.

Senator Keough asked about the exception in lines 22 and 23; she asked how an officer might know that a driver is using their hand to activate, deactivate, or initiate a feature or function. Mr. Zimmerman stated it would be difficult. He said that just last Saturday four people were witnessed texting on the interstate, all four manipulating the keyboard. This is seen as very easily enforceable under this Code in lines 21-24. **Senator Keough** agreed on the need to do something in this area; she worried that someone pulled over for texting, should this pass, and knew of the law could say they were not texting, they were turning off their phone, or deactivating Facebook, or turning their alarm clock on. What would be the response in that instance, which she believed fit the language in line 23. Mr. Zimmerman stated by observing their actions and not matching their argument. Generally, the majority of the people they run into on the road are honest. He believes excuses are rare.

Senator Corder stated the whole area is troublesome. The newest phone you can buy still takes three buttons to get to the simplest functions. The Senator does not see how will this be argued in court, a judge is going to decide whether the officer's accusation that the three buttons were texting, or the defendant's argument that the action was to turn their phone off. Mr. Zimmerman stated he wouldn't write the ticket if stated that way, there wouldn't be a case, wouldn't be in court. The questions are getting down to the lower end of speculation with those arguments; the benefits of the legislation outweigh the scenarios. If an officer is told at a traffic stop that they were just deactivating their phone and they were ready to put it away, the officer will believe that. Law enforcement doesn't jump at the chance to write a ticket. **Senator Corder** stated he appreciated that, but weekly reports show troopers write more tickets than Captains like Mr. Zimmerman. Captains have more experience and judgment. Troopers have a tendency to be overzealous, stopping more people. To have that discussion on the side of the road is virtually impossible. By passing this law is a judgment created? Or do we just have to pass a law and say don't text, is it that simple? Mr. Zimmerman stated, with all due respect, that does not work. **Senator Corder** replied, with all due respect to the Chairman, passing laws doesn't necessarily work either, or we wouldn't be writing any more speeding tickets.

TESTIMONY:

Janelle de Weerd is a senior at Meridian High School and serves on Meridian Mayor's Youth Advisory Council (MYAC). Both the Council and her high school stand in strong support of S1274. Meridian has a connection with this fatal behavior, and has been one of several cities to pass an ordinance on texting while driving. In 2010 Kassy's Law was enacted shortly after a local resident, Kassy Kerfoot lost her life due to texting while driving. Like S1274, Meridian's law made it an infraction to text while driving. Meridian has seen a great reduction in the behavior and has provided opportunities for law enforcement to educate drivers on the dangers of texting while driving. MYAC worked with the Meridian City Council to pass this law after failed legislation on the statewide level. Council representatives have gone to Washington, DC to attend a summit and held a State Legislative Breakfast with members. This is the first step to safer roads, consistency between the cities is the only way to see this being effective. Texting while driving affects drivers and everyone else on the road. It is unnecessary, and should be prevented in all possible ways. She wants Idaho to be the 43rd State to ban texting while driving. A Meridian Police Department (MPD) police officer, Sergeant Gonzales, provided statistics of what the MPD has run into since this ordinance was passed. In 2011, 53 citations written, for each one of those there were about 10 stops (ratio is one in ten stops receive a ticket). During those other stops it was an educational opportunity and has been very valuable as many people don't see the risks of texting while driving. Getting pulled over will scare a teenager enough to stop the practice of texting. No one wants to get pulled over for speeding or anything else that's illegal on the roads. People are generally honest when they get pulled over. A few rebellious types may choose to lie, but by far the majority are honest. The officers are looking at the length of time that one is looking down at their phone, that's how they judge if they're texting while driving. If it's for two or three seconds to enable or disable a function, they probably aren't going to get pulled over. Training will be involved, as has been the case in the City of Meridian.

QUESTIONS:

Senator Corder asked about the exception for law enforcement, fire, and emergency medical vehicles, and wanted to know if they are safer texting when they drive. Ms. de Weerd stated she believed they are trained in the skills, trained to have a laptop on their dashboard, and receive training on how to use and be a safe driver. They are not going to be typing while travelling down the street, but in an emergency situation it must be used.

TESTIMONY:

Dave Carlson, Government Affairs Director for AAA Idaho, spoke in support of 1274. This organization has been working for years to pass such a law in Idaho, and has been working on the issue nationally. There are 35 States that now have texting laws, and most have been passed in the past three years. This bill takes on a very specific distraction, probably more dangerous than all the other ones heard about. It robs attention from visual cues, taking eyes off the road; manual ability, taking hands off the wheel; and cognitive ability, the capacity to use your brain for the task of driving. The Office of Highway Safety provided numbers between 2008-2010 that show 192 people killed and more than 1,500 seriously injured in past three years. Texting represents 30% of fatalities related to distracted driving total and 36% of serious injury accidents. Most of those cases are similar to the Sauer's story; eight of ten texting collisions happen on straight sections of road. One in three crashes involve distracted drivers. Until now, crash data has been weak determining what happens in a crash. States are just starting to change accident reporting forms for check-off to identify electronic distraction or other type. New reporting forms will help because the numbers suggest that reports of texting may be underestimated. In 2011, there was a commissioned Idaho survey of 400 voters representing 41 counties: 87% of Idaho voters support legislative action to prohibit texting while driving, and 78% strongly recommend such action. The Idaho survey was

conducted by a nationally recognized polling service, Riley Research Associates of Portland, Oregon. Like others in the country this legislation will be revisited, and is compared to drinking and driving laws. Thirty years ago, half the fatalities on roads were related to drinking and driving. Since closed bottle legislation, license suspension, heftier fines, etc., that has dropped to 30% of fatalities are alcohol involved. Likewise, texting law enforcement to address texting problems has to start somewhere. This legislation doesn't solve the problems, but it does communicate that distracted driving issues are taken seriously. Mr. Carlson asked Mike Kane to respond to some of the legal questions.

Mike Kane represents AAA, the Idaho Sheriff's Association, and the Property Casualty Insurers Association, all of which support this bill. To address **Senator Keough's** question, using texting is within course and scope of duties; it is a legal term in insurance law and used in law enforcement all the time. It is included in Idaho Tort Claims Act, interpreted many times by court to include "doing things in furtherance of one's job." Examples are: going to an emergency scene, a burglary scene, trying to determine where a house is located. Driving to and from work is not within one's course of duties; it must be deliberately in furtherance of one's job. Most are comfortable with that language. With texting vs. activating/deactivating, things are done differently and the officers in the Sheriff's Association can distinguish between the two actions. Not every single case will get it right every single time, but that is why we have trials and the burden of proof is on the prosecution, beyond a reasonable doubt. His law enforcement clients stand with the Idaho State Police in support of this bill.

QUESTIONS:

Senator Corder suspects that at a minimum there will be more stops and we don't have enough officers right now. The Senator asked how do we resolve that situation, how do we track those stops, and will we be able to tell what happened later. Mr. Kane replied that we will be able to track infractions through the courts' computerized system, and keep track of infraction charges, including dismissals. In a year you will be able to tell how many cases there are. He agrees there will be more stops, but right now we're at ground zero. Nobody is being stopped solely for texting, unless they're doing something such as speeding or running a stop sign. The number is unknown. Every officer has the discretion to charge or not charge; they often give warnings. He doesn't think it will clog the system; an infraction won't necessarily go to court and fines can be paid by mail. **Senator Corder** asked if Mr. Kane was aware that commercial vehicles are already under a texting ban, and that he anticipates law enforcement taking a year to educate people. Mr. Kane said he couldn't speak for all 44 sheriffs, but some will take that approach, others may not, it will also be easier to see texting in a passenger vehicle rather than in commercial big rigs.

Senator Bair asked if being behind the wheel, stopped with the engine running, and texting (as in drunk driving citations), will the driver receive a citation. Mr. Kane described a special series of laws for Driving Under the Influence (DUI) called "physical control," even when the vehicle is not in motion. He believes it has to be a moving violation to make it work. **Senator Bair** asked if, in his opinion, texting on the side of the road while the vehicle is not moving would make the driver not guilty of an infraction. Mr. Kane said that in his opinion the Senator is correct; his clients will not be looking to ticket people for texting while their vehicle is not moving. **Senator Bair** asked for examples of what would be legal and illegal in texting to locate a house with regard to the course and scope issue. Mr. Kane responded that course and scope are fixed legal terms, meaning doing something in furtherance of their job. Driving a police vehicle and texting your wife is clearly not in furtherance of an officer's job; the officer would not be exempt under this law. Looking for an informant, giving you information on a crime in progress, to read and review while an officer is going to the scene would be in furtherance of their job. A test is whether it would assist fulfilling the duties

of a police officer or firemen, if the answer is no then they could be charged. **Senator Bair**, taking that example further, if an informant is giving information about a crime while the officer is speeding with sirens on, is texting appropriate? Mr. Kane said that officers will be trained. This bill allows them to text, it does not allow them to speed. A whole series of laws speaks to what officers can and can't do without violating various codes. In an emergency situation, with lights and sirens, you're already exempt from a lot of laws.

TESTIMONY:

Angela Richards of Allstate supports S1274. Technological changes require laws to be modernized. Texting while driving is a major concern. Half of the drivers between 16-24 years of age admit to texting while driving; it has been compared to drunk driving. There is a wide consensus as to the dangers; she asked the Committee to send S1274 to the floor with a do-pass recommendation.

Natasha Zumantz of American Bikers Aimed Towards Education (ABATE) and a student: is opposed to S1274. She has been riding motorcycles since she was two years old. She believes that texting while driving falls under inattentive driving laws. We cannot create legislation for every situation, and texting should continue to be considered inattentive driving. Americans need to retain their freedom.

Mariah Raynor of MYAC supports S1274. She supports the increased penalty and the simplicity of this bill. It covers a broad spectrum and incorporates many activities under the definition of 'texting,' including social media.

Eli Nary of MYAC supports S1274. He has testified on this issue before in Idaho and believes this is the year to pass this legislation. There are many ways to use this law: as a tool for education; as a deterrent; and, to save lives. We do not need to bury any more contemporaries, and he is sick and tired of bureaucracy. Fatalities do not stop others from acting poorly. Education has been a part of the process, but the law is part of that process. He stated that 85% of those who get pulled over don't lie to police officers.

Monica Hopkins of the American Civil Liberties Union (ACLU) opposes S1274. It is ineffective and opens the door to discretionary stops, invites rights violations, and creates unintended consequences. There is no evidence that banning texting works, and it may increase accidents. Studies have shown increased accident rates in States that have banned texting. Speculation on what accounts for that increase centers on higher distraction levels in order to conceal texting from view so it won't be exposed to law enforcement. Primary offense raises civil liberty concerns, creates discretion for officers, and threatens disproportionate or discriminatory enforcement. The ACLU opposes creation of laws that are ineffective or likely to be violated. Exceptions are problematic in that the behavior is either prohibitively dangerous or it isn't, and risks do not disappear if the driver is a law enforcement officer. They recognize the tragic, growing, and dangerous problem, but the first step is further education. Effective way to address the problem without unintended consequences is to create a secondary offense, or enhance the penalties of distracted driving. ACLU would support legislation to address the problem as a secondary offense, or an enhancement (such as S1311). She ended by urging a 'no' vote.

John Gonzales, a Sergeant with the Meridian Police Department, stated that the simplicity of this bill makes it easy to understand. In Meridian, officers using technology as they do their job are asked not to use it as they're driving. However, there are opportunities to look at information while they're responding. Our stance is: Officers are not to be texting as they're driving their vehicles. The ban in Meridian has been used as a tool for education. For every citation, about ten stops were made, and during those contacts, we determined whether it was appropriate to issue a citation.

QUESTIONS: **Senator Bair** asked if Meridian was teaching officers to not text while driving. Mr. Gonzales said that officers are trained specifically in the use of computers in the vehicle. We have a policy against using the computer while the vehicle is in motion. Based on the ban, looking at the screen could be a violation of the statute; the Meridian Police Department encourages the exemption of law enforcement in the statute.

TESTIMONY: Eric Pedersen personally opposes S1274. Based on liberty, he does not think there is legitimate authority to pass this law. Government is representative of the people, and no person has the right to tell another what they can and cannot handle, and what their limits should be. This could result in less accidents because of less texting; or it could result in more texting because they are trying to conceal it. S1274 will destroy our liberty.

Senator Bock thanked the Committee for allowing testimony. The Senator has been working on this issue for years. The longer we wait to pass this law, the more families like the Sauer family will suffer. The time is now. Over the years, each bill dealing with this issue has gotten better, so we've wound up with a simpler, better bill, and he urged the Committee to pass it.

Garret Nancolas, Mayor of Caldwell, spoke in support of S1274. He believes it would be easy to enforce. All issues with negative consequences should be dealt with from an educational and an intervention standpoint, but also from an enforcement standpoint to make sure that education is meaningful. Stronger penalties, like in crime, helps make the education meaningful.

Yolinda Garcia is with the Caldwell Mayor's Youth Advisory Council and spoke in favor of S1274. She is very aware of the dangers of texting while driving, and believes this bill will help.

Roy Eiguren, representing Verizon Wireless, spoke in support of S1274. He said it was some of the best crafted texting legislation in all the States and urged the Committee's support.

CLOSING REMARKS: With no further testimony, **Vice Chairman Brackett** turned the podium back to **Chairman Hammond** for his closing remarks.

Chairman Hammond said that researchers from the North Texas Health Science Center in Fort Worth found that texting behind the wheel accounted for 16,141 deaths between 2002 and 2007. About 6,000 deaths and half-a-million injuries are caused by distracted drivers every year. According to the U.S. Department of Education, had texting not been created, the number of distracted driving fatalities would have actually declined from 4,611 to 1,925 from 2001 to 2007. There are three main types of distractions for drivers who cause accidents: (1) manual – taking your hands off the wheel; (2) visual – taking your eyes off the road; and (3) cognitive – taking your mind off the road. Texting requires the use of hands, eyes, and mind all at the same time. That's three distractions under the category of distracted driving.

The average volume of text messages in 2002 was one million. By 2008 it was 110 million. While teenagers are texting, they spend about 10% of their time outside the driving lane they are supposed to be in; and according to one study, 73% of teens admit to texting while driving.

There has been concern about the law enforcement exemption. I think more has been made of that issue than will be reality. I think that the Sheriff's Association, police chiefs, as well as ISP, instruct their officers in the proper use of this technology. But there will be instances where it may be appropriate and necessary for these professionals to use texting for all of our safety. That is what this law is about, safety. There were concerns about more law enforcement stops as a result of this legislation. I would prefer to have more stops for education and citation, than more stops to secure an accident scene with injuries and fatalities. There was also a comment that while we pass this law, people are still going to do that which is against the law. We could say everybody needs to behave properly, but that doesn't work, and that is the reality of life. We have to specifically define what's appropriate and what isn't. In this case, it's not protecting just the lives of those texting, it's protecting the lives of all those around them as well. You've heard from the Idaho State Police and the Sheriff's Association that they support this legislation. I'm not one to pass new laws for the sake of a new law, but I think as my grandchildren grow up, I want them to be safe. And I think this is one time where it is needed and appropriate to pass a new law.

MOTION:

Senator McGee moved to send S1274 to the floor with a do-pass recommendation. The motion was seconded by **Senator Werk**.

DISCUSSION:

Senator McGee applauded **Chairman Hammond**, **Senator Lodge** and others for working on this legislation. He knew that Mr. Kane has spent a great deal of time over the last several years fine tuning this, and he agrees with some of the comments that this is even a better bill than before. **Senator Bock** has worked tirelessly, as have **Senator Werk** and others and he is optimistic this bill is the one. Two years ago a similar bill passed the Senate overwhelmingly, and was defeated on the House floor on a procedural vote. It's impossible to say whether or not that would have saved any lives, or whether it would have had an effect on the Sauer family. It's impossible to say, but when the Senate passed the bill two years ago and then it failed in the House, the Senate Pages, who are made up of high school seniors from across the State, came up to us and said, "So it's okay to text now?" They came to many of us, and said they can continue to text while driving. That's the message we send by not passing this legislation. One of the arguments we hear is that this is impossible to enforce. That's not what we heard today. ISP's Captain Zimmerman said this is easy to enforce. The police officials are telling us they can enforce it. **Senator McGee** is passionate about this issue, there are strong arguments, personal freedom arguments on the other side, and when we balance those with the safety of those on Idaho's roads, this is a clear cut decision in my opinion. He will vote for this bill. To the Sauer family, he said he prays to God he will never be in their seat, with what they've had to go through. If the Senate can help the situation by passing a bill that sends a message to Idaho's young people that says "texting is the wrong thing to do," then he is going to vote in favor of it.

