

MINUTES  
**SENATE TRANSPORTATION COMMITTEE**

**DATE:** Tuesday, March 19, 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 (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 1:35 p.m. and asked the secretary to take a silent roll. With a quorum present, **Chairman Brackett** brought up the "save the date" flyer in today's Committee packets. The event is a legislative meet-and-greet to be held on October 24 in Boise hosted by Idaho Women in Transportation's Treasure Valley Chapter. An email with more details will be sent this summer.

**MINUTES:** **Chairman Brackett** called for a motion on the minutes of the February 19 meeting. **Senator Rice** moved that the minutes of the February 19 meeting be approved. **Senator Nonini** seconded the motion. The motion carried by unanimous **voice vote**.

**S 1179** **Chairman Brackett** turned the meeting over to Vice Chairman Johnson so that he could present **S 1179**. **Vice Chairman Johnson** told Chairman Brackett the Committee was ready to hear the bill whenever he was ready to present.

**Chairman Brackett** said that **S 1179** is legislation that enables the Idaho Transportation Department (ITD) and similar agencies in contiguous states to enter into joint power agreements in order to obtain Idaho driver's licenses, vehicle titles and registrations. He referred to page 2, lines 14 through 23. This legislation was brought forward to put into statute this long-standing process for residents of the Duck Valley Indian Reservation, where half the reservation is located in Nevada and half in Idaho. If this bill is not enacted, those residents in the Nevada half will need to travel all the way to Elko, Nevada, a considerable distance, to receive these services. Mountain Home, Idaho is much closer for both the Idaho and Nevada reservation residents. The **Chairman** said there is a new section 49-244, Idaho Code, that says for the purposes of these services, they would be considered Idaho residents. He concluded by commenting that the "fiscal note" shows there is no impact to the general fund. He said that, in fact, there would be a positive impact to the general fund as these residents would shop in Idaho which would result in increases in sales tax which affects the general fund. **Chairman Brackett** stood for questions.

**Senator Nonini** asked if there were other areas of the state that could be affected by this bill. **Chairman Brackett** said that potentially the Nez Perce Indian Reservation and the Coeur d'Alene Indian Reservation could utilize the process outlined in this legislation. It is not limited to the Duck Valley Indian Reservation.

**Senator Bock** asked how ITD would implement the mechanics of this legislation. **Chairman Brackett** deferred that response to Alan Frew, ITD's Motor Vehicles Administrator. There were no further questions for Chairman Brackett.

**Mr. Frew** asked to provide some context and reason for this legislation before answering Senator Bock's question. ITD was approached nineteen years ago by the tribes at the Duck Valley Indian Reservation about providing the same services this bill outlines. The tribes argued that because of sovereign nation status, they are free to choose between Idaho or Nevada for residency; half the reservation lies in Idaho and half in Nevada. For the past nineteen years, Idaho has provided these services to those residents. After receiving the Attorney General's opinion, ITD notified the tribal chairman that the practice had to be discontinued. The mechanism that makes this work is that ITD will approach the state of Nevada to develop a reciprocity arrangement so that Idaho driver's licenses could be issued in Nevada and vice-versa. Residents of the Duck Valley Indian Reservation who live on the Nevada side could go to Mountain Home to receive their licenses; they would leave with a temporary license that is good for a forty-five day period of time; their permanent Nevada license would be mailed before the forty-five days are up.

**Senator Hagedorn** asked how this might impact other reservations like the Nez Perce or the Coeur d'Alene tribes. **Mr. Frew** said he was not aware of a need, but if a need arises they would go through the same procedures with the states of Washington and Oregon. **Senator Hagedorn** said he was concerned with vehicle titles and how they would be handled. **Mr. Frew** said that ITD has provided these services for nineteen years without complications and they would approach their counterparts in Oregon and Washington to make similar reciprocity arrangements. There were no further questions for Mr. Frew.

In closing, **Mr. Frew** said that while this is not a single purpose bill, the Duck Valley Indian Reservation would greatly benefit from being able to continue these services.

**TESTIMONY:**

**Vice Chairman Johnson** welcomed Chairman Terry Gibson of the Shoshone-Paiute Tribes on the Duck Valley Indian Reservation to the Committee to testify on **S 1179**.

**Chairman Gibson** began by thanking Chairman Brackett and Mr. Frew for their work on this very important issue to his people. The Shoshone-Paiute Tribes have entered into many agreements with the state of Idaho: state brand inspection for livestock purchased and sold in Idaho; Department of Corrections and the parole board; juvenile corrections agreement through the federal Indian Child Welfare Act; implementing the Adam Walsh Child Protection and Safety Act through the state sex offenders office; and federal block grants that work with the state. The Tribe prefers to do their shopping, get their healthcare services, and do their banking in Idaho. They help maintain Idaho's Highway 51 and participate in Life Flight. Many on the reservation are elderly and not being able to keep the current motor vehicle services would cause them great hardship. The tribes support and appreciate the state of Idaho and consider it their homeland. He concluded by asking the Committee to pass **S 1179**. **Chairman Gibson** stood for questions.

**Senator Hagedorn** said he was concerned about unintended consequences to other tribes in Idaho whose borders extended into Washington and Oregon. **Chairman Gibson** said that **S 1179** would give those tribes a choice. He speaks with the other tribe leaders regularly and this issue has never been discussed; he doesn't see that it would be a problem.

**Senator Bock** asked about the relationship the tribes in Duck Valley have with the tribe in McDermott, Nevada. **Chairman Gibson** said that following the Bannock Wars many families were broken up and moved to McDermott and Fort Hall and Duck Valley. Although many tribe members have family at these other locations, this bill does not affect the McDermott tribe. There were no further questions for Chairman Gibson.

