

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, January 14, 2014

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Brackett, Vice Chairman Johnson, Senators Keough, Winder, Rice, Nonini(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** convened the meeting of the Senate Transportation Committee (Committee) at 1:33 p.m. with a welcome to all in attendance. He asked the secretary to take a silent roll. With a quorum present, **Chairman Brackett** explained that the Committee would not hold a meeting on Thursday because of the Justice Reinvestment in Idaho Joint Legislative Briefing that was scheduled in the Lincoln Auditorium during the Committee's regular meeting time. He continued that Senator Lodge and Representative Wills, in conjunction with the Council of State Governments Justice Center, had organized this briefing that welcomed all legislators and interested stakeholders to attend. **Chairman Brackett** encouraged Committee members to attend.

RS22355: **Chairman Brackett** next turned to the agenda and welcomed **Sharon Kiefer** of the Idaho Department of Fish and Game (Department) who began by introducing herself and said she was before the Committee to request that **RS22355** be printed. **Ms. Keifer** said the legislation amends Idaho Code that refers to three speciality license plates of which the Department has oversight. As currently written, flexibility and marketing of the plates is limited because of design restrictions. The Department wants to modify the law to broaden the plates' marketability and the public's interest in purchasing them. Fees collected from the sale of these plates are distributed to the wildlife funds within the Department and to Idaho State Parks and Recreation. There has been a reduction in sales. The term 'elk' becomes 'mammal' and 'cutthroat' becomes 'fish.' There are no other changes. The Department's third plate's Idaho Code language for birds already allows for flexibility in design. The Idaho Mountain Bluebird plate has been altered over the years. **Ms. Kiefer** said she would stand for questions.

Senator Hagedorn asked for an explanation of why the Department believes changing the statute from 'elk' to 'mammal' and not changing the license plate will improve marketing. **Ms. Keifer** said that changing the statute will provide more opportunities to change design of the current license plate, as well as depict other animals.

Senator Rice asked if that could be accomplished by simply using the third license plate. **Ms. Keifer** agreed that the 'bluebird' license plate language was not species specific. The Department has been able to make design changes on the 'bluebird' license plate over the years. People like change and revenue is declining in the purchase of specialty license plates. The Department believes changing the statute will allow for more flexibility. She added that there will be a public process before changes in Department-sponsored license plates occur.

Senator Bock asked if the 'elk' plate would continue to be produced. **Ms. Keifer** said that because of the process involved, she would prefer to respond to this line of questioning at a full Committee hearing once the legislation has been printed.

Vice Chairman Johnson added that he believed the question was whether the 'elk' license plate would continue to be issued. **Ms. Keifer** said that the Department can only have three license plate designs at any time. This rule change would allow the Department to alter the design of the original license plates.

Senator Nonini asked whether the Cutthroat Trout license plate was chosen because the cutthroat is the state fish. **Ms. Keifer** confirmed that is why it was chosen for the license plate. **Senator Nonini** suggested that the cutthroat represents the State of Idaho to people who see it on a license plate, and any other fish would not. **Ms. Keifer** said that this legislation meets the results of the process the Department conducted.

MOTION:

Before calling for a motion, **Chairman Brackett** asked if anyone in the audience wanted to comment on **RS22355**. There being no one, **Chairman Brackett** recognized **Senator Keough** who moved that **RS22355** be sent to the Senate floor for printing. **Senator Winder** seconded the motion. The motion passed by **voice vote**.

RS22424:

Chairman Brackett thanked Ms. Keifer and asked **Ed Pemble**, of the Idaho Transportation Department (ITD), to take the podium and present **RS22424**, where he proceeded to introduce himself to the Committee.

Mr. Pemble said that **RS22424** adds new driver's license and testing standards that comply with federal requirements. These changes improve safety and training to the current program. The legislation includes definition changes such as people with learners permits will now be able to renew their permits once before needing to take a new knowledge test, and driving permits for motorized cycles will now be consistent across all programs. In addition, some of the new language benefits the Idaho State Police. If passed, this legislation would become effective on July 8, 2014, in keeping with federal compliance requirements. The fiscal impact is a result of required updates to ITD's computer programming. **Mr. Pemble** said he would stand for questions.

Senator Rice asked whether the definition of tanks transporting any liquid on page 12 of the legislation would include liquids like soft drinks. **Mr. Pemble** said that was not the intent and deferred his response to **Captain Bill Reese** of the Idaho State Police Safety Division who said the language does not apply to contained liquid but to bulk liquid being transported.