Senator Werk added that many have talked about the educational component, and when dealing with teenagers and getting them to not text while driving, it's a lot easier to point to a law that says it's illegal to text while driving, just as it is for speeding. Kids will grow up with the law, it will become part of their culture. **Senator Werk** hopes the Committee can get this bill passed.

SUBSTITUTE MOTION:

Senator Bair offered a substitute motion to send S1274 to the Senate's amending order. The motion was seconded by **Senator Keough**. **Senator Bair** has opposed other texting bills because of concerns with ambiguity in language and enforceability. This bill addresses those issues. **Senator Werk** just spoke eloquently about kids behaving better when there is a law. It gives parents a stronger foundation when counseling children about texting and driving. **Senator Bair** supports S1274 and he will vote on the floor for it, but wants to strike language that gives exemption to emergency vehicles and police officers. He cannot see an instance where radio can't be used instead. They're no better drivers than we are, and he would like to strike that language.

DISCUSSION:

Chairman Hammond spoke against a substitute motion. As it has been stated, there is too much concern over this issue. He believes it has to be left to the professionals and their individual agencies, and does not believe we should substitute our judgment for theirs. They have training and experience and he feels they would use this wisely.

VOTE ON SUBSTITUTE MOTION:

With no further discussion, **Vice Chairman Brackett** called for a vote on the substitute motion to send S1274 to the amending order. The motion failed by a voice vote.

VOTE ON ORIGINAL MOTION:

Vice Chairman Brackett called for a vote on the original motion to send S1274 to the floor with a do-pass recommendation. The motion passed by a unanimous voice vote.

Vice Chairman Brackett returned the gavel to **Chairman Hammond**. Before they left the hearing, **Senator McGee** thanked the members of the Caldwell and Meridian Mayor's Youth Advisory Councils for their attendance and testimony. **Chairman Hammond** turned to the final agenda item, S1229, the speed differential bill that was voted on to hold in Committee at a previous Committee hearing.

S1229:

Senator Winder asked the Committee to request that the Idaho Transportation Department (ITD), the Commercial Motor Carriers Advisory Group, AAA, the trucking industry, and other pertinent parties work together over the next ten months to study issues dealing with speed differentials on Idaho roadways. ITD would be the lead agency in this effort. It would be a path to a compromise or ideas on how to improve safety while considering a speed limit for all vehicles.

DISCUSSION:

Senator Werk wanted to ensure we're not directing ITD to come back with a proposal. If the current situation is best, we need to be open to accepting that. **Senator Winder** said that was his intent. He wanted to hear the Committee's thoughts on sending such a letter. **Senator Keough** felt it would be fine if the letter is coming from the Chairman, but if it is coming from the Committee she wanted to know if there would be an opportunity to review the letter. **Chairman Hammond** didn't believe it would be appropriate coming from the Committee. It is his intention to work with **Senator Winder** to draft the letter and would let the Committee comment on the draft. **Senator Keough** thanked the Chairman. There are differences of opinion on S1229; the Committee does not want to send a mixed message. **Chairman Hammond** said the letter would ask these groups to get together to discuss the pros and cons on speed differentials and come back with their findings. Next year's Committee can take their results into consideration. **Senator McGee** proposed a path forward, taking direction from the Chairman.

MOTION:

Senator McGee requested unanimous consent for a letter to be drafted by the Chairman on behalf of the Committee that could be reviewed and sent to ITD as an official transmittal. Hearing no objection to the request, it was so ordered.

ADJOURNMENT: **Chairman Hammond** asked for further announcements from the Committee; hearing none, the meeting was adjourned at 3:05 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

Erin Bennett
Minutes Transcriber

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Thursday, February 16, 2012

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Thursday, January 26, 2012	Senator Keough and Senator Winder
PAGE PRESENTATION	Farewell to Transportation Committee Page, Ben DeMordaunt , a senior at Eagle High School. Friday, February 17 marks the end of the term for this Legislative Session's first group of Senate Pages.	Senator Hammond
<u>S1310</u>	Legislation to merge the Public Transportation Advisory Council and Interagency Working Group for Public Transportation Systems into one organization.	Heather Wheeler, Community Transportation Association of Idaho
<u>S1312</u>	Amending legislation to provide that specified operating fees shall not apply to certain types of equipment.	Suzanne Budge, John Deere
<u>S1313</u>	Amends the Idaho Hazardous Waste Act to provides that additional fees be remitted to local highway districts.	Senator Brackett

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
email: gbennett@senate.idaho.gov

MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Thursday, February 16, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators Keough, McGee, Corder, Winder, Bair, 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.
- CONVENE:** **Chairman Hammond** called the meeting to order at 1:33 p.m. and asked the secretary to take a silent roll. With a quorum present, he explained that the agenda would be reordered and the Committee would begin by hearing S1312, followed by S1313 and S1310. With that, **Chairman Hammond** welcomed Suzanne Budge to the podium.
- S1312:** Ms. Budge said she was representing John Deere. She will do a quick overview and turn it over to her client, Beverly Heird. This bill puts into statute what the Idaho Transportation Department (ITD) already does; it adds clarifying language to the statute. John Deere is a multi-State company that finances equipment all over the country and they're looking for certainty in practice for ownership of equipment that they finance. The intent of S1312 is to clarify that equipment that is not required to be titled is, in fact, not titled. Their way of showing ownership is through the Universal Commercial Code (UCC) filing process. In order to do that, they are specifically exempting equipment in the Code by a specific process. If the equipment is not subject to federal safety requirements or if it meets federal safety requirements then it is not registered. If it is not registered, it is not titled. That specific exemption that already exists for farm tractors and other items in that section of the Code (29-426, section 2, Idaho Code) is being added. The language is for construction equipment, forestry equipment, and lawn and grounds equipment. She asked if Ms. Heird could testify. The Chairman invited her to the podium.
- Beverly Heird Florez introduced herself to the Committee. She is the Manager of Public Affairs for a division of John Deere. As a manufacturer of construction equipment and agricultural equipment, they are trying to have the same process as it relates to titling. As pointed out, construction equipment is not currently registered because it does not meet on-highway standards. Because it's not registered, it's better if it's not titled, but in the current statute it does not clearly exempt key equipment. Having to double check to make sure whether it is titled causes an additional step for their financing company. Also, it is unclear whether they need a title or if a UCC filing is sufficient. **Chairman Hammond** called for questions from the Committee.
- QUESTIONS:** **Vice Chairman Brackett** asked for specific examples that would fall under "other construction or forestry equipment." Ms. Heird Florez said examples would be a skidder that wouldn't be used on the highway or an excavator, a bulldozer, or a crawler.

Senator Keough stated that she may have a conflict of interest because she works for the forest products industry. **Senator Corder** indicated that he, too, may have a conflict of interest because he owns some of John Deere's "other" construction equipment. **Vice Chairman Brackett** indicated he may have a conflict of interest because he also owns some "other" construction equipment.

TESTIMONY:

Colby Cameron of Sullivan, Reberger and Eiguren said that their client, Caterpillar Corporation, supports this legislation, and that Caterpillar has the same problem that John Deere has with this issue. There were no questions for Mr. Cameron.

MOTION:

Senator Corder moved to send S1312 to the Senate floor with a do-pass recommendation. **Senator Bair** seconded the motion. The motion passed by a unanimous voice vote. The Chairman asked **Senator Corder** to carry the bill on the Senate floor.

S1313:

Chairman Hammond asked **Vice Chairman Brackett** to present S1313. Through the Idaho Hazardous Waste Act, the hazardous waste facilities charge a fee for every ton of waste. The Act sets a fee schedule and also provides that 5% of fees collected be remitted to the County where the facility is located for emergency response programs. Currently, that fee generates approximately \$2.4 million of which 95% goes to the State Treasurer. There is only one commercial hazardous waste facility in the State of Idaho and that is the U.S. Ecology facility located in Owyhee County. S1313 amends the Idaho Hazardous Waste Act to provide assistance to the County and State for maintenance, construction, and repair of the roads impacted by these trucks hauling waste from the rail facility down to the waste facility in Owyhee County. This legislation amends the Act to provide that 5% of the fees, phased in over three years, be remitted to the local highway district, in this case it's Elmore County. An additional 5% of the fees, phased in over three years, to be remitted to the State highway account for maintenance, construction, and repair of roads in connection with the rail facility in Elmore County. Simco Road is that road. It was paved in 2004 as part of an agreement between U.S. Ecology, J.R. Simplot Company, and the county highway district. Each company contributed approximately \$900,000 in the construction of the road. This has truly been a public/private partnership. Since that time, U.S. Ecology has contributed \$381,000 for maintenance and repair of Simco Road. Elmore County receives no direct benefit from the road, but because it is a County road, it has incurred expenses because it has maintenance responsibilities. The County has made a good-faith effort, but with limited resources it is not keeping up with maintenance and repairs. If Simco Road is going to remain viable, the County is going to need some help. If U.S. Ecology is going to remain competitive in the waste disposal industry, they need good infrastructure in Idaho. Simco Road has deteriorated and is in need of repair. He referred to photos provided in the Committee members' packets. If the repairs are not made, then the trucks may have to go through Mountain Home, which presents a safety issue. He finished his presentation by explaining the phasing in of fees in the fiscal note. The net reduction to the general fund is \$48,000 in Fiscal Year 2013, \$96,000 in Fiscal Year 2014, \$240,000 in Fiscal Year 2015 and each year thereafter. **Vice Chairman Brackett** requested that the remainder of his time be yielded to **Senator Corder** who was the chairman of the local highway district at the time of this agreement with Elmore County.

Senator Corder stated he was chairman when the agreement was struck and when the road was built. He agreed with the depiction of the problems with the roadway in the photos **Vice Chairman Brackett** had distributed to the Committee. He confirmed that the description of how this occurred was accurate. This was a gravel road and all the traffic was going to Mountain Home and then coming around a very circuitous route. This was an effort by U.S. Ecology. J.R. Simplot was involved because it saved them some money; a lot of their traffic was going down to their Grand View feedlot facility. At the time, the agreement was that it would become a highway district road and it would be the district's responsibility to maintain. Without the enactment of this bill, they will likely not have the funds to do that. A proposed toll road was rejected. They no longer have the funds to maintain the road and this bill is a good way to provide the needed maintenance.

TESTIMONY:

Vice Chairman Brackett yielded to Simon Bell, Vice President of Operations for U.S. Ecology. The company was founded in 1952, is headquartered in Boise, and they own and operate five hazardous and radioactive waste treatment and disposal facilities in Washington, Nevada, Idaho, Texas, and Quebec, Canada. They provide safe, secure and cost-effective hazardous and radioactive materials solutions to industry and government. They employed 375 people in North America of which 104 are in Idaho.

Senator Corder interrupted the presentation to mention that his daughter works for U.S. Ecology.

Mr. Bell continued that U.S. Ecology's largest facility was the treatment, storage, and disposal facility outside of Grand View, Idaho. From there they take their materials to their rail transfer facility located in Mayfield, Idaho, along Simco Road. Mr. Bell explained the fees are collected and 95% are paid to the general fund; Owyhee County gets the remaining 5%. The fees are used for emergency response projects like the County's 911 system, ambulance service and fire department equipment, training and equipping emergency response teams, and communication equipment and maintenance. He explained what the new distribution of fees would be under S1313. He stated that 85% of the material they receive gets transported at their rail facility by way of Simco Road. As a result of the 2004 paving project, use of the road has increased dramatically. Other users include new residents and businesses on Simco Road, employees of Mountain Home Air Force Base, residents of Grand View and Owyhee County, and recreational users of C.J. Strike Reservoir. In closing, the long-term success of U.S. Ecology is determined by access to the safe and efficient transportation route between their rail transfer facility and their treatment and disposal facility. S1313 provides a mechanism to help support critical road infrastructure allowing U.S. Ecology to maintain historic volumes and associated fees, waste volumes, and staffing levels. With that, Mr. Bell stood for questions.

QUESTIONS:

Senator Werk asked who has jurisdictional authority for the maintenance of this roadway. Mr. Bell said Simco Road is in Elmore County and is the responsibility of the local highway district. **Senator Werk** asked if they maintained the road. Mr. Bell responded that the local highway district does maintain the road.

Chairman Hammond suggested that most of **Senator Werk's** questions would be answered by **Vice Chairman Brackett** during his closing remarks.

Senator Bilyeu asked if their radio active waste was primarily medical materials and wondered if they were coming to Idaho from other parts of the country. Mr. Bell said that they receive exempt radiological materials. They are not authorized to receive licensed radioactive materials. This means that there are other materials that could include medical wastes; the Nuclear Regulatory Commission analyzes that waste, considers whether it is a potential safety concern, and they essentially determine whether they are going to regulate a facility. Because the levels are low enough the waste facility is not a long-term concern. They do take materials from all States; they're a national repository for hazardous waste and radio active waste. But radio active waste goes primarily to Richland, Washington, a licensed nuclear repository. **Senator Bilyeu** asked if the facility was over an aquifer. Mr. Bell said the facility is approximately 2,800 feet above the nearest aquifer, a hydrothermal aquifer; it's not potable water. They have perched, or discontinuous, water tables in and around the site, but they are not potable water. They have a network of fifty monitoring wells that track, detect, and verify that there are no impacts to that perched water table. **Senator Bilyeu** had an additional question. **Chairman Hammond** reminded the Senator that questions needed to be germane to the issue under consideration. **Senator Bilyeu** thanked the Chairman and asked Mr. Bell if a toll road was ever pursued. Mr. Bell said there was never a toll road put on this road; it was considered in a prior year. He did not recall how far the toll road idea got in the process, but it was determined it was not a feasible option.

Senator Bair asked if the money taken away from the general fund and ending up in the local highway district will be dedicated to the maintenance of Simco Road or will the funds be used in the course of their budgeted projects throughout their district. Mr. Bell said the bill has been written in such a manner that the funds must be spent on the corridor that goes from the rail transit facility to the hazardous waste repository. It must be used for construction and/or contractors or maintenance and repair activity. The short answer is, 'yes' the money has been limited to that corridor. **Senator Bair** asked if a study has been done to determine if eventually more funds than the cap at \$240,000 will be needed, or is the amount too much or too little. Mr. Bell said a study has not been conducted but he has been involved with the challenges they have with the road. It will still be challenging to maintain it. U.S. Ecology will continue to support the efforts of the highway districts responsible for the area. This bill goes a long way towards improving the maintenance activity, but there could still be a challenge in the future.

TESTIMONY:

Stuart Davis, representing the Idaho Association of Highway Districts, supports passage of S1313. It is truly a public/private partnership. There was no other testimony. **Chairman Hammond** invited the Vice Chairman back to the podium to present his closing remarks.

**CLOSING
REMARKS:**

Vice Chairman Brackett started by responding to **Senator Bair's** inquiry about the \$240,000. According to the bill, only half of that amount would go towards Simco Road, the other half would go towards the State highway system account. To respond to **Senator Werk's** questions, Simco Road flows into Highway 67 which intersects with Highway 78. Those are both part of the State highway system. There is a short segment in Owyhee County from Highway 78 down to the actual facility. If Simco Road is going to be maintained, the County is going to need some help. If U.S. Ecology is going to remain competitive in the waste disposal business, they need this infrastructure. In addition to the money that goes into the general fund, they have 104 employees in the State of Idaho. There is additional benefit with income tax and consumer spending. Idaho's economic development must first take care of existing companies. This bill does that. That concluded the Vice Chairman's remarks.

