

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, January 17, 2013

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Brackett, Vice Chairman Johnson, Senators Keough, Winder, Rice, Nonini, Hagedorn, Bock, and Buckner-Webb

ABSENT/ 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.

CONVENED: **Chairman Brackett** called the meeting to order at 1:36 p.m. and asked the secretary to take a silent roll; there was a quorum present.

PRESENTATION: **Chairman Brackett** welcomed Senator McKenzie and members of the Pacific Northwest Economic Region (PNWER) to the Committee. PNWER is a public/private partnership dedicated to encouraging global economic competitiveness and preserving the region's natural environment. **Senator McKenzie** spoke briefly about the mission of PNWER, the members of the organization visiting the Capitol, and those present in the Committee. PNWER represents five Northwest States and five Canadian Northwest Provinces; they are in the process of visiting each of those regions. Senator McKenzie is one of Idaho's representatives and a Vice President of PNWER. PNWER's Transportation Working Group was here to present their work to the Committee.

Senator McKenzie introduced Matt Morrison, PNWER's Executive Director. **Chairman Brackett** welcomed Mr. Morrison to the Committee.

Mr. Morrison began by stating it was great to be in Idaho's new Capitol building. PNWER provides great opportunities for Idaho as it sits at the crossroads among the other PNWER states and provinces where products produced in all regions will travel through Idaho. The Canadian National (CN) and the Burlington Northern Santa Fe (BNSF) rail lines will be connected creating efficiencies in rail transport. The future of the region is changing; they are looking at transportation corridors and applaud the Idaho Transportation Department's (ITD) ten-year plan. They are developing a primer for transportation so that new legislators understand all aspects of transportation including financing. They are aligning regulatory systems, and integrating varying size and weights as defined and used by various jurisdictions.

Natural gas is inexpensive in the region. PNWER is looking at developing natural gas piping and fueling stations for long and short haul trucks. Natural gas is clean energy, more efficient, does not need to be refined, and saves nearly 40 percent in fuel costs. He concluded by stating the PNWER team in Boise would be meeting with ITD on Friday. Before **Mr. Morrison** stood for questions, he asked if Colin Smith, past-President of Engineers Canada, and PNWER representative from British Columbia, could make a few remarks. **Chairman Brackett** welcomed Mr. Smith to the Committee.

Mr. Smith said that economics is Mr. Morrison's expertise, and his is trade. Canada is a 'Buy American' place. **Mr. Smith** wants to expand that trade by promoting U.S./Canada collaborations. He is co-chair of PNWER's Trade Working Group. He encouraged the members of the Committee to bring issues to the table; it is enormously powerful to resolve issues with policy makers. As an actively involved member of the Professional Engineers of British Columbia, he applauded Idaho's work to keep its engineers updated.

Chairman Brackett thanked them both for their presentations, and asked the Committee if they had questions.

Senator Hagedorn asked where the CN and the BNSF rail lines would be connected. **Mr. Morrison** said it would be at a Class 1 location in Montana; PNWER needs to work on the rail system.

Chairman Brackett asked if railway choke points had been identified. **Mr. Morrison** said that BNSF is looking at their upgrades and that he had not heard from Union Pacific. He said the Port of Lewiston is a vital transport example for the regional economy; it has lots of potential and is being used more and more.

Vice Chairman Johnson thanked **Mr. Morrison** for mentioning the Port of Lewiston where he had served on the Commission. The Vice Chairman noticed the short-line rail to the tri-cities was not on PNWER's map and stated there was a lot of potential with it. **Mr. Morrison** agreed by stating that one barge equals 200 trucks.

RULES REVIEW:

Chairman Brackett thanked the PNWER delegation for their report to the Senate Transportation Committee. He moved on to reviewing Administrative Rules before the Committee, and turned the meeting over to Vice Chairman Johnson.

Vice Chairman Johnson thanked the Chairman, and asked Lieutenant Jim Eavenson of the Idaho State Police (ISP) to address the first docket item on the agenda.

**DOCKET NO.
11-1301-1201**

Lieutenant Eavenson stated that this rule change updates the "Incorporation by Reference" of the Code of Federal Regulations pertaining to the commercial federal regulations governing commercial motor vehicles and, specifically, hours of service and the restricted use of hand held devices. Copies of State law were included in the Committee's packets. This rule updates the Motor Carrier Safety Rules to those adopted on March 1, 2012; the changes include texting and hand held cell phones. **Lieutenant Eavenson** stood for questions.

Senator Keough asked the Lieutenant to briefly comment on which operations this reference applies; she wanted to know what these regulations covered and if there are exemptions. **Lieutenant Eavenson** referred Senator Keough to Section 19 on page 4 of the Administrative Rules book. **Senator Keough** thanked Lieutenant Eavenson and asked if he would meet with her to discuss who this affects.

Vice Chairman Johnson asked if there were any public comments regarding this rule. **Lieutenant Eavenson** stated there were no negative comments and no public hearing was held. There were no further questions from the Committee.