Chairman Brackett asked if these changes are part of complying with federal regulations. **Mr. Pemble** confirmed that was correct, but stated that there are other issues included that are not part of federal compliance such as the changes to learner permits. He concluded by stating that ITD supports this legislation. There were no further questions.

MOTION:

Chairman Brackett thanked Mr. Pemble and Captain Reese and asked the Committee for a motion. **Senator Hagedorn** moved that **RS22424** be sent to the Senate floor for printing. **Senator Rice** seconded the motion. The motion passed by a unanimous **voice vote**.

RS22444:

Chairman Brackett asked Mr. Pemble to present **RS22444**. **Mr. Pemble** stated that this legislation is strictly customer service based and focuses on Idaho residents who are federal employees working abroad. It also applies to the immediate families of these employees. It mirrors the rules already in place that apply to members of the military serving abroad. The legislation allows ITD to have some flexibility when accepting identification documentation for drivers' training permits. There is frustration that currently exists with the requirement of certified copies of birth certificates instead of accepting a photocopy and for guardians appearing instead of parents when those parents have impairments. This legislation will alleviate some of that frustration. The changes offered in the legislation are procedural and do not cause additional costs to the state or to individuals. **Mr. Pemble** said he would stand for questions.

Senator Hagedorn said that he was familiar with some of the frustration from when he served in the military out-of-state and he had renewed an expired driver's license. He asked how drivers' licenses will become extended so that those serving abroad will receive new licenses. **Mr. Pemble** said that ITD had made changes to that process and is now sending out new cards. There were no further questions.

MOTION:

Chairman Brackett thanked Mr. Pemble and asked the Committee for a motion. **Senator Hagedorn** moved that **RS22444** be sent to the Senate floor for printing. **Senator Nonini** seconded the motion. The motion passed by a unanimous voice vote.

ADMINISTRATIVE RULES:

Chairman Brackett said the next business of the Committee was to take up the review of Administrative Rules. He turned the gavel over to Vice Chairman Johnson to conduct this portion of the agenda. **Vice Chairman Johnson** stated that the Committee would take up six Administrative Rules at today's meeting (one tax rule, and five transportation rules), and the remaining rules would appear on a future meeting agenda. **Vice Chairman Johnson** asked Don Williams of the Idaho State Tax Commission to come to the podium to discuss the fuels tax docket.

DOCKET NO. 35-0105-1301:

Mr. Williams went through this docket explaining the various sections. He stated that rules 110, 115 and 290 are not being promulgated and will remain codified.

Motor Fuels Tax rule 105 is being amended consistent with H 20 from the 2013 legislative session allowing the State Tax Commission to sell gaseous fuel decals. There are also changes to clarify records required for exempt sales at manned and unmanned pumps. This rule provides instruction for the licensed gaseous fuel distributor on how to complete its reports, maintain records and when it can sell exempt gaseous fuels.

Motor Fuels Tax rule 270 is being changed to clarify the records required for taxable and nontaxable use from a single storage tank when using the proration percentages provided in subsection (6)(a) or alternate percentages. This rule describes a valid receipt when the original can be replaced, how long the taxpayer must keep the receipts and alternative methods for claiming refunds.

Motor Fuels Tax rule 292 is being reviewed to determine if changes are required to the standard allowances for special fuels power take off (PTO). The review is required due to increased efficiency of special fuel engines. This rule defines nontaxable miles. It provides standard allowance rates when claiming refunds as a result of using PTO and auxiliary engines. It also provides instruction for International Fuel Tax Agreement (IFTA) licensees who want to claim refunds based on claims for other than nontaxable miles.

Motor Fuels Tax rule 410 is changed to cite the external source according to the Administrative Procedures Act. Section 63-2442A, Idaho Code, authorized the Idaho State Tax Commission to adopt IFTA. It previously incorporated the governing documents of this agreement but it did not follow the external source citation requirements of the Administrative Procedures Act. This rule adopts the agreements by reference.

Motor Fuels Tax rule 510 is changed to clarify when motor oils, other than new motor oils, are received in the state and subject to a transfer fee. Section 41-4909(7), Idaho Code, authorizes the Idaho State Tax Commission to assess a one cent (\$0.01) per gallon transfer fee on petroleum products that are sixty degrees Fahrenheit liquids, unless otherwise exempted. This rule adopts the transfer fee, and it outlines application and reporting. **Mr. Williams** said he would stand for questions.