QUESTIONS: **Senator Werk** asked if this was the first attempt to direct funds from the general fund into a local highway district. **Vice Chairman Brackett** said he didn't know specific other instances but he thinks there may be. It's a case by case issue. **Senator Werk** said there is an implication that is not in the bill that the money dedicated to the maintenance account would be inadequate in the long run to provide the full maintenance requirements for the road. It was further implicated that U.S. Ecology would continue to invest in the maintenance in repairs and upgrades. He wanted to know if there was a signed, written agreement between the entities to that effect. **Vice Chairman Brackett** said he heard the same thing. The best indicator of the future is to look at the past, and U.S. Ecology has spent \$381,000 since 2004 on this road. That seems to be indicative of their intentions and good efforts to keep this road maintained. **Senator Werk** asked if the \$381,000 was U.S. Ecology's contribution or does it also include J.R. Simplot Co. **Vice Chairman Brackett** said that it was only U.S. Ecology's contribution since 2004. **Senator Werk** asked if there is an agreement between U.S. Ecology and J.R. Simplot Co. in terms of road maintenance. **Vice Chairman Brackett** said there was an original agreement in 2004 between U.S. Ecology and the local highway district that has been updated twice since then. There is no agreement with the State. The Vice Chairman asked if Mr. Bell would respond to this question. Mr. Bell said that as **Vice Chairman Brackett** has mentioned, U.S. Ecology signed an agreement in 2004. Each time they did additional maintenance, they signed additional agreements to allow for those additional repairs. There is no agreement in place with J.R. Simplot Co. There were no further questions.

MOTION: **Senator Bair** moved to send S1313 to the floor with a do-pass recommendation. **Senator Keough** seconded the motion. The Chairman called for discussion on the motion.

DISCUSSION: **Senator Werk** said that based on what he has heard, he has concerns. This is the first time they will be creating a particular funding stream for a particular stretch of road. He has a concern that there is nothing in the bill about the public/private partnership that we're expecting will continue. At this point, he sees a special deal put in a special instance. He is concerned with the lack of overall agreements in terms of future maintenance. He sees this as not being a complete proposal and cannot vote for the motion, but with more information he may change his mind and vote for it on the Senate floor.

VOTE ON MOTION: **Chairman Hammond** called for a vote on the motion. The motion passed by a voice vote with one dissenting vote from **Senator Werk**. **Vice Chairman Brackett** will carry the bill on the Senate floor.

S1310: **Chairman Hammond** thanked Heather Wheeler for her patience as the Committee had to rearrange the order of today's agenda. He asked her to come to the podium to present S1310.

Ms. Wheeler introduced herself as the Executive Director of the Community Transportation Association of Idaho (CTAI). She would make a brief statement about S1310 and then stand for questions. She said this bill merges the Public Transportation Advisory Council and the Interagency Working Group for Public Transportation into the Idaho Mobility Council. It will coordinate agency funding of all those agencies that receive support for their transportation efforts, and it will allow Idaho to make the best transportation decisions with limited funding. It will make the organization relevant in the context of risk in the transportation planning and coordination environment that's taking place today. There will be increased transparency and accountability by all agencies and stakeholders. It will also include additional entities that are independently impacted by

transportation services. The new group includes: Department of Environmental Quality, Department of Commerce, Division of Veterans Services, Association of Idaho Cities, Idaho Association of Counties, and others. Ms. Wheeler stood for questions.

QUESTIONS: **Chairman Hammond** asked if essentially there are two separate groups following similar missions that will be consolidated into one entity and all the missions will be taken care of jointly making it more purposeful. Ms. Wheeler agreed with the Chairman's summation.

TESTIMONY: Marilyn Sword, Executive Director of the Idaho Council on Developmental Disabilities, stated that her organization currently sits on the Interagency Working Group and they support this effort. All the stakeholders at the table will help to do a better job with public transportation. There were no questions for Ms. Sword.

MOTION: **Senator Keough** moved that S1310 be sent to the Senate floor with a do-pass recommendation. **Senator Werk** seconded the motion. With no further discussion, the motion passed by a unanimous voice vote. **Senator Keough** will carry the bill on the Senate floor.

MINUTES: **Senator Keough** moved that the minutes of the meeting of the Senate Transportation Committee held on Thursday, January 26 be approved. **Senator Winder** seconded the motion. With no discussion, the motion passed by a unanimous voice vote.

FAREWELL TO PAGE: **Chairman Hammond** asked the Committee's Page, **Ben DeMordaunt**, to take the podium so the Committee could thank and recognize his contribution to the Senate the first half of the session. Mr. DeMordaunt told the Committee he was a senior at Eagle High School and planned to attend Utah State University in Logan, Utah in the fall. He hopes to study economics. He was not sure where his life following college would lead, but was looking forward to the challenge ahead of him and to having some fun.

COMMENTS AND QUESTIONS: **Chairman Hammond** said he enjoyed having Mr. DeMordaunt in Committee this session.

Senator Werk asked him what the biggest difference was from the time he came to the Committee until this point of his departure. Mr. DeMordaunt said he thought there would be more division among the Senate members, especially on tough issues. He stated he was surprised how well everyone seemed to get along.

Senator Winder said he was proud of the work he had done; Mr. DeMordaunt was sponsored by **Senator Winder**. He thanked him for his help, and reminded the Committee that Mr. DeMordaunt's father serves in the House of Representatives. He wished him luck, but was not convinced that 'economics' and 'fun' go well together.

Chairman Hammond presented the Committee's parting gift and letters of recommendation. He hoped they would be a pleasant reminder of his experience in the Senate and in the Senate Transportation Committee.

WELCOME TO NEW COMMITTEE PAGE: **Chairman Hammond** welcomed **Ben Stringham**, a senior at Centennial High School, to the Committee as its Page during the second half of the session. Mr. Stringham indicated he was looking forward to the experience before him and the professional environment. He is anxious to learn more about State government.

ADJOURNMENT: With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:30 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AMENDED AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Tuesday, February 21, 2012

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Tuesday, January 31, 2012	Senator Corder and Senator Bilyeu
H473	Legislation to improve the flexibility in driver's license and identification card renewal processes to better accommodate those who are temporarily out-of-state.	Representative Guthrie

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

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MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, February 21, 2012

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Hammond, Senators Keough, McGee, Winder, Bair, Werk, and Bilyeu

ABSENT/ EXCUSED: Vice Chairman Brackett and Senator Corder were both excused.

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.

CONVENE: **Chairman Hammond** called the meeting to order at 1:30 p.m. and asked the secretary to take a silent roll. With a quorum present, the Chairman asked for a motion on the minutes of the January 31st Committee meeting.

MINUTES: **Senator Bilyeu** moved that the minutes from the January 31, 2012, meeting of the Senate Transportation Committee be approved. **Senator Keough** seconded the motion. The motion passed by a unanimous voice vote.

H473: **Chairman Hammond** welcomed **Senator Tippets** to the Committee and invited him to come to the podium to speak about the bill and introduce **Representative Guthrie** who would be presenting H473.

Senator Tippets said H473 deals with drivers license and identification card renewal. Current law allows renewal of a drivers license or an identification card within twelve months of the date that it expires. The primary purpose of this bill is to modify the law to allow you to renew a drivers license or an identification card within twenty-five months of expiration. This greater flexibility would be a tremendous benefit to those who will be out-of- State for an extended period of time; people like students, the military, and missionaries. There are other minor changes. **Senator Tippets** turned the podium over to **Representative Guthrie** for further explanation of the bill.

Representative Guthrie started with a brief history of this legislation. At the end of last year's session, the Representative received an email from a constituent concerned with his children's drivers licenses expiring while gone on church missions. The constituent asked him to look into the law in Utah that mitigates this problem. **Representative Guthrie** worked with Legislative Services and the Idaho Transportation Department (ITD) staff, and came up with H473. The ITD Board has looked at it and have no legal or administrative problems with the bill. ITD does not endorse outside legislation. The bill includes Department recommended changes. He went through the bill explaining changed sections to the Committee. **Representative Guthrie** asked the Committee to send H473 to the floor with a do-pass recommendation, and stood for questions.

QUESTIONS:

Senator Bilyeu asked if she was pulled over for speeding and her drivers license is expired, rather than get a ticket for an expired license could she say that she has been out of State. **Representative Guthrie** does not believe the two issues would be compatible. **Chairman Hammond** asked Ed Pemble, the Drivers Services Manager at ITD, to respond to that question. He said that the changes in this bill would not affect the legality of driving with an expired license. You still must have a valid license to drive a vehicle in the State of Idaho.

Senator Bair hypothetically asked if a young person is out-of-State and while they are gone, their drivers license expires. As long as they're out of State they won't be in trouble for having an expired license. He wanted to know if from the moment they come back they will be susceptible to receiving a ticket with an expired license. Mr. Pemble confirmed that he was correct. He also mentioned that if you're driving in a foreign country that recognizes our driving privileges, you must have a valid drivers license. For those out-of-State, there is an extension process in statute for a \$10 fee. H473 does solve a problem for those who will be gone for longer than a year.

Chairman Hammond said that he believes the confusion is that they're connecting driving without a valid drivers license with renewing your drivers license. They are really two separate issues. If your drivers license is expired, it is expired and you cannot drive legally. This issue does not relate to the issue in H473. The bill relates to coming back and being able to renew your drivers license without any problems instead of up to twelve months now it's twenty-five months. Mr. Pemble said that was correct. The bill gives you the ability to renew up to twenty-five months late without any punitive action, in terms of retesting for knowledge and skills. There were no further questions.

**CLOSING
REMARKS:**

Senator Tippetts wanted to clarify that this bill allows you to renew your drivers license even though you're not within that one-year period of time before it expires. If your license expires in six or eight months, you can renew it now. If it expires in thirteen months from now, you cannot renew it now, you have to wait until you're within that one-year window. This bill says that as long as you're within a twenty-five month window you can renew that drivers license. **Chairman Hammond** said that basically this bill says you have a longer period of time to renew your drivers license without having to go through the testing process. **Senator Tippetts** said if you know you're going to be out-of-State for an extended period of time, you can make sure you get your drivers license or identification license renewed before you go.

MOTION:

Senator Bair moved to send H473 to the Senate floor with a do-pass recommendation. **Senator Bilyeu** seconded the motion. With no discussion on the motion, the bill passed by a unanimous voice vote. **Senator Tippetts** will carry the bill on the Senate floor.

Senator Werk asked that the reference to 'Idaho Transportation Board' in the sponsor information on H473's Statement of Purpose be removed. **Chairman Hammond** indicated that the error would be brought to the Secretary of the Senate's attention for correction.

ADJOURNMENT:

After **Chairman Hammond** introduced some guests in the audience and thanked them for being in Committee today, he adjourned the meeting at 1:47 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Thursday, February 23, 2012

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Thursday, February 2, 2012	Senators Keough and Werk
Review of Letter to ITD	Review of letter to ITD requesting study of differential speed limits on Idaho roadways, as requested by Senator Winder.	Senator Hammond
Unanimous Consent to State Affairs Committee	RS21102 – Allows the Idaho Transportation Board to establish standards for providing access from properties adjacent to State highways.	Senator Winder
Unanimous Consent to Judiciary and Rules Committee	RS21314 – Revises provisions relating to the corporate powers of highway districts.	Stuart Davis , Idaho Assn of Highway Districts
Unanimous Consent to Judiciary and Rules Committee	RS21317 – Revises provisions relating to highways and rights-of-way with actions to quiet title.	Stuart Davis , Idaho Assn of Highway Districts
<u>S1319</u>	Allows individuals to produce proof of automobile insurance by electronic means in appropriate situations in lieu of printed means.	Michael Kane , Property & Casualty Insurance Assn of America
<u>S1317</u>	Revises provisions relating to federally funded transportation project financing, and provides a bridge program.	Senator Winder
PRESENTATION	Report and update on the Port of Lewiston.	David Doeringsfeld , Manager, Port of Lewiston

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen McGee	Sen Bilyeu
Sen Corder	

COMMITTEE SECRETARY

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MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Thursday, February 23, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators Keough, Corder, Winder, Bair, and Bilyeu
- ABSENT/ EXCUSED:** Senator Werk was excused.
- 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.
- CONVENE:** **Chairman Hammond** called the meeting to order at 1:29 p.m. and asked the secretary to take a silent roll. With a quorum present, the Chairman asked for a motion on the minutes from the February 2nd meeting.
- MINUTES:** **Senator Keough** moved that the minutes of the Thursday, February 2, 2012, meeting be approved. **Senator Bilyeu** seconded the motion. The motion passed by a unanimous voice vote.
- SPEED LIMIT STUDY LETTER TO ITD:** **Chairman Hammond** told the Committee that a draft copy of his letter to Brian Ness, Director of the Idaho Transportation Department (ITD), requesting ITD convene a study group on speed differentials on Idaho's roadways was in their packets. He requested they review the letter and provide their comments or suggestions to him by the end of the day.
- RS21102:** **Senator Keough** asked why these RS's were just coming before the Committee. **Chairman Hammond** said he would have the sponsors address that inquiry. **Senator Winder** explained that RS21102, regarding access, had been worked on throughout the session and the previous summer to gain consensus. The group had decided to deal with their concerns on access through the rulemaking process. This RS is a piece of the puzzle that he feels is important and got tied up in that process.
- Senator Winder** asked for unanimous consent that RS21102 be sent to the State Affairs Committee for printing and returned to the Transportation Committee for a full hearing. With procedural discussion on the request, the Chairman asked if there were any objections to the request. With no objection, it was so ordered.
- RS21314:** Stuart Davis, Executive Director, Idaho Association of Highway Districts, explained that outlying highway districts have issues when trying to dispose of personal property no longer useful to the district. Other districts have issues dealing with small parcels of property, this legislation tries to combine those two issues to solve the problem. Mr. Davis stated he was unaware of opposition to the bill and did not believe it was controversial and stood for questions.

Senator Corder asked for unanimous consent to send RS21314 to the Judiciary and Rules Committee for printing and to be returned to the Transportation Committee for a full hearing. With no objection, it was so ordered.

RS21317:

Stuart Davis presented RS21317. It deals with title forwarding processes for validation and abandonment for quiet title action. This does not diminish land owner rights, but asks them to go through the process.

Senator Corder asked for unanimous consent to send RS21317 to the Judiciary and Rules Committee for printing and to be returned to the Transportation Committee for a full hearing. With no objection, it was so ordered.

S1319:

Michael Kane, representing Property and Casualty Insurance Association of America, presented S1319, dealing with the certificate of proof of liability insurance carried in vehicles. This bill would allow drivers to produce proof of insurance in print or in electronic form. He noted that in Idaho last year, 66,000 "no proof of insurance" tickets were issued, and 47,000 of those were dismissed, primarily because people had insurance but did not have the printed document. Mr. Kane deferred his time to Alex Hagley.

Alex Hagley, of Property Casualty Insurance Association of America, explained that S1319 would allow insured drivers to show proof of insurance through electronic means. He noted the 47,000 tickets issued and dismissed every year is a waste of time, whereas allowing the driver to show an electronic copy would prove they were in compliance with State law. Mr. Hagley also stated this will help cut back on fraud of cancelling a policy but retaining the proof of insurance card because the electronic means would indicate cancellation, as well as cutting down on printing costs for insurance companies.

QUESTIONS:

Chairman Hammond asked if it would be the motorist's choice if they had the card or carried proof electronically. Mr Hagley indicated it would still be the choice of the individual.

Senator Bair asked about the term "acceptable" on line 22, and who determines what "is" or "is not" acceptable. Mr. Hagley indicated that because of changing technology they did not want to limit the legislation to cellular phones, so the language was left ambiguous. **Chairman Hammond** offered that the certificate of proof was not ambiguous, simply the device that could be used to view it. **Senator Bair** continued asking about an electronic format and if it is legally binding. He wanted to know how an officer would know the origin of the document. Mr. Kane indicated that a PDF format, like those accepted in federal courts, would be the acceptable form. **Senator Bair** continued asking how an officer would be able to determine the document was not falsified. Mr. Kane suggested that concern could happen in either electronic or printed documents. The officer could take the device to verify. He also made note of other legislation coming through the House of Representatives that deals with online verification. Mr. Hagley suggested that a printed copy would be easier to falsify.

MOTION:

Senator Keough moved to send S1319 to the floor with a do-pass recommendation. The motion was seconded by **Senator Bilyeu**. The motion passed by a unanimous voice vote. **Senator Keough** will carry the bill on the Senate floor.

