

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, January 22, 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 Senate Transportation Committee's (Committee) 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 1:30 p.m. and asked the secretary to take a silent roll; there was a quorum present.

MINUTES: **Chairman Brackett** welcomed everyone to the Committee. First on the agenda were the minutes from the January 15 meeting of the Committee. The **Chairman** recognized Senator Keough.

MOTION: **Senator Keough** said she had reviewed the minutes. She moved that the minutes of the Committee's January 15 meeting be approved. **Senator Hagedorn** seconded the motion. There was no discussion on the motion; the Committee unanimously approved the motion by a **voice vote**.

RULES REVIEW: **Chairman Brackett** asked Committee members to be aware there may be a joint committee meeting with the House Transportation and Defense Committee on Tuesday, February 12 at the Ada County Highway District (ACHD). Vans would be available at 1:00 p.m. to transport all committee members to ACHD. Members would be returned to the Capitol by 3:00 p.m. With that, the **Chairman** turned the meeting over to Vice Chairman Johnson to continue reviewing the Administrative Rules before the Committee.

DOCKET NO. 39-0342-1201 **Vice Chairman Johnson** welcomed Greg Laragan, ITD Highway Operations Engineer, to the Committee to present the rule.

Mr. Laragan stated that this rule is in response to concerns raised by legislators, property developers and the private sector to find a means to reduce or minimize restrictions associated with access management. The rule clarifies and simplifies the permit appeal process, renames and redefines the highway types and access types, places more authority with district engineers, and restructures the fee schedule based on proposed land use.

Mr. Laragan said a temporary rule was written in order to create greater economic opportunity and development for private property owners and developers by providing greater access to property along state highways. This is property that might otherwise have less development potential due to inadequate access. The rule helps limit potential conflicts between development and safety by requiring adequate mitigation of development impacts. The temporary rule became effective on October 1, 2012; was amended on December 12, 2012; and is the same as the temporary rule in effect. If approved, the rule will become effective at the end of the legislative session.

This is a fee rule that has no negative fiscal impact on the general fund. The existing fee schedule has been restructured to recognize categories of land use as opposed to categories of approaches and encroachments. A cost/benefit analysis indicates that if right-of-way encroachment permits issued in Fiscal Year 2012 had been issued under the new fee schedule, the result would have been a revenue reduction of approximately \$1,750 or 4.2 percent, based on the issuance of nearly 800 permits statewide.

Negotiated rulemaking was not conducted because the temporary and proposed rule reflects the recommendations of the Access Management Committee established by the Idaho Transportation Department's (ITD) director in January 2011. The Access Management Committee consists of representatives from the legislature, the development community, departmental staff, and land use planning entities. **Mr. Laragan** participated in several meetings but was not a member of the committee. Senator Winder and Senator Hagedorn (former-Representative Hagedorn representing the House) were both members of the Access Management Committee. There were no public comments on this rule. With that, **Mr. Laragan** stood for questions.

Senator Bock asked Mr. Laragan to explain the purpose of the rule. **Mr. Laragan** said the rule is about access to state highway right-of-ways; when individuals want access to highways or want to change their access. The rule is the result of committee recommendations; it cuts three weeks out of the administrative process. New sections were added and several were deleted. District engineer requirements for traffic impacts have been modified, including deleting references to metric measurements. Fee schedules were simplified; a cost/benefit analysis showed a reduction in revenue. A copy of the analysis is included in the Administrative Rules book.

Senator Rice asked about the reference to "change of use" on page 18. **Mr. Laragan** used an example to explain the wording, i.e., if the land's use had previously been for residential and the new owner wanted to change it to commercial use.

Senator Nonini asked if the current owner could apply for a "change of use." **Mr. Laragan** responded that a current owner could change the use of the access as well.

Senator Keough asked about the exceptions listed on page 25, Section e, and wanted to know whether the engineer or the applicant makes the call on exceptions. **Mr. Laragan** said that at this stage, the district engineer made the determination.

As a follow-up to Senator Keough's question, **Senator Winder** commented that, as he understood it, the applicant has to provide a benefit analysis.

MOTION:

Senator Winder thanked ITD for dealing with this problem that has been evident for many years. There has been no way available to deal with property transitions from agricultural use to commercial or residential use. He commended ITD for their great effort to meet the needs of the public. With that, **Senator Winder** moved that **Docket No. 39-0342-1201** be approved by the Committee. The motion was seconded by **Senator Buckner-Webb**. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

**DOCKET NO.
39-0271-1201**

Vice Chairman Johnson invited Ed Pemble, ITD's Driver Services Manager, to present the rule.

Mr. Pemble stated that last year's bill, S 1274, made texting while driving a moving violation; a violation not subject to points. ITD received two public comments opposing the exemption of points in texting violations. This rule deals with how violation points are assessed.