MOTION:

Senator Winder said he appreciates **Lieutenant Eavenson's** willingness to provide information and meet with **Senator Keough**. **Senator Winder** moved that **Docket No. 11-1301-1201** be approved by the Committee. **Senator Buckner-Webb** seconded the motion. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

Vice Chairman Johnson recognized **Chairman Brackett** who welcomed Kevin Cook of PNWER to the Committee.

**DOCKET NO.
39-0212-1201**

Vice Chairman Johnson welcomed Barry Takeuchi, ITD's Titles Program Specialist, to the Committee to present the next docket item.

Mr. Takeuchi stated that this proposal aligns a bonded title's brand expiration date with the bond's expiration date, thereby eliminating customer issues that may occur due to the bond expiring prior to the brand's expiration date. Subsequently, with the bonded title brand expiring at the same time as the bond, there is the concern that the owner may apply for the bonded title just before the bond expires. This proposal requires that the owner obtain a bond rider if more than 90 days has passed since the bond was obtained, thereby providing a significant amount of time for the bonded title to be on public record for the protection of any prior owner or lien holder who still has an interest and is trying to locate the vehicle. **Mr. Takeuchi** stood for questions.

Senator Hagedorn referred to page 10 of the Administrative Rules book and asked why original documentation was required for the body and cab of a vehicle as opposed to an engine block. **Mr. Takeuchi** replied that a vehicle is identified by the Vehicle Identification Number (VIN) which is located on the body and cab of the vehicle. There were no further questions from the Committee.

MOTION:

Senator Hagedorn moved that **Docket No. 39-0212-1201** be approved by the Committee. **Senator Keough** seconded the motion. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

**DOCKET NO.
39-0260-1201**

Vice Chairman Johnson welcomed Christine Fisher, ITD's Registration Program Specialist, to the Committee to present the next docket item.

Ms. Fisher stated that this rule provides procedural requirements for the implementation of program changes established in statute, through Senate Bill 1243, enacted in 2012. It adopts specific provisions for prequalification and application procedures for specialty license plate programs, as outlined in statute. It also provides for duplicate use of a letter/number combination on a larger (passenger vehicle) plate and a smaller (motorcycle) plate and eliminates the 45-day limitation on a proof of registration receipt, in keeping with the improved plate production and delivery process. She stated that there were no public comments submitted on the rule; the exception to this rule is Military plates. **Ms. Fisher** stood for questions.

Senator Rice asked what ITD would do if the legislature passed legislation authorizing a specialty license plate without first going through ITD's process. **Ms. Fisher** said it would need to meet the same requirements that any request for a specialty license plate would need. **Senator Rice** wanted to confirm that ITD thought a specialty plate enacted as legislation was the same as one requested from the public. **Ms. Fisher** deferred to her supervisor, Amy Smith, Vehicle Services Manager, to respond to the question. **Ms. Smith** explained the changes from the old process to the new process. Legislation creating specialty license plates would go through the new process, which is based on last year's enacted legislation; unless it were to be repealed. **Senator Rice** asked if it would be reasonable to come back to the Committee with the results from the process before going forward. **Ms. Smith** said that to comply with Idaho Code, ITD determines the prequalification of a request.

Senator Nonini asked what the process was for those who have a specialty plate. **Ms. Smith** said that six months before ITD discontinues selling the plate, they notify the registered contact of their intentions to discontinue sales. ITD also notifies those who have purchased the plate that it is being discontinued; when their license expires, they will need to get different plates.

Senator Hagedorn asked about prequalification as outlined on page 17, Section 2, and annual reports in Section 4; he wanted to know if that was required by older plates as well. **Ms. Smith** said it applied to all specialty plates except for Military plates because they are exempt. There were no further questions from the Committee.

MOTION:

Senator Hagedorn moved that **Docket No. 39-0260-1201** be approved by the Committee. **Senator Keough** seconded the motion. Before a vote was called, there was a substitute motion to reject the docket.

SUBSTITUTE MOTION:

Senator Rice moved that **Docket No. 39-0260-1201** be rejected by the Committee. **Senator Nonini** seconded the substitute motion. There was discussion on the substitute motion.

Senator Rice said he had looked at the statute and the proposed rule. He believes the process could be interpreted to require going to the legislature before moving forward. The way the rule is currently written, it removes future legislators from passing statutes to issue specialty license plates. Restraining actions of the legislature violates the State Constitution. The solution is to reject the rule as written and ask ITD to submit a new rule requiring ITD to bring requests to the legislature first.

Senator Bock asked how the rule fared in the House of Representatives. **Ms. Fisher** said the House had approved the rule.

Senator Rice said he had been approached by a Member of the House committee to reject the rule as they were looking at it again.

Senator Winder said he was having difficulty finding the language to which **Senator Rice** was referring. He commented that last year's law contemplated a reduction in specialty plates and not future legislative actions.

Senator Rice said that the statute does not refer to future legislation. The rule purports to limit future legislators; the statute does not.