S1317: **Senator Winder** presented S1317 dealing with designations of routes and corridors for GARVEE funding. This legislation strikes language on lines 25 and 28-30 for projects that are incomplected or ineligible for GARVEE funding. They do not want to eliminate eligibility for certain segments and proposes that S1317 be sent to the 14th order for amendment to eliminate the strikeouts relating to the designation of the corridors on page 1 line 24 through page 2 line 2. **Senator Winder** said this bill also adds definitions of Statewide projects for bridges and allows unspent dollars, and potential additional savings, to be used for those projects. This does not authorize spending, but simply cleans up the language and allows financing of critical projects.

TESTIMONY: Robert Simonson, City of Meridian, testified in support of the legislation. He said it adds tools to make improvements to those bridges that are out-of-date. There were no questions for Mr. Simonson.

QUESTIONS: **Senator Bilyeu** asked if this took away the authority of the Idaho Transportation Board. **Senator Winder** indicated this simply adds a definition to allow the ITD Board, at their discretion and pending availability of funding, to include critical bridges using funding available in authorized GARVEE projects. This allows a broader definition of use of funds already authorized. **Senator Bilyeu** asked if GARVEE funds currently could not be used on bridge projects. **Senator Winder** indicated funds could only be used if they fit within the definition of the corridors already in legislation. This legislation provides a Statewide definition for bridges that would be considered critical, and also allows projects outside the original corridor designation of the original project areas. ITD has not brought this program forward as they were waiting for final numbers for federal dollars.

Senator Bair asked about the revenue stream from federal dollars, and expressed concern with coming forward with new projects before those dollars were definitive, in which case this legislation might be too early. **Senator Winder** stated that this does not authorize funding, it simply allows the Board to use this option, if they so choose, this does not require them to use funds. **Senator Bair** indicated that his concern was that by putting this in statute, it would force the appropriation. **Senator Winder** stated that was not the intent, this simply allows for consideration in the future.

Senator Corder remarked that this was not indicated as one of the legislative priorities of ITD or of the Governor's office. He asked for the source of the legislation. **Senator Winder** said that he and former Senator, **Senator McGee**, had brought it forward, but discussions had been taking place for over a year. **Senator Winder** stated this allows flexibility for ITD to determine the priorities, rather than waiting for specific funds. **Senator Corder** indicated the original list was specific. The legislature knew exact funds and where to spend them. This grants statewide authority, eliminating that goal. **Senator Winder** stated that was not what this bill is trying to accomplish. It just allows the Board to decide the highest priorities.

Chairman Hammond said the past few years the legislature made an active decision to let the Board decide how they would move forward with GARVEE projects to eliminate the political aspect of project decisions. **Senator Corder** stated he believed this legislation would be a significant expansion on the original intent of the GARVEE funding bills. **Senator Winder** stated the legislation provides limited authority to the Board to put the money where they deem it is necessary.

Senator Bilyeu asked if the federal transportation bill contained special appropriations for bridges. **Senator Winder** indicated that S1317 had nothing to do with the categories of funding that would be authorized in the federal legislation.

Senator Keough asked if the statement of purpose would be revised if this legislation went to the amending order. **Senator Winder** indicated it would. **Senator Keough** stated there were critical bridge and funding issues, and she was not opposed to using bonding authority this way.

MOTION: **Senator Keough** moved to send S1317 to the amending order. The motion was seconded by **Vice Chairman Brackett**. With no discussion on the motion, it passed by a voice vote with three dissenting votes cast by **Senator Bair**, **Senator Bilyeu** and **Senator Corder**.

PRESENTATION: David Doeringsfeld, Port of Lewiston Manager, discussed the dry land port legislation, H557, and stated their support of it for the economic development benefits of port districts. Determination of extending funds is dependent on creating jobs, and they work in intermodal transportation, economic development, and international trade. Mr. Doeringsfeld went further to discuss intermodal operations, dealing with river, rail and roads. He indicated the district was county-wide and included business and industrial parks, as well as a capital improvement project to expand the port to more barges, improve efficiency and productivity, and provide safer working environments. They hope to begin construction of the project in July, 2013.

Mr. Doeringsfeld provided information on oversize equipment coming into Port Lewiston heading to Billings, Montana, and discussed the delays and adjustments to the project and the impact on roads, the environment, and the controversy surrounding the issue. He went further to discuss the issues hindering economic development: location of rail and needed improvements to Highways 12 and 95, which are the only highways used to access the Port of Lewiston. Mr. Doeringsfeld stood for questions.

QUESTIONS: **Senator Keough** commented on the challenges with rail travel along the north-south corridor. Mr. Doeringsfeld added that the entire north panhandle was a geographical and travel challenge.

Senator Bilyeu asked if there should be any kind of litmus test as to what is being transported. Mr. Doeringsfeld indicated ITD has the expertise on deciding those cargoes. Some of the controversy surrounding the latest project, having to do with the type of load, could delay a project to its detriment. **Senator Bilyeu** stated that delays about possible load spills are not frivolous, as it is important to keep the environment protected. Mr. Doeringsfeld agreed with the Senator on the need for safety. **Chairman Hammond** reminded the Committee that the recent loads did not contain hazardous materials.

ADJOURNMENT: **Chairman Hammond** thanked Mr. Doeringsfeld for updating the Committee on the activities and concerns at the Port of Lewiston. With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:26 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

Erin Bennett
Transcriber

AGENDA
SENATE TRANSPORTATION COMMITTEE
 1:30 P.M.
 Room WW53
 Thursday, March 01, 2012

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Appointment of Jim Kempton of Albion to the Idaho Transportation Board commencing March 1, 2012, and expiring January 31, 2018.	The Honorable Jim Kempton
<u>H472</u>	Specialty license plate to commemorate the Idaho Territory Sesquicentennial Program.	Senator Johnson
<u>RS21355</u>	UNANIMOUS CONSENT TO STATE AFFAIRS COMMITTEE – Amending Sections 67-2805 and 67-2806, Idaho Code, to provide the same exemption from disclosure of bids and bid documents until after awarded as provided in Section 67-5711C, Idaho Code.	Senator Winder
<u>S1356</u>	Relating to the corporate powers of highway districts by revising the procedures for disposing of real and personal property that is no longer useful or is surplus.	Stuart Davis , Idaho Assn of Highway Districts

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Winder
Vice Chairman Brackett	Sen Bair
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu

COMMITTEE SECRETARY

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MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Thursday, March 01, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators Keough, Corder, Winder, Bair, Werk, and Bilyeu
- ABSENT/ EXCUSED:** all present (with one vacancy on the Committee)
- 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.
- CONVENE:** **Chairman Hammond** called the meeting to order at 1:31 p.m. and asked the secretary to take a silent roll. With a quorum present, the Chairman asked Mollie McCarty, Government Affairs Program Manager for the Idaho Transportation Department (ITD), to introduce gubernatorial appointee to the Idaho Transportation Board, Jim Kempton of Albion, Idaho.
- GUBERNATORIAL APPOINTMENT:** **Chairman Hammond** welcomed Mr. Kempton to the Committee. Mr. Kempton said he has been appointed by Governor Otter to fill the District 4 position on the Idaho Transportation Board. He thanked Ms. McCarty for her introduction of him to the Committee. From his many past experiences, he has a broad view of State government and its processes; and the connecting links between State government and ITD and the Board. The ITD Board is a policy organization and has no business meddling in the day-to-day operation of the Department. He expressed his concern about the financial and transportation situation in Idaho. The last gas tax increase was in 1996 and it was difficult to pass. He discussed the vote at that time and the political ramifications legislators feared would occur if they voted incorrectly. It has now been 15 years without an increase. He understands the concerns and hope that compromise can be reached. He appreciates this appointment and believes he can fulfill the responsibility. Mr. Kempton stood for questions.
- QUESTIONS:** **Chairman Hammond** thanked Mr. Kempton for his remarks and expressed his appreciation for his comments. He said he agreed that a more aggressive strategy is called for.
- Senator Corder** said Mr. Kempton was imminently qualified. He asked Mr. Kempton how he would move forward with the fairness of a gas tax with other funding being discussed. Mr. Kempton said it will come about by: (1) using some of the information already laid out and passed; (2) studies that have been done; (3) review and formulation of committees; and (4) having some kind of hearing to get needed information from district engineers and the public. The GARVEE analysis was over a short period of time and focused primarily where GARVEE has been used. He also spoke about the Ton Mile Tax. **Senator Corder** asked about a plan, he believes has been attributed to Mr. Kempton, that if we don't fund transportation more, we need to figure out how we're going to get the roads back to gravel. Mr. Kempton said that if we can't fund the highway system, then you have to have a plan to reorganize the structure. Some options are: registration fees, sales tax, utilities taxes, and an energy tax (not a fuel tax, but an energy tax). All should be open for discussion. **Senator Corder** asked how

he sees the relationship between ITD and the local highway districts; whether it would be changing and expanding or just becoming different. Mr. Kempton said it was difficult to discuss because of how funds flow from the State and ITD to the local districts. Whether the money is being fairly spent by the highway district is not easy to find out, and local option taxes are not specific.

Senator Winder thanked Mr. Kempton and remembered past discussions about these same funding issues with him. He looks forward to working with Mr. Kempton.

Chairman Hammond thanked Mr. Kempton and reminded the Committee that his nomination would be voted on at the next meeting.

- H472:** **Chairman Hammond** welcomed **Senator Johnson** to the Committee and asked him to present H472. **Senator Johnson** said H472 is a license plate bill recognizing the 150th anniversary of the establishment of the Idaho Territory. On March 4, 1863, President Abraham Lincoln signed the act that created the Idaho Territory. The next 22 months will demonstrate the mission of how much we value our past. This bill creates a sesquicentennial license plate. The funds raised will go to preserve and safeguard the local legacies that shape our Counties. The distribution of funds will go to the Counties from where the plates were purchased. **Senator Johnson** stood for questions.
- QUESTIONS:** **Chairman Hammond** asked who the sponsor was and who would be providing the funds to create the plate. **Senator Johnson** said it was the Lewiston Historical Society. It is a \$4,000 commitment.
- Senator Bilyeu** said she really likes the sesquicentennial plate and thinks it should be granted. She asked if the funds would go to other museums or historical societies. **Senator Johnson** said that each County that has an historical committee will receive funds. There were no further questions.
- MOTION:** **Senator Bilyeu** moved to send H472 to the floor with a do-pass recommendation. **Senator Keough** seconded the motion. The motion passed by a voice vote with three dissenting votes cast by **Senator Bair**, **Senator Corder**, and **Senator Werk**. **Senator Johnson** will carry the bill on the Senate floor.
- RS21355:** **Chairman Hammond** asked **Senator Winder** to discuss his request for unanimous consent to send his RS to the State Affairs Committee for printing. **Senator Winder** said this RS was brought to him by the industry representing some local jurisdictions that are having difficulty under current Idaho Code that allows for someone during a bidding process to make a public disclosure request to try to get information during the bidding process as to what competitive bids have been submitted to a data base. He asked for a unanimous consent to send it to the State Affairs Committee for a print hearing.
- QUESTIONS:** **Senator Corder** asked what industry brought this to him. **Senator Winder** said it was brought on behalf of the Ada County Highway District (ACHD) through their representative Jerry Deckard. They have a significant problem with the bidding process that they would like to get corrected. **Senator Corder** pointed out that ACHD is not the industry but a local unit of government. **Senator Winder** agreed with that description as being more appropriate.

Senator Keough asked why this was coming before the Committee at such a late time in the session. **Senator Winder** deferred that question to Jerry Deckard. Mr. Deckard offered a hypothetical example to help the Committee understand what this bill does. He said that when a local jurisdiction accepts bids and the closing bid time was 5 p.m. yesterday, the governing body has the bids reviewed and awards them at noon tomorrow. In the intervening time there are requests for public information for all of the competitive bids which, when provided, makes the competitive bidders take issue with each other. This bill says that until the bid is awarded no public information request would be fulfilled. Upon award, the public information would be provided.

Senator Werk asked if once the contract is awarded bidders can examine other competitor's bids. Mr. Deckard said they are available only after the contract has been awarded. **Senator Werk** asked if Mr. Deckard was representing ACHD at this time. Mr. Deckard said he does represent ACHD in this instance, and pointed out that the director of all highways districts also supports this legislation.

Vice Chairman Brackett asked for unanimous consent that RS21355 be sent to the State Affairs Committee for printing and returned to the Transportation Committee for a full hearing. With no objections, it was so ordered.

WELCOME:

Chairman Hammond welcomed his wife, Cyndie, and his son, Sean, daughter-in-law, Virginia, and two grandsons, Ebreth and Nathan, to the Committee.

S1356:

Chairman Hammond asked Stuart Davis, Executive Director of the Idaho Association of Highway Districts, to come to the podium and present S1356. Mr. Davis said this bill is designed to streamline the procedures for disposing of real and personal property to the district. A difficulty policy makers face is how to take care of small jurisdictions while also taking care of the larger ones with a single piece of legislation. What happens over time is that legislation is added to and taken-away from to make it work. This bill is the final piece of that process. On the one hand you have ACHD that has 85 parcels of land they want to dispose of and the process is long and tedious; on the other hand you have highway districts trying to dispose of two battery chargers. This does not take away from the public's right to review those processes. It combines the two actions of declaring a surplus and conducting a hearing to determine if the property should be sold. It also allows a streamlined process so that all are on the same page for disposing of property of value over \$5,000. Mr. Davis stood for questions.

QUESTIONS:

Senator Werk thought that it is a big change when you change language for adding or disposing of property. He asked what the current procedure is for disposing of small pieces of real property and why should it be changed. Mr. Davis said they are trying to minimize the amount of administrative actions to get rid of such a small item. Real property is put in here because it was never considered surplus. The process for disposing of 85 parcels would require multiple hearings that currently require a lot of administrative actions. He does not believe that huge pieces of property would fall under this. **Senator Werk** referred to line 40 on page 1 and asked if there was something that could use current appraisals rather than older appraisals. Mr. Davis deferred the question to Steve Price, General Counsel for ACHD, Mr. Price said this statute is what all highway districts use to dispose of real or personal property. It is intended for there to be a process to dispose of the public's assets. There is a process where the public can offer their input. This statute offers a series of safeguards to ensure the public's best interests are taken into consideration, as well as the fiduciary responsibility of the highway district. What has happened over the

years is there are a number of parcels that have no accounting value (they are not on the tax rolls), sometimes their lines aren't perfect on projects, but they could benefit the adjacent property. The district generally has an idea of what the value is, and sometimes having a new appraisal can hinder selling it. **Senator Werk** said his concern is that there may be 'sweetheart' deals that are not in the best interest of the public. Mr. Price apologized for the poor language structure and said that it should read 'current appraisal.' **Senator Werk** suggested that a qualifier indicating it would be the most current appraisal would be good.

Senator Corder asked if it is even possible that these types of parcels would be appraised. Mr. Price said that once a project is done the appraisal is fresh, but ACHD has 85 parcels that are not from current projects. **Senator Corder** asked if the value is based on the entire parcel. Mr. Price said their appraisal is based on a value per square foot. That's what they use to value the pieces of the parcels.

Senator Bilyeu said she agreed that the appraised value needs to be current and that the language should be changed. Mr. Davis said he would be willing to have this bill sent to the amending order.

Senator Bair commented that in Blackfoot they are looking for ITD's used and closed gravel pits because they are used to put water back into the aquifer.

MOTION:

Senator Werk moved to send S1356 to the 14th order for amendment. **Senator Bilyeu** seconded the motion. With no discussion, the motion passed by a unanimous voice vote. **Senator Corder** will carry the bill on the Senate floor.

ADJOURNAMENT:

With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 1:27 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Tuesday, March 06, 2012

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Appointment of Jim Kempton of Albion to the Idaho Transportation Board commencing March 1, 2012, and expiring January 31, 2018.	MOTION
<u>RS21438</u>	UNANIMOUS CONSENT TO JUDICIARY AND RULES COMMITTEE – A Senate Concurrent Resolution to recognize the achievements and service of the Union Pacific Railroad on its 150th anniversary.	Mike Brassey , Union Pacific Railroad
<u>H540aa</u>	Creates an Online Insurance Verification Program with a real-time response to verify the existence of insurance coverage on a motor vehicle.	Representative Thompson

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Bair
Vice Chairman Brackett	Sen Rice
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu
Sen Winder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
email: gbennett@senate.idaho.gov

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, March 06, 2012

TIME: 1:30 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.