Senator Hagedorn was concerned about calling 'intermediate storage facilities' 'permanent storage facilities' as written on page 14 under transfer fees for petroleum products, and he wanted to know if it was defined somewhere in the statute. **Mr. Williams** said it was defined in the Internal Revenue Service Code and went on to cite examples of such facilities in Boise. There were no further questions.

MOTION:

Vice Chairman Johnson thanked Mr. Williams and asked the Committee for a motion. **Senator Hagedorn** moved to approve **Docket No. 35-0105-1301**. **Senator Bock** seconded the motion. The motion passed by a unanimous **voice vote**.

**DOCKET NO.
39-0260-130**

Vice Chairman Johnson welcomed Christine Fisher of ITD to the Committee and asked her to present the next docket. **Ms. Fisher** introduced herself and said that the text of this rule begins on page 17 and ends on page 24. This rule has been adopted by ITD's Board. No public comments were received on this rulemaking. Upon legislative authorization, this rule will become final and effective at the end of this session. **Ms. Fisher** proceeded to briefly outline the rule changes.

The change was made to comply with S 1243 which became effective on July 1, 2012, and H 169 from the 2013 legislative session. The reason for the 2012 law change was to implement a set of requirements for initiating a new specialty license plate program, to place parameters around the prequalification and application for specialty license plate programs, and to rein in the proliferation of those programs. It is also intended to ensure greater accountability for the funds collected. Our original rule proposal to implement S 1243 was rejected in the 2013 legislative session, and subsequent to that rejection, HB 169 was passed. This law clarified that specialty license plate legislation may be passed before, during or after the requirements stipulated in S 1243 are met. With this change, potential plate sponsors have a much better idea of the interest level their proposed program might generate, and it saves some from going through the process only to have their program cancelled. There is now a requirement that those proposing new specialty license plates gather at least 250 signatures from Idahoans who would be willing to purchase the specialty license plate if implemented. The expected result is that ITD will not be required to cancel as many specialty license plate programs because the minimum sales requirement of at least 1,000 new or renewed registrations will more likely be met.

ITD has also incorporated minor language changes to align the law more closely with current practices, and to rename the 'forty-five day temporary' document to a 'proof of registration' document in order to more accurately describe the form issued when a license plate has been ordered from the manufacturer and the full registration fees have been paid by the applicant. Language was also added to make it clear that 'personalized license plate' messages on plates may not refer to gang or criminal affiliations, and ITD may utilize the expertise of law enforcement as a resource in determining if the affiliation exists. **Ms. Fisher** said she would stand for questions.

Senator Bock asked if reducing the number of applicants is a requirement to maintain plates. **Ms. Fisher** said the rule incorporates the qualifications needed to meet the requirements and stipulates when they need to be done.

Senator Keough noticed that on page 21, the fee was not refunded and asked if that was in last year's legislation. **Ms. Fisher** said that everything remained the same with regard to fees.

Senator Hagedorn said that on page 21 it states that the annual report goes to ITD and the legislative transportation committees for review, but he wanted to know if the public also gets the information. **Ms. Fisher** said that ITD gathers information from organizations to present to legislators but does not currently publish the information publicly.

Senator Bock asked if there were prequalification requirements in addition to requirements before, during and after the process of requesting a specialty license plate. **Ms. Fisher** said that last year's House legislation allows for signatures to be gathered after the due date. Interested parties can do this by collecting signatures and getting a legislator to submit them, but ITD cannot offer the plate for sale until all the requirements have been met.

MOTION:

Vice Chairman Johnson thanked Ms. Fisher and asked the Committee for a motion. **Senator Winder** moved to approve **Docket No. 39-0260-1301**. **Senator Keough** seconded the motion. The motion passed by a **voice vote**.

**DOCKET NO.
39-0350-1301**

Vice Chairman Johnson welcomed Cathy Ford of ITD to the Committee and asked her to present the next docket. **Ms. Ford** informed Vice Chairman Johnson that there was another docket before hers that had not yet been heard. **Vice Chairman Johnson** thanked her and asked if she would proceed and the Committee would go back to that docket when she was concluded. **Ms. Ford** introduced herself and said that this rule was presented and approved by ITD's Board. Upon legislative approval, it will become final and effective at the end of this legislative session. This rule prohibits the discharge of firearms at safety rest areas. ITD has posted signs prohibiting the unlawful discharge of firearms at these rest areas.