Senator Hagedorn mentioned that 49-402d, Section 2, *Idaho Code*, says that any specialty license plate 'shall'; or, according to statute, in order to be considered, these things 'shall' be done. The legislature needs to correct the statute before ITD can correct the rule.

Senator Bock commented, in response to Senator Hagedorn, that legislative authority cannot be restricted in that way. The legislature can override legislative acts; it cannot be restrained in the way Senator Hagedorn suggested.

Senator Hagedorn agreed that the legislature can change statute, but rules are written by what current statute says (i.e., the consideration shall meet the following criteria). The legislature needs to adjust the statute so that ITD can adjust the rule. The process is: legislation is passed, and rules are written based on statute.

Senator Bock said the conflict is that the executive branch cannot limit what the legislature does. Any rule to underwrite what the legislature can do is unconstitutional.

Senator Rice suggested that it was unwise to accept a rule that is unconstitutional on its face.

Senator Winder offered that ITD was not limiting the Legislature as much as last year's legislation on specialty license plates has limited the Legislature. Specialty license plates were getting out-of-hand. We limited the Legislature because we believed the process had to be limited, but it does not preclude future legislation.

Senator Bock suggested it would be an easy fix if the rule limited its authority, but that is not the case.

Senator Rice agreed that the language does not purport to limit legislation; today's Legislature cannot limit tomorrow's legislators.

Senator Hagedorn said that this rule does not limit nor does it trump statute; nor does it limit bringing future legislation. Legislators are not limited by a rule to do whatever they want to do.

Senator Rice commented that ITD said they would reject a specialty license plate passed in the Legislature; he suggests the Committee reject the rule and fix the statute.

Senator Winder asked if the Committee could hold the rule and get input from the Attorney General's office.

Senator Bock concurred with Senator Winder; suggested the rule could be taken up at the next meeting.

Senator Rice suggested the Committee also confer with the House committee. There was no further discussion.

**AMENDED
SUBSTITUTE
MOTION:**

Senator Keough offered an amended substitute motion that **Docket No. 39-0260-1201** be held in Committee at the call of the Chair. **Senator Winder** seconded the amended substitute motion. **Senator Hagedorn** commented that ITD may be encumbered to prepare a temporary rule to meet the concerns of the Committee. **Senator Winder** suggested that was the reason to offer the amended substitute motion. With no further discussion, the amended substitute motion was approved by a unanimous **voice vote**.

Senator Winder thanked the members of the Committee for allowing this docket to receive further consideration.

**DOCKET NO.
39-0261-1201**

Vice Chairman Johnson asked Ms. Fisher to present the next docket item.

Ms. Fisher stated that this rule is needed to create equity for those agencies eligible for exempt vehicle registration. One program is currently exempt from any payment, with all costs subsidized by ITD. This rulemaking will make the application process and registration cost consistent for all exempt license plates. It adds provisions specific to the undercover plate program. It also adds standard language required by the Office of Administrative Rules (Sections 002 through 006). In order to provide sufficient time for implementation and budget considerations (if the pending rule is approved by the legislature) it would become effective July 1, 2013. Prior to creating this rule, the process was handled in varying ways. The rule allows ITD to recover its administrative costs. There were no public comments made on this change. With that, **Ms. Fisher** stood for questions.

Senator Winder asked if federal license plates were exempt given the effective date, and therefore if the rule only applied to State and local plates. **Ms. Fisher** said that State, federal, out-of-state, and local plates would all be impacted. Those with later fiscal year endings would benefit from an earlier notification. **Senator Winder** asked why ITD did not engage in negotiated rulemaking given the many jurisdictions impacted; and how did ITD come to mutually agreed upon negotiations without it. **Ms. Fisher** said ITD did confer with ISP because they had the majority of the undercover license plates; they agreed with the rule. **Senator Winder** asked who in ITD decides whether to have negotiated rulemaking. **Ms. Fisher** deferred to Ms. Smith to respond to the question. **Ms. Smith** said ITD goes through a process and determines how to proceed based on answers to the questions posed. ITD's objective is to recoup administrative costs incurred, not to impose a new fee. **Senator Winder** again asked why negotiated rulemaking was not used and who at ITD makes that decision. **Ms. Smith** said it comes from the administrative staff. **Senator Winder** and **Vice Chairman Johnson** asked that the information being asked be provided to the Committee. There were no further questions from the Committee.

MOTION:

Senator Nonini moved that **Docket No. 39-0261-1201** be approved by the Committee. **Senator Winder** seconded the motion. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

Given the time, **Vice Chairman Johnson** suggested the remaining agenda items be taken up at the next Committee meeting. The Vice Chairman turned the meeting back to Chairman Brackett.

ADJOURNED:

Chairman Brackett noted that the Committee would submit a letter to the Attorney General requesting input on **Docket No. 39-0260-1201**. He stated that the remaining dockets on today's agenda would be taken up at the next meeting of the Committee. With no further business before the Committee, the Chairman adjourned the meeting at 2:56 p.m.

Senator Brackett
Chairman

Gaye Bennett
Secretary