CONVENE: **Chairman Hammond** called the meeting to order at 1:30 p.m. and asked the secretary to take a silent roll. The Chairman welcomed **Senator Rice**, the newly appointed Senator representing Legislative District 10, to the Committee. The Chairman asked for a motion on the gubernatorial appointment of Jim Kempton of Albion to the Idaho Transportation Board. The appointment had been heard at the previous Committee meeting.

GUBERNATORIAL APPOINTMENT: **Senator Keough** moved to send the gubernatorial appointment of Jim Kempton to the Idaho Transportation Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Winder** seconded the motion. The motion passed by a unanimous voice vote. **Chairman Hammond** said he would ask **Senator Cameron** to sponsor the appointment on the Senate floor.

UNANIMOUS CONSENT OF RS21438: **Chairman Hammond** asked Mike Brassey to present his RS. Mr. Brassey, representing the Union Pacific Railroad, said that RS21438 is a Senate Concurrent Resolution recognizing the achievements and service of the Union Pacific Railroad. The railroad has a long history in Idaho that began in 1862. This resolution congratulates the railroad on its 150th birthday. Mr. Brassey stood for questions.

MOTION: **Senator Bilyeu** asked unanimous consent to send RS21438 to the Senate Judiciary and Rules Committee for printing and then to the 2nd reading calendar of the Senate with a do-pass recommendation. With no objections from the Committee, **Chairman Hammond** said the request was so ordered.

H540AA: **Chairman Hammond** welcomed **Senator Goedde** to the Committee. **Senator Goedde** said there has always been a problem with verification of liability insurance. This bill is a step forward from the industry that might help solve that problem. With that, **Senator Goedde** yielded to Paul Jackson of the Farmers Insurance Group.

Mr. Jackson said the insurance industry is not generally involved in issues for mandatory financial responsibility, but based on concerns expressed by legislators and members of the public, the industry developed this program which meets acceptable standards for security of customer information. Last year the insurance industry opposed an insurance verification bill in the House Transportation and Defense Committee, but promised to bring back something more acceptable, more efficient, and less expensive. H540aa is that promise kept.

Many Idaho citizens expressed concern regarding the number of uninsured motorists on our roadways. As of 2010, 32 States used insurance industry information and required the insurance industry to report information about their insured members in many ways. As the result of concerns in Idaho, the legislation before you was developed by the insurance industry after consultation with the Department of Transportation (ITD) to create an online insurance verification program with real-time response capability to verify the existence of motor vehicle insurance coverage in response to an event-based situation, such as vehicle registration, a traffic stop, or an accident.

This program is planned to be available to law enforcement, ITD, Department of Insurance, the courts, and at the time of vehicle registration. It provides for ITD to coordinate with the insurance industry to establish the internal parts of the program and assist in making the program available to the end-users based on IICMVA (Insurance Industry Committee on Motor Vehicle Administration) or higher standards. All carriers writing coverage on personal autos in the State will be required to participate in the program. Due to the nature of commercial insurance policies, they are excluded.

If a person is verified as having coverage through use of this system they will not be subject to an infraction for failure to carry a proof of insurance. If they are subsequently found to have had coverage at the time of the issuance of the citation, the citation is to be dismissed and it will not appear on the person's record. The program will allow the end-users to send a secure request based on the license plate number and Vehicle Identification Number via the program, to the insurer of record, to verify within a few seconds that the policy is indeed in-force. This insured's private information will not be available. Only a response that the coverage is in-force or not in-force will be returned. Mr. Jackson stood for questions.

QUESTIONS:

Senator Winder presented a hypothetical to **Senator Goedde**. Someone is driving down Broadway Avenue, speeding, and gets pulled over. The officer asks to see his insurance card but he doesn't have it, but he has a Smart Phone and checks with his insurance company that says 'yes he is' or 'is not' covered. He asked if that is how this process would work. **Senator Goedde** suggested that the Senator was thinking of a bill that had been passed earlier that allowed for electronic verification. **Senator Winder** asked what the difference is in this bill. **Senator Goedde** said this allows the officer to access, through the internet, the insurance company which will answer 'yes' or 'no' as to whether the insurance is in-force. **Senator Winder** thanked the Senator for explaining the difference in the two bills.

Senator Werk told Mr. Jackson that he was troubled by the fiscal note. Systems like this that interact with a large number of variables and a large number of companies that don't necessarily operate on the same platform. He asked if there was an existing platform that can be used for this purpose; he did not believe \$100K was enough for this project. Mr. Jackson said he would call on the ITD staff in the audience to help respond. This bill becomes effective on January 1, 2014, to give the insurance industry and ITD time to put it together. There is a window of opportunity right now through ITD because they are building-out a computer system and this fits perfectly in that window; \$100K is based on their estimate. Mr. Jackson yielded to ITD staff.

Mr. Alan Frew, Motor Vehicle Administrator for ITD, stated that there is an ongoing process of updating all their automated systems. They got a bid from 3M to build-out this program; their bid was less than \$95K. It is a simple build-out to their already extensive database. **Senator Werk** asked how police officers would interact with this system; would it be with ITD or with an insurance company. Mr. Frew said they were not exactly sure at this time. Absent a driver's Smart Phone, the officer would go through this system, possibly by using the Vehicle Identification Number to see if it is registered. **Senator Werk** asked about certificates of insurance that are not current. Mr. Frew said they anticipate being able to find out currently, based on how frequently they are able to refresh the data base, if a driver and vehicle is insured and officers can react to the information. They are still working out the fine details of how it will work.

Senator Corder asked what work will **not** be done because we are using the \$100K on this program; and was this part of their original budget. Mr. Frew said there is a contingency fund in case a project will cost more. They have a 10% contingency built into their budget. **Senator Corder** asked if this would slow down the modernization effort. Mr. Frew said it would not.

Senator Bair asked about what kind of information is available for disclosure given the bill states that some information won't be able to be exchanged. Mr. Frew said this language provides an exemption to public disclosure for these records. This means that if they have the information and there is a public records request, this provides an exemption. None of these records will be subject to that public disclosure.

Chairman Hammond acknowledged and welcomed a group of students from an Eagle High School American Government class to the Committee. The Chairman took a few minutes to explain the process the Committee was undertaking.

MOTION:

Senator Bilyeu moved that H540aa be sent to the Senate floor with a do-pass recommendation. **Senator Bair** seconded the motion.

DISCUSSION:

Senator Werk said he would like to see ITD come back next year and report on what ensued with the process.

VOTE ON THE MOTION:

With no further discussion, the motion passed by a unanimous voice vote. **Senator Goedde** will carry the bill on the Senate floor.

ADJOURNMENT:

With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 1:49 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Thursday, March 08, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>H511aa</u>	Establishes standards for lighting and marking of guyed towers more than 50 feet in height, and not regulated by the FAA, to ensure pilot safety.	Senator Winder
PRESENTATION –		
	Review of 129K pound truck legislation and an update on the economic benefits to the industry.	Bryan Whipple , Director of Marketing, Amalgamated Sugar Co.
	DISPLAY – 129K pound truck on display at or near the Capitol.	
	Support of economic development in Idaho.	Paul Steinman , Chief Operations Officer, ITD
	Available to respond to technical questions regarding data.	Greg Laragan , Highway Operations Engineer, ITD

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Bair
Vice Chairman Brackett	Sen Rice
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu
Sen Winder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
email: gbennett@senate.idaho.gov

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, March 08, 2012

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Hammond, Vice Chairman Brackett, Senators Corder, Winder, Bair, Rice, Werk, and Bilyeu

ABSENT/ EXCUSED: Senator Keough

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.

CONVENE: **Chairman Hammond** convened the meeting at 1:35 p.m. and asked the secretary to take a silent roll. The Chairman called on **Senator Winder** to present his bill.

H511AA: **Senator Winder** said this bill deals with guyed or meteorological towers, which test things such as wind velocities, possible alternative energy locations, and other related uses. This legislation is an effort to improve air safety on towers not regulated by the Federal Aviation Administration (FAA), which regulates towers 200 feet and above. Towers such as these operate across the State, and this bill would make it safer for Med-Evac, crop dusters, Idaho military, aerial fire fighters, search and rescue, predator control, survey aircraft and a variety of other aircraft.

QUESTIONS: **Senator Corder** asked how many accidents have occurred in Idaho. **Senator Winder** indicated later testimony would be able to specifically address that question.

Senator Werk asked about the amendment, which exempts power poles owned and operated by electrical suppliers to support telecommunications equipment, and if there are already safety requirements associated with those structures. **Senator Winder** indicated that was the case.

TESTIMONY: George Parker, Idaho Agriculture Aviation Association, related a story about a tower being moved without notification which almost caused a crash that could have been fatal. He referenced approximately 400 towers of this type that have been erected in the State of Idaho, only about 10% being appropriately marked by the owner or user. Mr. Parker stated the FAA's rule has overlooked legitimate air space uses below 200 feet and noted there are 16 different uses for air space in the State. He indicated there are four documented deaths, none in Idaho, due to these towers, and supports the legislation to improve safety.

QUESTIONS: **Senator Bair** asked Mr. Parker to share information he provided in an earlier conversation regarding costs of lighting for these towers. Mr. Parker stated that he had done research to keep this change and new lighting cost effective. He indicated he had found a solar powered light, lasting five years, that could operate in cloudy conditions for up to seven days for a lower cost than a typical light under FAA rules.

Vice Chairman Brackett asked about the discrepancy between line 17 indicating "shall be lighted, marked, or painted, or otherwise constructed to be visible" and line 23 indicating towers "shall have flashing lights." Mr. Parker indicated they shall have the light, and stated the goal was to focus on guyed structures, not other types of towers. Mr. Parker indicated it seemed to be contradictory language.

TESTIMONY: Byron Schmidt, Chief of Air Space Management, Mountain Home Air Force Base, indicated this issue has not been appropriately dealt with in federal regulations, and States are just beginning to address the problem. Mr. Schmidt explained some of the federal rules for air space, and the gap that exists for the low level altitudes, where there are currently no obstacle protections. He stated the Idaho State Legislature is the only entity with authority to deal with the issue without federal changes. Mr. Schmidt indicated this was a lifesaving measure, and a reasonable response and urged the support of the Committee.

QUESTIONS: **Senator Corder** asked about the FAA process, and what kind of incident was required to write new rules. Mr. Schmitt stated it was impossible to determine, and the National Transportation Safety Board (NTSB) had already made recommendations to the FAA that action needed to be taken, but the FAA has left it voluntary.

TESTIMONY: Brian Fox, State National Guard Aviation Safety Officer, stated the number of hours the National Guard are flying at night, which makes these towers impossible to see. Mr. Fox showed a video of a night flight, in which a tower could only be seen at approximately 300 feet away, which would be even worse in low visibility conditions. The cost of lighting this tower would be low compared to the cost of loss of aircraft and crew in an accident.

QUESTIONS: **Senator Rice** asked to clarify that not just the tower, but also the guide-wires that aren't visible and could take down an aircraft. Mr. Fox indicated that was the case, and explained how the guide-wires could take a plane down.

TESTIMONY: Bill Miller, Volunteer with the Idaho Aviation Association, offered his background as a pilot, flying reconnaissance missions, search and rescue and other aviation missions. Mr. Miller indicated pilots may not always be looking straight ahead, particularly on search and rescue missions and other aerial jobs. He stated these towers must have a minimum visibility for safety, to protect aviators, passengers and people on the ground, and urged passage.

Jim Raney, Chief Pilot, Idaho Helicopters, stated he responds to remote accidents day and night. When responding to fires, the smoke in the air makes these towers that much more difficult to see. He urged passage of the bill.

Keith Raley, Chief of Aviation Safety, Department of the Interior, explained the requirements for low level flying and what pilots do to map these low level hazards, but lack of notification requirements and tower movement make this more difficult. In addition, the FAA is not taking on the management of this issue.

Skip Smyser, on behalf of AT&T, spoke in support of the amendment, and indicated there should be letters of support from cellular carriers operating in the state. He indicated the sponsors had stated the intent was not to regulate carriers under this legislation, and the amendment made that specific, and he urged support of the amendment.

QUESTIONS: **Senator Corder** asked if any AT&T towers would fit these descriptions that were not marked. Mr. Smyser stated that there were guyed towers, and that in speaking to pilots, the cellular industry are the leaders in ensuring towers are marked appropriately.

TESTIMONY: **Roy Eiguren**, on behalf of Verizon Communications, indicated support of the amendment.

CLOSING REMARKS: **Senator Winder**, referencing **Vice Chairman Brackett's** previous question, indicated the structure of line 16 applied to the specific section that did not reference the lighting requirement. **Senator Winder** then related a story of a former Idaho Congressman who was killed when his plane hit a guyed tower, and stated the legislation would not eliminate all accidents, but would help.

QUESTIONS: **Senator Corder** asked about the number of towers in the State. **Senator Winder** indicated there are approximately 400 already in existence, and approximately that many more planned in the next four-to-five years. **Senator Corder** continued to ask who owns the land on which they are placed. **Senator Winder** indicated some would be private, but vast majority, including the one referenced in the video, were on public lands. **Senator Corder** asked if there was a registry or way to determine where they all are. **Senator Winder** deferred to Mr. Parker, who indicated the citing is proprietary, and there is no list. He also indicated they would use connections in the industry to start working on communications with companies to determine where they are located. **Senator Winder** also deferred to Mr. Schmidt, who stated the need for notification when erecting a tower was one of the issues that brought about this legislation. The proprietary nature was secretive in regard to mining for wind locations. Mr. Schmidt suggested that under requirements for lighting and marking they use the FAA methodology for determining where they are located, which has a notice for proposed structural operation. This would make information available to the Division of Aeronautics to be given to pilots without getting into proprietary issues. It would not cost anything and would allow the State to enforce this act.

Chairman Hammond indicated that issue might be able to be resolved during the Division of Aeronautics' rulemaking process. **Senator Winder** indicated the Division would have to clarify that ability.

Senator Corder said that this legislation did not address the ability to enforce, provided no penalties, and gave no one the ability to promulgate rules. He stated he was in support of the concept, but that there was a piece missing from the legislation. **Senator Winder** indicated the effort was to start the process, and that teeth could be added.

Senator Rice asked if page two, lines 12-13 would make this a misdemeanor and whether counties would be made aware. **Senator Winder** stated that was his understanding.

Senator Winder stated that an additional amendment was suggested, dealing with exclusion of telecommunication towers, of which the House sponsor was aware. The Senator recommended the Committee send the bill to the 14th order for amendment.

MOTION: **Senator Winder** moved to send H511aa to the 14th order for possible amendment. The motion was seconded by **Senator Bilyeu**. With no further discussion, the motion carried by a unanimous voice vote. **Senator Winder** will carry the bill on the Senate floor.

PRESENTATION: Roy Eiguren, on behalf of Amalgamated Sugar Company and U.S. Ecology Corporation, introduced people who would be presenting from those companies. Mr. Eiguren discussed the history of the efficiency of the 129K pound trucks on Idaho highways, and indicated the long history of testing these heavier trucks on highways since the 1990's. Mr. Eiguren discussed the pilot projects that have taken place and indicated the need to advise the committees of the progress and discussion on how to move forward.

Bryan Whipple, Marketing Services Director of Amalgamated Sugar, presented data slides and referenced a display in front of the Capitol. He also introduced colleagues present at the hearing and available to answer questions. His testimony is part of the permanent record of this hearing.

Marie McMonigle, District Manager, U.S. Ecology, stated they support the use of heavier weight trucks. She discussed the reduction of truck mileage because of road paving and using heavier weight trucks through the pilot project. Ms. McMonigle indicated they have been able to reduce the number of trucks and amount of time on the road, improved and maintained safety for the general public and contractors, and produced economic benefits for the community. **Senator Corder** proudly welcomed his daughter, Ms. McMonigle, to the Committee.

QUESTIONS:

Senator Werk asked if the road she referenced, Simco Road, was one that allowed the heavy trucks. Ms. McMonigle indicated it was.