The new section in Idaho Code directs ITD to establish a violation point count system for various moving traffic violations and infractions. This rule implements the system and provides information and guidance to the public and those drivers impacted by violation points. The rule updates the standard required language, updates the "Point Count List" with specific violations, and acknowledges the point exemption to certain violations, such as texting. **Mr. Pemble** stood for questions.

MOTION: With no questions from the Committee, **Senator Nonini** moved that **Docket No. 39-0271-1201** be approved by the Committee. The motion was seconded by **Senator Rice**. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

DOCKET NO. 39-0304-1201 & DOCKET NO. 39-0310-1201 **Vice Chairman Johnson** welcomed Reymundo Rodriguez, ITD's Motor Vehicle Services Manager, to the Committee. The **Vice Chairman** asked if Mr. Rodriguez wanted the Committee to consider **Dockets 39-0304-1201** and **39-0310-1201** together. The rules deal with the movement of disabled vehicles by tow trucks. **Mr. Rodriguez** said that he did want the Committee to consider the rules together. Language was stricken from 39-0310 to create 39-0304, a new rule. ITD handled the rules in this manner to eliminate confusion.

Mr. Rodriguez said that 39-0304 addresses the movement of vehicles by tow trucks. Language has been updated for better organization and to provide clarity. Industry needs are broader than what would be appropriate in the existing rule, which addresses when overlegal permits are required. The guidance for movement of disabled vehicles was originally established in a section of this rule that primarily addressed the waiver of permit policy restrictions in emergency situations; it was very limited in scope. The new rule provides great authority for the industry since their role in providing service to a disabled vehicle is not always related to an emergency. There are frequently many other elements to consider in the movement of transporting specialized equipment and loads.

Mr. Rodriguez said, with regard to 39-0310, that at the request of the towing companies and the Idaho Trucking Association, ITD proposed changes that will remove guidelines related to the movement of disabled vehicles from this rule and move them to a new rule, 39-0304. It will centralize the role, responsibility, and authority of tow trucks and wreckers in the movement of disabled vehicles. Two additional changes have been made to this rule: (1) relating to office hours, and (2) relating to emergency movement of implements of husbandry.

Rule 39-0310, along with its companion 39-0304, confers a benefit on the industry by creating a new rule that will better meet industry needs. With that **Mr. Rodriguez** stood for questions.

MOTION: With no questions from the Committee, **Senator Rice** moved that **Docket No. 39-00304-1201** be approved by the Committee. The motion was seconded by **Senator Winder**. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

MOTION: With no questions from the Committee, **Senator Winder** moved that **Docket No. 39-0310-1201** be approved by the Committee. The motion was seconded by **Chairman Brackett**. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

Docket No. 39-0341-1201 **Vice Chairman Johnson** welcomed Ethan Griffiths, ITD's Traffic Services Principle Technician, to the Committee to present this rule.

Mr. Griffiths said that the most recently revised edition of the "Manual on Uniform Traffic Control Devices" (MUTCD), revised in 2009, established certain requirements for sign replacement, including deadlines. In response to concerns from those impacted, the Federal Highways Administration (FHWA) opted to extend or eliminate certain requirements for sign replacement, depending on the sign classification. Immediate adoption of the rule confirms those changes for state and local jurisdictions throughout Idaho. **Mr. Griffiths** said there were no public comments received on this rule; if approved, it will become effective at the end of the legislative session. This is only the sixth time ITD has come to the legislature requesting adoption of MUTCD. With that, **Mr. Griffiths** stood for questions.

Vice Chairman Johnson asked if the manual includes new reflective standards that haven't been addressed before, like safety at schools. **Mr. Griffiths** said it does and it will benefit the travelling public. The manual maintains standards and suggests either extending or upgrading signs if needed. **Vice Chairman Johnson** asked if it creates a physical impact to the state. **Mr. Griffiths** said it actually reduces it. There were no further questions from the Committee.

MOTION:

Chairman Brackett moved that **Docket No. 39-0341-1201** be approved by the Committee. The motion was seconded by **Senator Winder**. With no further discussion, the Committee unanimously approved the docket by a **voice vote**.

**DOCKET NO.
39-0402-1201**

Vice Chairman Johnson welcomed Bill Statham, ITD's Aeronautics Division Administrator, to the Committee to present this rule.

Mr. Statham said this rule was updated to comply with H 511, as amended, from the 2012 legislative session. The rule establishes standards for lighting and marking guyed towers that are more than 50 feet in height (which have not been regulated by the Federal Aviation Administration (FAA) since 1969) to ensure the safety of pilots. The rule also adds definitions for key terms and updates, and clarifies existing requirements. It adds new requirements associated with the dimensions, design, color and lighting of guyed towers along with deadlines for implementation established in the bill. In addition, it identifies exemptions for power poles or structures owned and operated by an electric supplier as defined in Section 61-331A(4), Idaho Code, for any structure with the primary purpose of supporting telecommunications equipment, or for the military.