**MOTION:** With no further discussion, **Senator Buckner-Webb** moved to send **S 1179** to the Senate floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by unanimous **voice vote**.

**Vice Chairman** turned the meeting back to **Chairman Brackett** who thanked Chairman Gibson and the Committee. He introduced Lisa Jim who works closely with Chairman Gibson. **Chairman Brackett** also welcomed Steve Price, General Counsel to the Ada County Highway District (ACHD), to the Committee and asked him to present **H 171aa**.

**H 171AA**

**Mr. Price** said this was an important piece of legislation for county and local highway districts. It deals with encroachments on right-of-ways along highways, and explores issues that have been raised in the past. There were three incidents in the recent past that became high profile examples of why this legislation is needed: (1) the death of an assistant principal at Mountain View High School in Meridian; (2) the collapse of a downtown Boise sidewalk to an underground vault, where fortunately no one was injured; and, (3) a child was choking from an obstruction and the Emergency Medical Services (EMS) team could not get through an unmarked fence blocking the roadway and the detour around it detained them by another nine minutes. **Mr. Price** explained how these incidents could have been helped or prevented if this legislation had been law. This bill requires removal of obstructions in public right of ways. Liability incurs if the owner has knowledge of an obstruction and does nothing. **Mr. Price** stood for questions.

**Senator Nonini** asked how the sidewalk claim was resolved. **Mr. Price** The owner of the property contacted ACHD and it was resolved through settlement; there was no liability protection under the law. **Senator Nonini** asked if someone had died would there have been a settlement. **Mr. Price** said that they would likely have gone through a tort claim and insurance.

**Senator Bock** referred to page 2, lines 2 through 6, stating that the owner or person controlling the encroachment has five-days to respond to a notice of encroachment. He wanted to know what would happen if the encroachment causes harm during the waiting period. **Mr. Price** said that if an encroachment is unsafe, ACHD has a mandatory obligation to remove the obstruction without notice; no five-day wait applies. **Senator Bock** referred to page 2, lines 12 through 20 regarding "reasonable care." It seems inconsistent that only the highway district does not assume liability. **Mr. Price** said the intent is to limit responsibility to standard of care. **Senator Bock** asked if negligent standard applies. **Mr. Price** said it did.

**Senator Hagedorn** asked if a tree branch encroaches over a stop sign, would the responsible party be able to remove the tree branch or would they have to cut down the entire tree. **Mr. Price** said only the encroachment in the public right-of-way would need to be removed. There were no further questions for Mr. Price.

**TESTIMONY:**

**Chairman Brackett** welcomed Barbara Jordan of the Idaho Trial Lawyers Association (ITLA) to the Committee.

**Ms. Jordan** said that ITLA agrees with the highway districts in part and they are not opposed to the bill in general, but they do have concerns. She listed those concerns as: (1) the House amendment made the bill better, but ITLA's concerns were not addressed; (2) highway districts already have protection under the Tort Act; (3) the language in the bill is confusing; (4) another concern is that highway districts determine what is safe and what is not safe; and, (5) the change to section 4 needs to be more specific as to whether the owner knew about an encroachment and did not resolve it or didn't know about the encroachment.

**Ms. Jordan** continued that courts should be determining some of these issues because the language in the bill makes the issues very complex. The highway districts do not seem interested in correcting the language. **Ms. Jordan** asked the Committee to either hold the bill in Committee and work out the language issues, or send it to the 14th Order where the language can be fixed. She ended by saying she was accompanied to the hearing by a trial lawyer who could respond to questions. There were no questions for Ms. Jordan.

**MOTION:** **Senator Bock** moved that **H 171aa** be sent to the 14th Order for amendment. **Senator Buckner-Webb** seconded the motion. **Chairman Brackett** asked if there was any discussion on the motion.

**SUBSTITUTE MOTION:** **Senator Hagedorn** commented that he did not believe there was a problem with the bill, and moved that **H 171aa** be sent to the Senate floor with a **do pass** recommendation. **Senator Rice** seconded the motion. **Chairman Brackett** asked if there was any discussion on the substitute motion.

**Vice Chairman Johnson** had questions for John Kormanik, a trial lawyer, representing ITLA. The **Vice Chairman** asked whether the phrase "county highway district shall not be liable to encroachment" is "strict" or "ordinary" negligence. **Mr. Kormanik** said that was the issue with the statute as written. If that phrase is unclear to the Senator, it becomes a good reason why the bill should be amended. He said the legislation should be written in clean and plain language. He believes the passage deals with ordinary negligence, but by using strict liability, it becomes unclear. **Vice Chairman Johnson** wanted to know why the word "liability" is the same in the original bill and in ITLA's amendment. **Mr. Kormanik** said it was "reasonable care" liability.

**Senator Rice** described the three different types of encroachments in the bill. He commented that there are many things for which highway districts should not be held liable. There was no further discussion.

**VOTE ON THE SUBSTITUTE MOTION:** **Chairman Brackett** called for a vote on the substitute motion which passed by majority **voice vote**. **Senator Bock** and **Senator Buckner-Webb** asked to be recorded as voting "no" on the motion. **Senator Rice** will carry the bill on the Senate floor. **Chairman Brackett** said that with the passage of the substitute motion, the original motion died.

**ADJOURNED:** There being no further business before the Committee, **Chairman Brackett** adjourned the meeting at 2:35 p.m.

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Senator Brackett  
Chairman

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Gaye Bennett  
Secretary