Chairman Hammond asked about the ratio of axles to weight, and the greater stopping power. Ms. McMonigle deferred to Chuck Overman who indicated there was less weight per tire on the heavy weight vehicles. **Chairman Hammond** asked if that meant there was more friction on the road per pound for stopping power than under the old axle systems. Mr. Overman indicated that was the case.

Senator Werk asked if the added axles meant there were more brakes on the vehicle. Mr. Overman indicated that was the case. **Senator Werk** asked if brake specifications were heartier than in lighter trucks. Mr. Overman said they had the same specifications.

Jerry Whitehead, Chairman of the Idaho Transportation Board, stated his support of the heavier trucks, and spoke to the fact that Canada was already using these trucks. Chairman Whitehead referenced **Senator Werk's** question about brakes, and indicated the same requirements were on the trucks.

Senator Bair asked about the extra weight on bridges. Mr. Whitehead indicated the weight being spread out over many axles had less of an impact than the weight in the shorter trucks. Greg Laragan, Highway Operations Engineer at the Idaho Transportation Department, indicated that long span bridges were a concern, if an entire load were between spans. Mr. Laragan stated they were monitoring them, and that inspections had not shown damage as a result. Analysis indicates that potentiality more cracking could occur, but has not yet been observed.

Senator Bilyeu asked if the extra weight and axles showed additional damage to the roads. Chairman Whitehead indicated no additional damage was found. Mr. Laragan stated they had been monitoring road degradation. The report will be out next year, but they had not seen attributable pavement damage.

Senator Werk asked if conclusions were not drawn because roads were not closed off and there were no isolated instances to deal with. Mr. Laragan stated the significant hindrance is the small percentage of total volume of heavy trucks traveling on highways. He indicated separating out the damage caused by the heavy trucks versus smaller trucks was not possible.

Chairman Hammond asked if the analysis was possible through comparison with roads on which heavy trucks are not allowed. Mr. Laragan indicated this becomes very complicated.

Senator Werk stated that baseline data for roads of similar condition and similar construction was making it more complicated.

Chairman Hammond stated that as a better system for managing the data on road degradation is developed, those answers may become available.

**CLOSING
REMARKS:**

Mr. Eiguren stated the project was open and transparent. The pilot project was meant to collect ten years of data. A final report will be coming to the Legislature next year. A leadership decision was made when the pilot project was launched to keep the heavy trucks to certain highways, and those choices can be revisited next year. Mr. Eiguren indicated the freeway system in Southern Idaho is also being pushed in Congress by Idaho's delegation.

QUESTIONS:

Senator Werk asked if safety of the 129K pound trucks was being directly tracked for accident rates and the nature of incidents. Mr. Eiguren stated that information was being tracked and would be included in the report.

ADJOURNMENT:

Chairman Hammond thanked Mr. Eiguren and all the presenters for the update. With no other business before the Committee, the Chairman adjourned the meeting at 2:55 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

Erin Bennett
Transcriber

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:30 P.M.
Room WW53
Thursday, March 15, 2012

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Appointment of Julie D. DeLorenzo of Boise to the Idaho Transportation Board commencing on March 12, 2012, and expiring on January 30, 2015.	Julie D. DeLorenzo will be introduced by Jerry Whitehead , ITB Chair
MINUTES	Thursday, February 9, 2012	Senator Bilyeu and Senator Brackett
	Tuesday, February 14, 2012	Senator Bair and Senator Winder
PRESENTATION	Idaho Transportation Department Freight Study	Maureen Gresham , ITD Freight Coordinator

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Bair
Vice Chairman Brackett	Sen Rice
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu
Sen Winder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
email: gbennett@senate.idaho.gov

MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Thursday, March 15, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Hammond, Vice Chairman Brackett, Senators Keough, Corder, Bair, Rice, and Bilyeu
- ABSENT/ EXCUSED:** Senators Winder and Werk
- 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.
- CONVENE:** **Chairman Hammond** called the meeting to order at 1:30 p.m. and asked the secretary to take a silent roll. The Chairman welcomed Idaho Transportation Board (ITB) Chairman, Jerry Whitehead, to the Committee to introduce Julie D. DeLorenzo's appointment to the ITB.
- GUBERNATORIAL APPOINTMENT:** ITB Chairman Whitehead stated that Ms. DeLorenzo is a long-time resident of Idaho. She is replacing his position on the ITB. He stated that she had been to her first Board meeting and that she was becoming familiar with the Department. He is certain she will do a good job and be a good fit for the Board. He recommends that she be confirmed.
- Chairman Hammond** welcomed Ms. DeLorenzo to the Committee and asked her to share some of her background. She said she was raised in a small community on the Oregon coast where she lived until she was 23; she then moved to Idaho. She has lived in the Boise area for about 30 years. She has a strong understanding of the diversity and needs of a small rural community and how differing they are from larger communities. She comes from a long line of entrepreneurs. Her father and grandfather owned and operated logging operations and farms. As a realtor, she is very proud to be able to help put people in homes. She gets to see home ownership coming true every day. She is married, has one child, and three 'bonus' daughters and 'bonus' grandsons. Ms. DeLorenzo stood for questions.
- QUESTIONS:** **Chairman Hammond** asked what she saw as the major issues facing her as she moves forward on the ITB. Ms. DeLorenzo said there were two issues: (1) the aging transportation system they are faced with; and (2) the funding challenges that they are also faced with. Idaho is one of the few States in the nation that does not have a major highway running North between two large metropolitan areas. That is a significant challenge for commerce, safety, and efficiency for our State.

Senator Corder thanked her for agreeing to become a member of the ITB. He noticed that she is a Democrat but has served as a federal political coordinator for U.S. Senator Larry Craig and now for U.S. Congressman Raul Labrador. He was curious what that entails. Ms. DeLorenzo said she is basically a liaison between the realtor members in the State of Idaho and the Congressional Delegation. She had also served in that capacity for former Congressman Walt Minnick. **Senator Corder** said while imminently qualified for real estate business community involvement, he was curious about her qualifications for infrastructure and highways; and how big she thinks the learning curve is for her. Ms. DeLorenzo said she attended her first Board meeting yesterday and thinks Director Ness is doing a great job. She is very involved in the community and understands how transportation affects our economy. She's looking forward to working with the Board and the legislature to further their efforts. **Senator Corder** asked if she's given any thought to increasing the funding for roads. Ms. DeLorenzo said she had and that it will not be an easy task. There are real challenges before us in the State of Idaho for funding our transportation system. It is critical the system provides a safe and efficient way of moving people around; and it is critical that we get our products to market. Those are huge issues. Idaho is in a unique position of having two-thirds of its land as public land, and the 39th State in population. It's a small population that has to fund the system. We don't know what the federal government is going to be doing with their package. Doing nothing is not an option. The gas tax has not been increased since the mid-nineties. GARVEE funding is nearly used up and it doesn't look like there will be an expansion, but we have to address failing roads and bridges. **Senator Corder** suggested that she must have had a lot of experience in working with the Ada County Highway District (ACHD). It is a unique entity unlike all the other highway districts. He asked if she's given any thought about what that relationship would look like in the future. Ms. DeLorenzo said she has not worked with ACHD. **Senator Corder** suggested that since her work experience is in Ada County, he assumed she had some knowledge of that entity. Ms. DeLorenzo is looking forward to becoming more educated on that. **Senator Corder** asked if she viewed her job as focusing on the State system or as focusing on a broader system. Ms. DeLorenzo said that while she was appointed to District 3, she will be making decisions that affect the entire State, and that is where she will focus. There were no further questions.

Chairman Hammond thanked Ms. DeLorenzo for appearing before the Committee. The Committee will vote on her appointment at the next meeting. The Chairman thanked her for her willingness to serve on the Committee. Ms. DeLorenzo said it was a pleasure and an honor to have been considered for this appointment.

MINUTES:

Chairman Hammond called for a motion on the minutes of the February 9, 2012, Senate Transportation Committee meeting. **Senator Bilyeu** moved that the Committee approve the minutes of February 9th. **Vice Chairman Brackett** seconded the motion. The minutes were approved by a unanimous voice vote.

Chairman Hammond called for a motion on the minutes of the February 14, 2012, Senate Transportation Committee meeting. **Senator Bair** moved that the Committee approve the minutes of February 14th. **Vice Chairman Brackett** seconded the motion. The minutes were approved by a unanimous voice vote.

Chairman Hammond welcomed Idaho Transportation Department (ITD) Director Brian Ness to the Committee to introduce Maureen Gresham, ITD's Freight Coordinator.

INTRODUCTION: Director Ness said that the purpose of the Freight Study is to identify policies, programs and investments within the State's transportation network that will facilitate the efficient movement of freight over State transportation systems, improve safety, and support economic development at the State and local levels. Data from the study will also be used to update the State's Freight and Passenger Rail Plan. The plan update will help develop and preserve essential freight and passenger rail services in Idaho, set public and private sector priorities, and guide investments and policy or program changes. The study is expected to be completed in November, 2012.

The Director said that Maureen Gresham brings seventeen years of experience in transportation planning, program management, policy/project development, and public involvement to her management of Idaho's Freight Study and Rail Plan update. She came to ITD from Atlanta, Georgia, two years ago. She has worked at all levels of government including local, regional, and State, as well as in the private sector at an international private engineering and planning firm. Ms. Gresham received her undergraduate degree from Appalachian State University and her Masters in City Planning from the Georgia Institute of Technology.

PRESENTATION: Ms. Gresham began her presentation with an overview. ITD has initiated a study of the statewide multi-modal freight network to address current and future freight movement needs. The purpose is to identify policies, programs, and investments within the State's transportation network and institutional framework that will facilitate mobility, improve safety, and support economic development initiatives at the State and local level.

The scope of the study addresses truck, rail, air, and water freight movements into and out of Idaho by inventorying and analyzing the physical infrastructure, condition, and operations of the multi-modal system, testing various investments strategies, and developing performance measures that can be used to evaluate the viability and cost of investments and policy/programmatic recommendations.

The results of the study will be used to prioritize needed policy and programmatic changes as well as lay a foundation for individual modal (highway, rail, airport, and port) system plans to identify and prioritize needed investments.

ITD is hiring a consultant team to conduct this study. The consultants and ITD staff will be coordinating the entire effort with a wide array of stakeholders including freight railroads, Amtrak, trucking industry, airports, freight shippers, Port of Lewiston, existing and potential inter-modal facility stakeholders, other State agencies, regional planning and economic development organizations, MPOs, State and local advocacy groups, local governments, adjacent States, environmental interests, other modal interests, and the public, especially those with an interest in freight movement.

ITD is also updating the 1996 Idaho State Rail Plan. The primary objective of this update is to identify, evaluate and encourage the development and preservation of essential freight and passenger rail and inter-modal freight services. The rail plan is necessary to meet federal requirements and will enable the State to competitively compete for national rail related funding opportunities. The plan provides Idaho the opportunity to facilitate and participate in a rail transportation system allowing commodity-based companies to move products efficiently, expanding business opportunity, and generating the need for increased jobs. This project is being developed in concert with the Idaho Freight Study, both to leverage federal funds but also to increase coordination of modal infrastructure investments. ITD is using the same consultant team and stakeholder plan. Ms. Gresham stood for questions.

QUESTIONS:

Senator Corder made a comment that he had attended the forum and thought it was well conducted and that she had done a great job. It was certainly worth the time just to have everyone in the room.

Senator Bilyeu asked about available federal grants. Ms. Gresham said the grant money they received was a Federal Railroad Administration grant to complete the rail plan. When they are finished they will be able to see what other grant opportunities are out there, and there is talk about reauthorization and creating a freight program. **Senator Bilyeu** asked for more information about how a rail plan could take place in Idaho and if passenger rail is being looked at as well. Ms. Gresham said that they are looking at passenger rail. There is some passenger rail in Sandpoint, but the possibility of future passenger rail in other areas of the State are not as high. All the short line rails involved in the steering committee are bringing their expansion issues to the table and trying to build on what the trucking industry is doing in building a system to be more efficient.

Chairman Hammond thanked Ms. Gresham for her presentation and that she had done a great job.

ADJOURNMENT:

With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 1:55 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:00 P.M.
Room WW53
Tuesday, March 20, 2012
NOTE: CHANGE IN MEETING TIME

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT	Motion on appointment of Julie D. DeLorenzo of Boise to the Idaho Transportation Board commencing on March 12, 2012, and expiring on January 30, 2015.	MOTION
<u>H619</u>	Returns the authority to set incorporated cities' speed limits to the Idaho Transportation Department.	Representative Palmer and Representative Smith
<u>H583</u>	Requires the government agency with jurisdiction over a roadway to consider and recognize legal access rights reflected in easements when acting on an access application.	Senator Winder
<u>S1372</u>	Amending Sections 67-2805 and 67-2806, Idaho Code, to provide the same exemption from disclosure of bids and bid documents until after awarded as provided in Section 67-5711C, Idaho Code.	Senator Winder

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Bair
Vice Chairman Brackett	Sen Rice
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu
Sen Winder	

COMMITTEE SECRETARY

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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

AGENDA
SENATE TRANSPORTATION COMMITTEE
1:00 P.M.
Room WW02 - AUDITORIUM
Wednesday, March 21, 2012
PLEASE NOTE DATE, TIME, LOCATION CHANGES

SUBJECT	DESCRIPTION	PRESENTER
<u>H414</u>	Authorizes the Idaho Department of Agriculture to transfer funds to the Idaho Transportation Department to prepare and periodically update Idaho's rail plan.	Senator Winder
<u>HCR49</u>	Honors Mildred Rinker Bailey , an enrolled member of the Coeur d'Alene Tribe and a pioneer of the American jazz and blues musical idiom. In 1989, Ms. Bailey was inducted into the Big Band and Jazz Hall of Fame.	Helo Hancock , Legislative Director, Coeur d'Alene Tribe
MINUTES	Thursday, February 16, 2012 Committee meeting	Senator Corder and Senator Werk
	Consensus on handling of Minutes not yet approved.	Chairman Hammond
PAGE PRESENTATION	Farewell to Transportation Committee Page, Ben Stringham of Boise, a senior at Centennial High School.	Chairman Hammond

FUTURE MEETINGS AT THE CALL OF THE CHAIR

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Bair
Vice Chairman Brackett	Sen Rice
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu
Sen Winder	

COMMITTEE SECRETARY

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MINUTES
SENATE TRANSPORTATION COMMITTEE

- DATE:** Wednesday, March 21, 2012
- TIME:** 1:00 P.M.
- PLACE:** Room WW02 - AUDITORIUM
- MEMBERS PRESENT:** Chairman Hammond, Senators Keough, Winder, Rice, and Bilyeu
- ABSENT/ EXCUSED:** Vice Chairman Brackett, Senators Corder, Bair, and Werk
- 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.
- CONVENE:** **Chairman Hammond** called the meeting to order at 1:00 p.m. and asked the secretary to take a silent roll. With a quorum present, he asked **Senator Winder** to present H414.
- H414:** **Senator Winder** said that this bill deals with the moving of funds from the Idaho Department of Agriculture to the Idaho Transportation Department (ITD) for the purpose of updating the rail plan. This is an effort to bring the planning process up-to-date. We have a tremendous transition of main-line and short-line railroads that are local in nature and service regional lines in rural communities. There is a requirement to have a rail plan in place; the last one was done in 1996. It would allocate up to \$75,000 to help with the rail plan that would serve the State. The Senator deferred the rest of his presentation time to John Watts.
- John Watts is a partner at Veritas Advisors and represents WATCO Railroad, a short-line railroad company that is interested in railroad policy in Idaho. Mr. Watts explained the various primary and short-line railroads around the State and which lines affected the regions that the Committee members represent. Short-line railroads gather up products from various points around the State and transport them to the main hub of the primary lines. The point of this bill is that in the original act there was a call for a freight, truck, and rail plan. It has never been funded. This bill is hoping to change that. The Idaho Department of Agriculture has some funding and they would like the 16 year old plan updated. Maureen Gresham of ITD will help coordinate that effort. The bill transfers funds from the Idaho Department of Agriculture, not to exceed \$75,000, and moves them over to ITD to accomplish the update, refresh it periodically, and not let it fall behind in the future. Shippers need predictability in how they're going to move their products whether by truck or train or a combination of both. That is why they need insight into where the State is going with policies in years to come. It will help the main-lines and the short-lines in their planning processes. Mr. Watts encouraged a do-pass recommendation and stood for questions.
- QUESTIONS:** **Senator Bilyeu** asked who would be writing and doing research for this study. Mr. Watts said that Maureen Gresham of ITD would be coordinating the project. **Chairman Hammond** reminded the Committee that Ms. Gresham had presented ITD's freight study to the Committee recently. Mr. Watts indicated that Laura Johnson with the Idaho Department of Agriculture would be helping with the distribution of funds.