The 2008 Legislature passed SB 1441 that preempted the field of firearm regulation and prohibited state agencies from regulating firearms as this practice interfered with the Second Amendment to the U.S. Constitution. Section 18-3302J, Idaho Code, allows cities and counties to regulate the discharge of firearms within their boundaries; however, state agencies do not have this authority with the exception of universities and the Idaho Department of Fish and Game. As a result, this rule had to be amended. ITD was directed by the Idaho Attorney General to propose revisions. Rule 05 of Section 200 prohibits discharging of firearms or fireworks. In the revision, ITD recommends changes to prohibit discharging fireworks or any other incendiary devices.

There had been no changes or updates since this rule was adopted in 1990. In addition to this specific rule change, ITD is also recommending other minor changes that address other specific issues regarding the use of safety rest areas. They required that these areas are safe, secure and used as intended as well as clarify acceptable and unacceptable behavior including panhandling and skateboarding.

Signs displaying 'Safety Rest Area Rules' are displayed at each of our thirty rest area facilities. These signs have been modified to cover or remove the reference to firearms. Once approved, ITD will have new signs manufactured addressing all the safety rest area rule changes. **Ms. Ford** said she would stand for questions.

Senator Rice asked if taxis would be prohibited under this rule and referenced page 72. **Ms. Ford** said allowing safe passage for drivers of disabled vehicles requiring alternative transportation is not the intent of this rule and believes the need to call a taxi was allowed. **Senator Rice** asked if the reference to 'incendiary device' included road flares. **Ms. Ford** did not have specific information regarding road flares, but would look into that question if needed. **Senator Rice** indicated he wanted that information.

Senator Bock said he has serious concerns about section 200.04 on page 72. He stated that Judge Lodge had just struck down the panhandling ordinance in Boise as being an infraction of the U.S. Constitution's free speech amendment. **Senator Bock** believes this portion of the rule would be unconstitutional as well. **Ms. Ford** said that these rules were recommendations made through ITD's process. She said that the panhandling issue is new, and then explained why it was in the rule. **Senator Bock** said that he believed the issue went beyond the explanation. 'Begging' is equivalent to panhandling; asking for a donation is a free speech right, possibly hitchhiking is as well. **Senator Bock** asked Ms. Ford to consult with ITD over his concerns. **Ms. Ford** said she would ask ITD to address his concerns.

Senator Hagedorn referenced page 72, section 200.05, 'selling of any merchandise'. He has purchased soda at rest areas and wondered if that was exempt from this rule. **Ms. Ford** said that ITD has an agreement with the Commission for the Blind to provide this service. There were no further questions.

MOTION:

Vice Chairman Johnson thanked Ms. Ford and asked the Committee for a motion. **Senator Rice** moved to hold **Docket No. 39-0350-1301** in Committee for further review. **Senator Bock** seconded the motion. **Senator Keough** asked if the intent was to hold the rule for further investigation or to reject the rule. **Senator Rice** said his intent was to hold for further investigation rather than make a decision at this Committee meeting. With no further questions, **Vice Chairman Johnson** called for a vote. The motion passed by a unanimous **voice vote**.

**DOCKET NO.
39-0271-1301**

Vice Chairman Johnson welcomed Amy Kearns of ITD to the Committee and asked her to present the skipped docket. **Ms. Kearns** introduced herself and said that the text for this rule begins on page 27 of the review book. This rule was presented for modifications last year. During the 2013 legislative session, H 274, the Traffic Safety Education Program, was passed. It allowed new means of points removal from a driving record by attending a traffic safety education course offered by the arresting/citing officer when a driver is eligible for point removal. This proposed rule incorporates the provisions of that bill.

When the rule was presented to ITD's Board last summer, a highway engineer offered input regarding obsolete terminology, which has been incorporated in this rule. There was also input from Idaho State Police (ISP) regarding moving violations that were submitted by law enforcement to the court system but were not being transmitted from the court to ITD. Those moving violations are added to section 200 of the rule with the proposed point counts. These violations and their associated point counts appear on pages 28 and 29.