Mr. Statham said this rule has no fiscal impact on the state. The public comments received were of a technical nature; these issues were addressed. ITD is charged with identifying hazards and ensuring implementation is compatible with FAA rulings and jurisdictions. The rule takes effect at the end of the legislative session. With that, **Mr. Statham** stood for questions.

Senator Nonini commented that he was aware of last year's House bill brought forward by Representative Batt.

Vice Chairman Johnson said he had received concerns from ham radio operators; they wanted an explanation as to how ITD determines a hazard exists. **Mr. Statham** stated that ITD had also heard from ham radio operators. He believes it would take a legislative change to exempt this group. Ham radio operators are associated more with urban areas, and their towers have generally not been a problem. He speculated that the organization may bring legislation later this session.

Senator Winder offered that, as he understands it, they are trying to deal with the issue, but most ham radio towers are not guyed. The bill was not intended to focus on this group, but if they have a guyed tower over 50 feet, they should take precautions. He mentioned the hazard example the National Guard presented at the hearing last year.

MOTION: With no further questions, **Senator Winder** moved that **Docket No. 39-0402-1201** be approved by the Committee. The motion was seconded by **Senator Rice**. 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, back to the Committee to readdress this rule.

Ms. Fisher asked if the Committee wanted her to re-present the rule that was discussed at the last meeting of the Committee. **Senator Winder** stated the Committee had already heard her presentation and had asked many questions. **Senator Winder** asked if the Committee could hear from Senator Rice for an update.

Senator Rice stated that the Chairman sent the Attorney General (AG) a request for input on the rule; Committee members were sent the AG's response. The letter did not offer guidance on the constitutionality of the rule. **Senator Rice** suggested the Committee reject the rule and make the statute's intent clearer.

Senator Winder reminded the Committee that in the last hearing there was concern that the rule restricted future legislators; he suggested that there was not a restriction on legislative ability to act. Additionally, the rule could be less controversial. **Senator Winder** recommended the Committee adopt the rule and give instruction to ITD on how to deal with Committee concerns; then bring a new rule in the next session.

Senator Keough reminded the Committee that they are charged with either accepting or rejecting the rule before them.

Senator Winder agreed with Senator Keough, and suggested that it is within the members' ability to ask ITD to address the Committee's concerns with a future rule.

Senator Rice said it sets a bad precedence; he believes legislative intent should be spelled out regarding constitutional issues.

Senator Winder offered that by rejecting the rule, ITD is put in a difficult place when dealing with specialty license plates. If the intent of last year's bill was to reduce specialty license plates, falling under the old rules would not accomplish that objective. He believes it is better to adopt the rule than reject it.

Senator Bock apologized to Ms. Fisher for being in the middle of this discussion. He agreed with Senator Rice's approach and believes the right way to proceed is to amend the statute.

Senator Winder asked Ms. Fisher what would happen if the rule is rejected based on the legislation. **Ms. Fisher** deferred to Amy Smith, ITD's Vehicle Services Manager. **Ms. Smith** said that if the rule is rejected entirely, ITD would fall back to the statute as written in Idaho Code.

Senator Bock said that Idaho Code states the only way to add specialty plates is through legislation; this creates a conundrum, but statute should reflect the intent of the legislature.

MOTION: **Senator Rice** thanked ITD for their work on this issue. **Senator Rice** moved that **Docket No. 39-0260-1201** be rejected by the Committee. The motion was seconded by **Senator Bock**. Discussion followed.

Senator Winder asked what the impact would be and if ITD could administer current code without the rule. **Ms. Smith** said existing code offers "ideas" not "details." She suggested they could go through the process and then notify the Committee for guidance; ITD can move forward.

SUBSTITUTE MOTION:

Senator Winder suggested that not passing the rule opens up issues for ITD. He made a substitute motion to approve **Docket No. 39-0260-1201** as submitted. The substitute motion was seconded by **Chairman Brackett**. With no further discussion, a majority of the Committee rejected the substitute motion by a **voice vote**.

VOTE ON ORIGINAL MOTION:

Vice Chairman Johnson called for a vote on the original motion. With no further discussion, a majority of the Committee rejected **Docket No. 39-0260-1201** by a **voice vote**.

ADJOURNED:

Vice Chairman Johnson turned the meeting back to the Chairman. **Chairman Brackett** thanked the Vice Chairman for his work on the transportation Administrative Rules. With no further business before the Committee, **Chairman Brackett** adjourned the meeting at 2:30 p.m.

Senator Brackett
Chairman

Gaye Bennett
Secretary