MOTION: **Senator Winder** moved to send H414 to the Senate floor with a do-pass recommendation. **Senator Bilyeu** seconded the motion. With no discussion, the motion passed by a unanimous voice vote. **Senator Winder** will carry the bill on the Senate floor.

HCR49: **Chairman Hammond** asked Helo Hancock, Legislative Director of the Coeur d'Alene Tribe, to take the podium to present HCR49.

Mr. Hancock said this resolution was drafted to honor and recognize Mildred Bailey. Ms. Bailey was a very famous jazz and big band era singer in the 1930's and 1940's. She was also a member of the Coeur d'Alene Tribe. Julia Keefe, a rising jazz singer and member of the Nez Perce Tribe, has dedicated her singing career to recognizing and trying to bestow proper credit to Mildred Bailey for her contribution to the jazz community. Ms. Keefe brought Ms. Bailey's contribution to the attention of the Coeur d'Alene Tribe and several legislators who were so impressed that they wanted to help with the recognition. One goal is to have Ms. Bailey recognized in the Jazz Hall of Fame in New York City.

Ms. Bailey was born in Tekoa, Washington, just off the Reservation line, but grew up on a family farm in Desmet, Idaho. Her family moved to Spokane when she was 13. Her mother, a very accomplished pianist, taught Ms. Bailey and her brother, Al, piano. They became close friends with a neighborhood kid named Harry Crosby, who went by Bing; they became lifelong friends. Ms. Bailey moved to Los Angeles in the early 1920's and became an instant success. She convinced her brother and Bing Crosby to move to Los Angeles where she got them their first jobs. Mr. Crosby credits Ms. Bailey for getting him a start in show business. Throughout her career, Ms. Bailey was able to conceal her Native American heritage. She was able to break the race barrier by performing with both white and black bands. She paved the way for future female singers. The Committee had no questions for Mr. Hancock.

MOTION: **Senator Keough** moved to send HCR49 to the Senate floor with a do-pass recommendation. **Senator Rice** seconded the motion. With no discussion, the motion passed by a unanimous voice vote. **Chairman Hammond** will carry the resolution on the Senate floor.

COMMENTS: **Senator Bilyeu** stated that she would like to hear some of Ms. Bailey's music. On his iPad, **Senator Winder** was able to find Ms. Bailey's famous rendition of "Thanks for the Memories," Bob Hope's theme song, and played it for the Committee.

MINUTES: **Senator Keough** moved that the Committee approve the minutes of the February 16, 2012 meeting of the Senate Transportation Committee. **Senator Bilyeu** seconded the motion. With no discussion, the motion passed by a unanimous voice vote.

Chairman Hammond explained to the Committee that with the end of the session drawing near, Committee meeting minutes not already approved will be approved either via a hearing, buck slip, or at the will of the Chair. There were no questions or discussion.

**PAGE
PRESENTATION:**

Chairman Hammond asked **Ben Stringham**, the Committee's Senate Page for the second half of this legislative session, to come to the podium. The Chairman commented on what a "class act" Mr. Stringham was, and how he had enjoyed visiting with him and appreciated his help with the Committee. He asked Mr. Stringham to share what he had learned and his thoughts on being a Senate Page.

Mr. Stringham began by stating he had learned a lot during his short time in the legislature. He came in not knowing what to think about the Senate or government in general. He quickly saw not his preconceived perception of a dusty room with people figuring out what to do, but he found a group of fine people that he has come to understand and appreciate. He enjoyed serving with the Senate Transportation Committee. He thanked each member of the Committee with a unique story of something they did that left behind a learning moment for him. At the end of his remarks he quoted from the renowned Mildred Bailey with a "Thanks for the memories!" He received a round of applause from the Committee.

Chairman Hammond presented Mr. Stringham with a letter of thanks from the Committee, a letter of recommendation from the Chairman, and gifts to remind him of his time as a Senate Page for the Senate Transportation Committee.

ADJOURNMENT:

Chairman Hammond reminded the Committee that there would be a meeting of the Committee the following day to hear H628aa. He would not be in Committee as he had a commitment in Coeur d'Alene he could not miss. **Vice Chairman Brackett** would, therefore, chair tomorrow's meeting. With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 1:30 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

**AMENDED AGENDA
SENATE TRANSPORTATION COMMITTEE
1:00 P.M.
Room WW53
Thursday, March 22, 2012**

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Tuesday, February 21, 2012	Senator Bilyeu and Senator Bair
	Tuesday, March 6, 2012	Senator Keough and Senator Rice
	Thursday, March 15, 2012	Senator Brackett and Senator Rice
<u>H628aa</u>	Provides that highways created by statutory prescription or common law dedication are an exception to the requirement that all highways shall not be less than fifty feet wide.	Don Copple , Davison Copple Copple Copple

**FUTURE MEETINGS ARE AT THE CALL OF
THE CHAIR**

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Bair
Vice Chairman Brackett	Sen Rice
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu
Sen Winder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
email: gbennett@senate.idaho.gov

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, March 22, 2012

TIME: 1:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Vice Chairman Brackett, Senators Keough, Corder, Winder, Bair, Rice, Werk, and Bilyeu

ABSENT/ EXCUSED: Chairman Hammond was excused.

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.

CONVENE: **Vice Chairman Brackett** called the meeting to order at 1:00 p.m in the absence of **Chairman Hammond**. He asked the secretary to take a silent roll.

APPROVAL OF MINUTES: **Senator Bair** moved, seconded by **Senator Winder**, to approve the minutes of February 21, 2012. The motion carried by a unanimous voice vote.

Senator Keogh moved, seconded by **Senator Bair**, to approve the minutes of March 6, 2012. The motion carried by a unanimous voice vote.

Senator Rice moved, seconded by **Senator Winder**, to approve the minutes of March 15, 2012. The motion carried by a unanimous voice vote.

DISCLOSURES: **Senator Winder** for the record, stated he was involved in preparing several bills that came up for discussion. He said some advanced and some did not, but this was a bill he actually took over to some House members. There had been some discussion about this bill being originated by some House members, specifically for their problem. He said he thought it was worthy of debate and discussion. They actually put it into a bill form and brought it forward. Also for the record, while he didn't think he needed to disclose, but because of the sensitivity of all of the things that were going on, he would disclose under rule 39H that at times he is called as an expert witness on this matter by the presenter on the bill.

Vice Chairman Brackett said he wanted to disclose he had served on the Highway District in his prior or former life. He has a brother and a son that are current members of districts. He is a landowner that could be impacted by this legislation, so he declared under rule 39H.

H628AA:

Vice Chairman Brackett said they had H628aa before them and he introduced the presenter, Don Copple, from Davison, Copple, Copple, and Copple. Mr. Copple said this bill dealt with Idaho Code 40-2312 and it was designed to address the Idaho Supreme Court's holding in *Halvorson v. North Latah County Highway District*, 151 Idaho 196 (2011), which held that prescriptive rights-of-way across private land were no less than 50 feet in width unless an owner could prove they were established prior to enactment of Idaho Code, Section 40-2312. Historically, the law had been that prescriptive easements were limited to the width actually used. There was no proper basis allowing governments to take 50 feet across private property when they had not paid any just compensation for that taking and had not actually used the ground for a roadway. He said this bill only applied to counties and not cities.

Mr. Copple gave a brief history and cited a 1908 Supreme Court case called the Meservey case that dealt with the width of a prescriptive road. He said a public prescriptive road was one that came into existence because it had five years of public use and public funds expended on it. At that point it became a public road. The issue was how wide was it going to be. This case created a presumption, based upon the statute that the road was to be 50 feet wide, unless one could show that a lesser amount was involved. He represented private property owners and they analyzed and looked to see if prescriptive rights-of-way were involved. In the Meservey case, the Idaho Supreme Court adopted the law of Utah and said that it would seem that the right acquired by prescriptive users carried with it such width as reasonably necessary for the reasonable convenience of the county or public. He said the statute fixed highways of not less than 50 feet. He said they wanted to know the actual use of the road by the traveling public and what was necessary to support on the site, such as water, runoff, snow and that sort of thing. He cited Chris Myers, who did a road report, and he said the Idaho Supreme Court held that with the highways established by public use, based on the separations of circumstances peculiar to each case, that was presumed to be 50 feet unless facts clearly indicated otherwise.

He said that in 1985, the legislature repealed the provisional law and reenacted the current version of the code we have now. He then cited February 2011 and the Halvorson Case, which established what the law was now. The Idaho Supreme Court said Section 40-2312, established a mandatory width of 50 feet for prescriptive highways and it was not limited to prescriptive highways. Mr. Copple gave an example of a one-lane forestry road going to people's property, which went to the national forest, and that road was not 50 feet wide and said the same thing could happen in rural counties and one could have a 20 foot road or a single main road. These roads, he said, were 50 feet wide and it ignored the historical use. He said the Halvorson case supported having every road 50 feet wide. He suggested this Committee look at this as a policy decision. He asked them if they wanted every public, descriptive road in Idaho to be 50 feet and if they did, then the Halvorson case supported that and they didn't have to pass this bill. However, if the Committee believed that a public prescriptive road should be limited to the actual use, with sufficient distance on each side to support it, then this bill would address that. What the bill stated was that it was trying to clarify the legislative intent and bring it forward to the presently existing language of 1985. He said it was a little convoluted and everyone had a different view on this. He gave an example of someone who had a 25-foot wide road, which was rarely used. He said they had fences that had been there forever, and no public money had ever been expended on it, and the highway district was claiming it. To make it 50 feet in width, they would have to give up another 25 feet of property. Mr. Copple stood for questions.

QUESTIONS:

Senator Rice asked Mr. Copple if he would consider the case of a prescriptive easement where the land owner was voluntarily allowing the use of his property? Mr. Copple responded and said it could be, but it made no difference if it was voluntary or involuntary, because if the public drove on the road and it was supported with public funds, it was a public highway.

Senator Corder said Mr. Copple was teaching them that after Halvorson, this addressed every road, but pre-Halvorson decision, these narrower roads were allowed. Mr. Copple said that prior to Halvorson, the public right-of-way was determined to be the actual user, plus enough on each side to support the road. He said that was the way he thought the law ought to be. But, he said, the Halvorson case said on page 10 that this did not apply to just prescriptive roads but it applied to all roads in Idaho. He said the court took it to the next step and made a public policy decision. **Senator Corder** said he knew Mr. Copple appreciated some of the subtleties that were in the law. The bill said the rights-of-way were 50 feet, but he was not clear on the decision. He said he knew the 1887 law had been repealed in 1985 and replaced with Idaho Code 40-2312. **Senator Corder** said Mr. Copple was asserting that the narrower road capacity preceded 1887 rather than 1985. Mr. Copple said the original 1887 act included the 50-foot width. The Meservey case said, basically, the presumption was the roads were 50 feet wide. The property owner could show there was less amount of ground being used and it was not 50 feet. The change was that they were now all 50 feet irrespective of the actual use. The State of Idaho wrote a memo on this stating this was not always that way. But, it was that way according to the Halvorson case. He did not read the case that way and he still didn't view it that way.

Senator Corder said that if he owned a piece of a narrow road used by the public and if that was a one-lane road, because it was way out in the middle of nowhere and occasionally there was room for vehicles to pass one another, then that road trumped. Even though in 1887 the law said it was 50 feet because it was assumed to be that way, it was only the width that was actually used. People would build their fences right up to the part that was being used and were infringing on what others may have considered a right-of-way. In 1985, that was correct. Mr. Copple said a lot of times owners would ask the highway district before they put their fences up as a common courtesy. Then something happened and they would want to widen the road, so the issue was how much did they own. In the 1887 law as it was read, roads were 50 feet unless the owner could show the County that it was not. That was the way the law was applied until February of 2011 when the Supreme Court said all roads would be 50 feet. He said the issue was whether that was the way the Committee wanted the law to be. If they did, then it was okay. Mr. Copple said that he believed if one owned property, then one should not have to donate or dedicate it. He gave an example of having a 20-foot road with 2-1/2 feet on each side, so there would be 25 feet. According to the Supreme Court, a person would have to give up another 25 feet. He didn't think we should have to fight about this with the courts. He said he thought this was what we thought in Idaho as to what private property rights should be. He said he thought the issue was clear-cut. He said it really got down to highway districts and counties were charged with the responsibility for wanting to widen the road and not pay whatever just compensation would be for the additional strips next to the highway. He said he believed this was where the dispute lay.

Senator Corder said he was sympathetic to what Mr. Copple said, but he was curious as to how the highway districts were going to pay for the easements. **Senator Corder** said that if this was to pass, their ability may be limited to maintain some of the things they already had or by expanding there would be a significant impact. Mr. Copple said the Committee had to decide what the public policy was. He said if the Committee thought the Halvorson case was good public policy then the Committee should vote no. He said he thought this was bad public policy. He said he thought the Committee could not ask the few to pay for the benefit of the whole as it should be the other way around. He said that was the philosophy of eminent domain.

Senator Keough said she noticed the Halvorson decision occurred in 2010 and the rehearing was denied about a year ago and she agreed with Mr. Copple's statements about private property rights. The question was whether or not any effort was made to get together with utility companies and highway districts, to work through some language that could balance and preserve private property rights. She asked if that occurred in the last year? Mr. Copple said he didn't think it did, but he was at a meeting where some of the people representing the highway district were there, but other than that he was not aware of any discussion.

Senator Rice said he pulled up the Meservey case and he wanted to check the language which said it was presumed to be 50 feet unless the facts and circumstance of the case clearly indicated that the owner over whose land the road ran had limited the width of said road to within less than 50 feet prior to the time said road became a highway by users. He asked if that was correct. Mr. Copple said that was correct.

TESTIMONY:

Vice Chairman Brackett asked that all testimony be concise and to the point. He said they would try to alternate pro and con.

**SUPPORT
H628AA:**

The following people testified in **support** of H628aa: Patrick Dobie, a professional engineer licensed in Idaho who talked about the 50 foot right-of-way and how the bill needed to address this issue; Janice Kootstra, a resident of Jerome, who said she didn't think it was fair to have land taken without fair compensation; Dennis Tanikuni from the Idaho Farm Bureau, asked the Committee to look at his letter in their packet; Don Hite, a citizen from Jerome, told a story about how some of his parent's land was taken and the highway district did not acknowledge any responsibility for payment; Hebert Carpenter said he wanted to testify because he wanted people in Idaho to get along with their neighbors in the rural areas. Land owners have allowed people wishing to cross their property in the past with the ability to do so without fear there would be a prescriptive easement gained. Through that easement a county road would be placed there and a 50-foot right-of-way would be granted, which he considered a government taking of private property. Kerry Ellen Elliott said she did not need to testify and she had submitted a letter to the Committee. Heather Cunningham, Copple, Davison, Copple, Copple, and Copple, said she would testify at the next meeting.

**OPPOSE
H628AA:**

The following people testified in **opposition** to H628aa: Lan Smith, Gem County Commissioner and Chairman of the Idaho Association of Counties Transportation Committee. He said he wished the Committee would take some time to compare the 1887 law and the 1985 law because he said he thought they were identical. Gordon Cruickshank, a Valley County Commissioner, said there was a backlog of maintenance and asked why add another burden to the local jurisdiction; Bruce Wong, Ada County Highway District (ACHD), declined to testify; Steve Price, ACDH, declined to testify.