Last year the texting violation was listed as 'exempt' in section 200. That exempt statutory language is parallel to the language describing seat belt violations. ITD thought it appropriate to also note that exemption in section 200. **Ms. Kearns** said she would stand for questions, and introduced Captain Bill Reece of ISP who was available to provide clarification on any specific moving violations if needed. There were no questions for Ms. Kearns or Captain Reese.

MOTION:

Vice Chairman Johnson thanked Ms. Kearns and Captain Reese, and asked the Committee for a motion. **Senator Nonini** moved to approve **Docket No. 39-0271-1301**. **Senator Keough** seconded the motion. The motion passed by a unanimous **voice vote**.

**DOCKET NO.
39-0402-1301**

Vice Chairman Johnson welcomed Bill Statham of ITD's Division of Aeronautics to the Committee and asked him to present the next docket. **Mr. Statham** introduced herself and said that this rule was advertised in the Idaho Administrative Bulletin on October 2, 2013. No hearing was requested and no public comments were received. Industry representatives were not involved in the development of this rulemaking. Upon legislative approval, this rule will become final and effective at the end of this session.

This rule has been updated to comply with H 216 that exempted power marketing firms from lighting and marking guyed towers; and S 1065 that exempted amateur 'ham' and 'CB' radio towers from the requirement to light and mark their guyed towers. Both bills were passed during the 2013 legislative session.

These amendments do not create conflicts with ITD's program and do not create an undue amount of additional effort to administer. All changes to the rule are shown on page 78. The changes simply add the legislative language exempting the power marketing firms and the 'ham' and 'CB' radio towers from the lighting and marking requirements. **Mr. Statham** said he would stand for questions. There were no questions for Mr. Statham.

MOTION:

Vice Chairman Johnson thanked Mr. Statham and asked the Committee for a motion. **Chairman Brackett** moved to approve **Docket No. 39-0402-1301**. **Senator Hagedorn** seconded the motion. The motion passed by a unanimous **voice vote**.

**DOCKET NO.
39-39-0404-1301**

Vice Chairman Johnson asked Mr. Statham to present the next docket. **Mr. Statham** said that this rule was advertised in the Idaho Administrative Bulletin on October 2, 2013. No hearing was requested, and no public comments were received. Industry representatives were not involved in the development of this rulemaking. Upon legislative approval, this rule will become final and effective at the end of this session.

This rule has been updated to comply with legislative amendments dating from the 2005 Legislature in H 40 to new funding procedures for the airport grant program that was approved by the Aeronautics Advisory Board (AAB) in May, 2013.

Changes to the rule begin on page 83 with definitions for Airport Service Area Population and Adjusted Service Area Population that are needed to understand how the match rate is set for a community airport. The next change is in the section title; the order of the numbered items reflects the priorities stated in the new procedures. The priorities have been reordered and have not been changed from the previous version of the rule. On page 84, the change reflects that the Idaho Airport Aid Program cannot afford to provide 100 percent of the cost for a new airport or 90 percent of the cost for airport maintenance projects. The next change is that the AAB determined that the population of a town was not representative statewide and elected to calculate population on a service area basis. The service area population is defined as everyone within a thirty-minute drive of the airport.

Final changes appear on page 86 in section 300.04. The language from H 40, enacted in 2005, is incorporated into the rule. It states that the elements needed to provide protection of the airport, its operations, its neighbors near the airport, and ITD's investment of public funds is reflected in Idaho Code, Federal Aviation Administration (FAA) orders, and FAA and State grant assurances.

These rule changes will help Idaho's public airports by providing a uniform project prioritization method and a uniform annual allocation method for grant funds. **Mr. Statham** said he would stand for questions.

Senator Rice asked about the 'thirty minutes' determination instead of using number of miles. **Mr. Statham** said the use of drive time to-and-from local airports makes it consistent with federal statutes. There were no further questions.

MOTION:

Vice Chairman Johnson thanked Mr. Statham and asked the Committee for a motion. **Mr. Hagedorn** moved to approve **Docket No. 39-0404-1301**. **Senator Keough** seconded the motion. The motion passed by a unanimous **voice vote**.

ADJOURNED:

With the review of Administrative Rules complete, **Vice Chairman Johnson** thanked the Committee and passed the gavel back to Chairman Brackett. **Chairman Brackett** also thanked the Committee and the presenters. With no other business before the Committee, **Chairman Brackett** adjourned the meeting at 2:56 p.m.

Senator Brackett
Chair

Gaye Bennett
Secretary