QUESTIONS: **Senator Rice** asked a question of Mr. Cruickshank about prescriptive easement. He asked if a landowner let the County use 20 feet wide to go across property and the County had maintained it, but that was all he let the County use, was it his position that after five years the County would own 50 feet wide across the property? Mr. Cruickshank said there were cases in his County where the property owners had recognized the 50 foot prescriptive right in the diagram he showed them. The County asked for 70 feet and they have purchased the additional right-of-way they needed at market value. They have never been challenged. He said they did have roads in Valley County that have only a 40 foot right-of-way. He said they recognized that and if they wanted to build more, they had paid for beyond the 40 feet. They had land owners who had fences that were close to the road, but who agreed that if the County paid for the cost of moving the fence back, they would relinquish the ground to the public enterprise. **Senator Rice** wanted to clarify and said that what had been used historically, such as 40 feet, and there was a fence there, the County was working with the owner and getting agreement. Mr. Cruickshank said that was correct. **Senator Rice** wanted to know what if the property owner didn't agree with the extra 10 feet? Mr. Cruickshank said they have had that in the past when there was a road the County didn't maintain in the winter time. Now it would be maintained during all weather. The road was narrow and they recognized that the usable roadway was 42 feet wide. They sat down with the land owner and came up with a plan where they paid for an additional right-of-way. **Senator Rice** said this bill, as he understood it, would not affect any of that. Mr. Cruickshank said he believed this bill didn't define this enough and he thought the Committee needed a lot more time to work on some of the issues he talked about.

CONTINUATION OF HEARING: **Vice Chairman Brackett** said due to time constraints, testimony would be continued to the next meeting.

COMMENTS: **Senator Werk** asked if there was a tax meeting at 2:00 p.m. **Senator Corder** indicated that there was a meeting. **Senator Winder** said they would have to post an agenda and time for the next meeting. **Vice Chairman Brackett** said he hoped they could meet at 1:00 p.m. on Friday, March 23, 2012.

ADJOURNMENT: **Vice Chairman Brackett** adjourned the meeting at 2:00 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary

Linda Kambeitz
Transcriber

**AMENDED AGENDA
SENATE TRANSPORTATION COMMITTEE
1:00 P.M.
Room WW53
Tuesday, March 27, 2012**

CONTINUATION OF MARCH 22 MEETING

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Thursday, February 23, 2012	Senator Bair and Senator Brackett
	Thursday, March 8, 2012	Senator Corder and Senator Winder
	Wednesday, March 21, 2012	Senator Bilyeu and Senator Keough
COMMENTS	<u>Continuation of hearing of March 22, 2012:</u> At the request of the Chairman: A response to questions regarding historical perspective on legislation before the Committee.	Chris Kronberg, Office of the Attorney General
	<u>H628aa</u> Provides that highways created by statutory prescription or common law dedication are an exception to the requirement that all highways shall not be less than fifty feet wide.	CONTINUATION OF TESTIMONY ON LEGISLATION

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Hammond	Sen Bair
Vice Chairman Brackett	Sen Rice
Sen Keough	Sen Werk
Sen Corder	Sen Bilyeu
Sen Winder	

COMMITTEE SECRETARY

Gaye Bennett
Room: WW33
Phone: (208) 332-1332
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MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, March 27, 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.

CONVENE: **Chairman Hammond** called the meeting to order at 1:05 p.m. and asked the secretary to take a silent roll. With a quorum present, **Chairman Hammond** asked for motions to approve meeting minutes.

MINUTES: **Senator Bair** moved that the minutes of the meeting of Thursday, February 23, 2012 be approved. **Vice Chairman Brackett** seconded the motion. The motion was approved by a unanimous voice vote.

Senator Corder moved that the minutes of the meeting of Thursday, March 8, 2012 be approved. **Senator Winder** seconded the motion. The motion was approved by a unanimous voice vote.

Senator Bilyeu moved that the minutes of the meeting of Wednesday, March 21, 2012 be approved. **Vice Chairman Brackett** seconded the motion. The motion was approved by a unanimous voice vote.

Chairman Hammond stated that today's meeting was a continuation of the Committee's last hearing held on Thursday, March 22, 2012. The Committee will continue to hear testimony on H628aa. However, the Chairman began the meeting by having Deputy Attorney General, Chris Kronberg, present clarifying information regarding H628aa. With that, **Chairman Hammond** asked Mr. Kronberg to take the podium.

COMMENTS ON H628AA: Mr. Kronberg stated that he did work for the Office of the Attorney General, however, the Attorney General has not taken a position on this legislation. He also said he was not here speaking on behalf of the Idaho Transportation Department (ITD). He said the Committee had asked several questions regarding H638aa of the Attorney General, and he was asked to respond.

The first question was: When was the 50' easement for prescriptive highways statutorily enacted in Idaho and what was the law prior to its enactment? The law stating that all highways shall be 50' wide was passed in 1887 as section 932, Rev. St. 1887, and stated that all highways, except alleys and bridges, must be at least 50 feet wide, excepting those consisting of a less width at the date of the enactment of section 932. That is the language that is essentially found in the current version of Section 40-2312, Idaho Code. Section 851, Rev. St. 1887, defined highways as roads laid out and recorded by county commissioners, and all roads used and maintained by the public for five years (prescriptive easement). That is the language that is essentially now found in Section 40-202(3), Idaho Code. In 1908, the Idaho Supreme Court made clear that once a highway is found to exist by prescriptive easement, it is 50 feet wide. See, *Meservey v. Gulliford*, 14 Idaho 133 (1908). Prior to the enactment of Section 932 in 1887, the common law applied to the width of a highway established by prescriptive easement in Idaho. The common law stated that the width of a highway created by prescriptive easement was the width actually used for traveling, plus an additional width needed to maintain the traveled width.

The second question was: When Section 40-701, Idaho Code, was recodified as Section 40-2312, Idaho Code, in 1985, were there substantive changes made to the law itself that altered its intent, meaning or reset the "preexisting" date in any way that changed the application of the 50 foot prescriptive easement? No substantive changes were made to Section 40-701, Idaho Code, (it may have been Section 40-904, Idaho Code) when it was recodified in 1985 as Section 40-2312, Idaho Code. Chapter 253 of the Idaho Session Laws for 1985 simply indicates that the former Title 40, Idaho Code, was repealed and recodified in a newly entitled Title 40, Idaho Code. Because the language of the statute itself was not amended, there is no basis upon which to assert that mere recodification "altered its intent, meaning or reset the preexisting date in any way that changed the application of the 50 foot prescriptive easement."

The third question was: Did the decision in *Halverson v. North Latah County Highway District* change the law regarding prescriptive highway easements? No. The Halverson decision affirmed what has been the law at least as far back as 1908 when the Meservey decision was issued, and essentially as far back as 1887 when the Idaho Legislature changed the common law by passing section 932, Rev. St. 1887.

The fourth, and final, question was: Would the passage of H628aa affect other statutory provisions of Chapter 2, Title 40, Idaho Code? With the caveat that the question is broad in scope, Mr. Kronberg believes that there are two provisions in Chapter 2, Title 40, Idaho Code, that may be affected by the passage of H628aa. One such statute is the savings clause found at Section 40-205, Idaho Code, which states, in part, as follows: "This act shall not affect any act done, ratified or confirmed, or any right accrued, or established, or any action or proceeding had or commenced in a civil or criminal cause prior to July 1, 1985....." Under the law as it has existed since 1908, or perhaps 1887, rights have accrued to the public for 50 feet rights-of-way. The legislative intent expressed in H628aa appears to conflict with the savings clause because of the language in H628aa attempting to limit prescriptive easement highways in existence in 1985 to widths reflecting historic usage as opposed to 50 feet. H628aa may also conflict with the intent expressed in Section 40-210, Idaho Code, which indicates that "highways are lawfully used in connection with uses associated with utility purposes necessary to provide utility services to the public." Utilities are located in highway rights-of-way, and if those rights-of-way are limited to their historic traveled way, the utilities may be outside that width.

QUESTIONS: **Vice Chairman Brackett** quoted from Section 40-2312, Idaho Code, and asked if the language was in statute prior to 1887. Mr. Kroneburg indicated that it was.

Senator Rice asked if Mr. Kronberg had reviewed the cited law. Mr. Kronberg indicated he had not.

TESTIMONY: **Chairman Hammond** thanked Mr. Kronberg and asked if he would be willing to remain in the Committee in case there were issues needing clarification. The Chairman acknowledged that Mr. Kronberg's responses would be from a neutral perspective. Mr. Kronberg said he would be able to stay. The Chairman then laid out the ground rules to accommodate the many people signed up to testify. He asked that remarks be brief and provide information that had not previously been raised by others testifying. **Senator Werk** asked the Chairman to define the word "brief." The Chairman said testimony should be limited to three minutes or less.

TESTIMONY IN SUPPORT OF H628AA: The following individuals testified in support of H628aa: Alvin Carpenter, a property owner from Malta, Idaho; Gary Jones, a cattle rancher from Almo, Idaho; Dennis Tanikuni, a lobbyist and Assistant Director of the Idaho Farm Bureau; Jane Wittmeyer, a lobbyist representing Clearwater Paper Corporation; Heather Cunningham, an attorney with Davison Copple Copple and Copple; Elizabeth Criner, a lobbyist representing J.R. Simplot Co.; Neil Colwell, representing Avista Corporation; Jeremy Pisca, a lobbyist representing Potlatch Corporation; and Jerry Rigby, a Rexburg attorney, representing unique water rights organizations.

QUESTIONS: **Senator Corder** asked Mr. Carpenter what he thought of the historical context Mr. Kronberg shared. Mr. Carpenter said that he understood about prescriptive easement and that he is able to maintain what currently exists in his case but is not in a position to expand on it.

Vice Chairman Brackett asked Mr. Carpenter to explain when his land was taken. Mr. Carpenter said it was an ongoing issue that began in the 1990's. **Vice Chairman Brackett** asked what the outcome was. Mr. Carpenter said they have since left him alone.

Senator Corder asked Mr. Tanikuni his opinion of the testimony of Mr. Kronberg. Mr. Tanikuni said he is not an attorney but the Idaho Farm Bureau's attorney believes there is significant areas for discussion.

Senator Keough asked Ms. Cunningham how many cases have been filed since the Halvorson case in 2010. Ms. Cunningham said there has been one decided case but she didn't know if there are others. Everyone with a road to their property has only one course if this bill does not pass.

Senator Rice stated to Ms. Cunningham that the court didn't address French in the Halvorson case because no one brought it to their attention. Ms. Cunningham agreed.

Vice Chairman Brackett asked Mr. Pisca if all prescriptive roads were 50 feet wide. Mr. Pisca said he didn't understand that to be the case and there are a nebulous set of circumstances.

Senator Rice asked Mr. Pisca if he thought, under Article 1, Subsection 14, that just compensation should be paid. Mr. Pisca said it is core to the private property rights issue.

Senator Corder asked Mr. Pisca about the dilemma of having a poorly worded statute and a poorly worded court decision, how does one come to a resolution. Mr. Pisca said through the same process that is occurring today.

**TESTIMONY IN
OPPOSITION
TO H628AA:**

The following individuals testified in opposition to H628aa: Ladd Carter, Bingham County Commissioner; Kerry Ellen Elliott of the Idaho Association of Counties; Stuart Davis, Executive Director of Idaho Association of Highway Districts; Kelly Aberastri, Owyhee County Commission, but speaking as a private citizen; Bruce Wong, Executive Director of the Ada County Highway District; Steve Price, General Counsel for the Ada County Highway District; and Kim Gourley, an attorney with Idaho Power Company.

QUESTIONS:

Senator Rice asked Ms. Elliott about the provisions in Idaho Code that talks about takings with compensation. Ms. Elliott said that she is not an attorney but thought that no compensation is due within the 50 foot easement where there is not a deed. Senator Rice asked what she thought the meaning of prescriptive easement. Ms. Elliott said a prescriptive easement is 50 feet.

Vice Chairman Brackett asked Mr. Wong if Ada County has prescriptive easements. Mr. Wong deferred the question to the Ada County Highway District's legal counsel, Steve Price. Mr. Price explained the history of the issue.

Senator Winder stated to Mr. Price that after 13 years on the highway commission there were only 50 foot easements on section-line roads. Mr. Price said that is what they have practiced, but this will change.

**NEUTRAL
TESTIMONY:**

Bill Roden, a Boise attorney representing Century Link in Idaho, testified that Century Link would comply with whatever the decision is of this Committee and the legislature. There were no questions for Mr. Roden.

**CLOSING
REMARKS:**

Representative Bedke said he is not an attorney, but he can read English and he can go back through these cases that go back to 1887. It says that everything is 50 feet except those that exist that are of a lesser width. The Representative agreed with others who stated this bill is not artfully crafted.

In 1985 this statute was last recodified that all highways are 50 feet except those of a lesser width presently existing. It is presumed that everything in Idaho is 50 feet, but that is a rebuttable presumption. It is being done in a very narrow case of prescriptive roads or those that have been dedicated out of the common law. He reminded the Committee that there were a number of people from Jerome and Spokane that testified on the first day of this hearing (March 22). They spoke of a prescriptive highway in Jerome. The Jerome County Highway District thought they had 50 feet and went to condemn the property along that road. The courts held that they had to pay for the strip. They paid 19 land owners along that strip. Now for us to come in and say it has always been 50 feet, period, does not consider the prima facie evidence that roads are not always 50 feet.

Representative Bedke is a property owner and declared, under House Rule 38, that he may have a conflict. This is a private property issue and many have allowed for this prescriptive use of their property. If every one of the two-tract roads in Idaho now have to be 50 feet, he is concerned there will be a cooling effect and the "good-neighbor policy" will be undone. He referred to all the testimony from government agencies who have benefited. There is a process to allow for the greater society to bear these costs. If that doesn't occur, then the individual property owner bears the costs. It is the legislature's job to make policy, and at some point it has to be decided on who is going to bear these societal costs. Is it going to be the property owner or is it going to be the government. The "except" language has been carried from 1887 to 1985; we have recognized there are roads that exist of a lesser width. This bill attempts to put that language back into law. There were no questions for **Representative Bedke**.

**DECLARATION
OF CONFLICT
OF INTEREST:**

Senator Winder reiterated his declaration of a 39h conflict from the March 22nd hearing. In his private business dealings he is often called as an expert witness in similar cases.

Vice Chairman Brackett reiterated his declaration of a 39h conflict from the March 22nd hearing. He is a private property owner, a former highway district commissioner, and has relatives who are presently with a highway district.

MOTION: **Senator Rice** moved to send H628aa to the floor with a do-pass recommendation. **Vice Chairman Brackett** seconded the motion.

DISCUSSION ON THE MOTION: **Senator Keough** said she saw this issue last Thursday (March 22) and has now spent two-and-a-half hours on a legal question that requires knowledge of laws passed over 100 years ago. She is certainly not anti-private property, but she believes this is too complex of an issue to make a reasoned decision at this time. She will vote "no" on the motion.

Senator Rice said he has doubts about the Constitutionality of prescriptive rights. He is willing to construe that the property used was voluntarily given, but will not go any further. These kinds of issues define the powers of government when it comes up against the rights of citizens. This bill addresses the problem of a 50 foot easement and whether it was voluntarily given; if it was not, then what should be compensated.

Senator Corder said he did not like the characterization that a "no" vote is a vote against private property rights. Half of the lawyers testifying today have taken the other side. He will be voting his conscience, but does not want it labeled as being against private property rights.

SUBSTITUTE MOTION: **Senator Corder** moved to hold H628aa in Committee in order to study the issues over the summer. **Senator Keough** seconded the motion.

DISCUSSON ON THE SUBSTITUTE MOTION: **Senator Winder** said that this legislation needs to be dealt with. If the substitute motion prevails, he will move to convene an Interim Task Force in order to deal with the issue. He stressed that the legislature needs to make a decision on this issue.

Chairman Hammond commented that this legislation has been framed in the context of private property owners vs. the government. He reminded the Committee that county government is working for its citizens and that citizens do have private property rights.

VOTE ON SUBSTITUTE MOTION: With no further discussion, the substitute motion passed by a voice vote, with three dissenting votes, thereby killing the original motion.

MOTION: **Senator Winder** moved that an Interim Task Force be formed, made up of Members of the Idaho Senate and the Idaho House of Representatives, to study the issues brought forward at today's hearing. **Senator Werk** seconded the motion. With no discussion, the motion passed by a unanimous voice vote.

ADJOURNMENT: With no further business before the Committee, **Chairman Hammond** adjourned the meeting at 2:45 p.m.

Senator Hammond
Chairman

Gaye Bennett
Secretary