

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, January 20, 2015

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Brackett, Vice Chairman Nonini, Senators Keough, Winder, Hagedorn, Vick, Den Hartog, Buckner-Webb and Lacey

ABSENT/ EXCUSED: None

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 of the Senate Transportation Committee (Committee) to order at 1:30 p.m. **Chairman Brackett** welcomed members of the Pacific NorthWest Economic Region (PNWER) delegation and asked Senator McKenzie, PNWER Incoming President, to the podium to present a PNWER working group report on regional harmonization efforts.

PRESENTATION: **Senator McKenzie** thanked the Committee and introduced members of the PNWER delegation in the audience.

Senator McKenzie said truck harmonization in moving freight throughout PNWER's jurisdiction is an important focus area for PNWER and is a function of truck configuration. Configuration refers to truck weight, length and number of axles. Idaho approves various truck configurations depending on the route. The concern in Idaho is that the infrastructure, particularly bridges, may be too old to withstand the load.

Maximum truck weights vary by state and province within the region, but with no north-south rail routes in Idaho, the State is dependent on trucks for hauling freight. An Idaho asset is the Port of Lewiston, which is the most inland seaport on the West Coast. It is a particularly effective mode of transportation because all barge and rail loads must be hauled by trucks at some point.

Given the varying transportation regulations among PNWER jurisdictions, harmonization is a challenge. Congress may have to act in order to move the process along. Idaho has two Canadian border crossings at Eastport and at Kingsgate. Canadian B-Train trailers, two trailers linked together by a fifth wheel and up to 85 feet long, are not permitted in Idaho but are allowed in other states and Canadian provinces. A-Train configuration is currently the most efficient truck trailer combination for United States/Canadian border crossings in the northwest. The Western Association of State Highway and Transportation Officials (WASHTO) is advocating legislation that supports efficient and effective transportation systems. Idaho has taken a lead and has met WASHTO's phase one requirements. Truck size and weight is a political issue that is not a focus of PNWER. **Senator McKenzie** thanked the Committee and stood for questions.

Senator Vick wanted to know the impact of big trucks on Canadian roads. **Senator McKenzie** said the big B-Train configuration with its many axles are welcomed. Studies show that there is no more stress to a roadway than smaller trucks because the weight is distributed across all the axles.

Chairman Brackett asked if the Canadian public accepts findings that bigger and heavier trucks do not cause more damage to roadways. **Senator McKenzie** said that like in the United States, the Canadian public does not accept that reasoning.

Senator Hagedorn commented on the slide that states the 129,000 pound truck is a federal cap on the interstate systems. He asked if that was true for other states but not for Idaho. **Senator McKenzie** said that states that do not have a weight cap designated are automatically capped at the 129,000 pound cap. Congressional action is needed for that to be the case in Idaho.

Chairman Brackett asked if Nevada and Utah have weight-specific legislation. **Senator McKenzie** was not certain, but Idaho has to qualify for the federal cap.

Senator Winder suggested Idaho may be grandfathered into the lower amount and the other states were grandfathered in at the higher amounts when some of the federal regulations changed on interstates.

Senator Keough recommended PNWER talk with North Idaho local officials in Bonner and especially Boundary Counties. They want to work with their Canadian partners. They have safety and road construction issues as well as problems with heavier trucks. **Senator McKenzie** said because of Idaho's mountainous terrain, it is the only partner that uses the system of truck weights based on routes. He added that there is a calculator on the Idaho Transportation Department's (ITD) website that calculates weight limits on routes. With no further questions, **Chairman Brackett** thanked Senator McKenzie for his presentation.

**PASSED THE
GAVEL:**

Chairman Brackett passed the gavel to Vice Chairman Nonini.

**ADMINISTRATIVE
RULES:**

Vice Chairman Nonini told the Committee they would be hearing all eight administrative rules. Experts would present each rule and answer questions or concerns from Committee members. **Vice Chairman Nonini** asked Lieutenant Tim Horn of the Idaho State Police (ISP) to present the first docket before the Committee.

**DOCKET NO.
11-1301-1401:**

Lieutenant Horn stated that this docket adopts 49 CFR 386.71-84 Subparts F and G, Injunctions and Imminent Hazards of the Federal Motor Carrier Safety Regulations (FMCSR). Although the Federal Motor Carrier Safety Administration (FMCSA) gives carriers many opportunities to correct safety issues, when they do not comply FMCSA can revoke a carrier's operating authority. This means the carrier is placed out of service, or they no longer have the authority to operate and are declared an imminent hazard. These carriers are most likely to cause crashes and jeopardize the safety of others on Idaho highways. Currently, Idaho does not have the authority to enforce out of service orders for imminent hazard. Idaho does not have the authority to place carriers out of service when they fail to pay civil penalties for violations of the regulations. This rule will give Idaho that authority. He asked for the Committee's support by approving the adoption of 49 CFR 386.71-84 subparts F and G allowing Idaho safety experts to stop the movement of these out of service carriers. **Lieutenant Horn** stood for questions.

Senator Hagedorn was concerned by the language on page 5, line f, and wanted to know why there was no date included. How will the Legislature be informed if the federal government makes changes to this regulation? The Committee is being asked to approve language from the current version of federal regulation, which is why he thinks the date of the version approved should be part of the rulemaking task. **Lieutenant Horn** said that federal regulation can change at any time, but this is the process followed in the past. **Senator Hagedorn** recommended that in the future when federal regulation is incorporated by reference, the date of the regulation incorporated should be included within the rule. This will ensure the version of regulation approved by the Legislature is the version that will be enforced in Idaho.

Senator Lacey suggested that if this rule is approved, a date will be placed in the parenthesis currently left blank at the end of the rule. **Lieutenant Horn** was unsure if that was correct.

Vice Chairman Nonini asked Lieutenant Horn to research this concern and provide a response to the Committee secretary for distribution.

Senator Vick offered to clarify the point by directing the Committee to page 6, Section 04, where the date of the regulation did appear.

With no further questions, **Vice Chairman Nonini** asked Lieutenant Horn to present the next docket.

**DOCKET NO.
11-1301-1402:**

Lieutenant Horn said the Moving Ahead for Progress in the 21st Century Act (MAP-21) deals with interstate agricultural transportation. It does not affect intrastate operations. On July 6, 2012, the President signed MAP-21 into law, making it effective before federal regulations were in place. All enforcement officers had to begin enforcement. Idaho has been enforcing MAP-21 since that date. FMCSA is now clarifying exemptions to MAP-21 through adopted federal regulations. FMCSA made some changes in exemptions for covered farm vehicles and extended their ability to travel under those exemptions from 100 to 150 miles. This benefits businesses and vehicles engaged in the transportation of agricultural commodities and farm supplies. A covered farm vehicle is exempt from Part 383 (Commercial Drivers License (CDL)), Part 382 (drug and alcohol testing), Part 391 Subpart E (physical qualifications), Part 395 (hours of service), and Part 396 (inspection, repair and maintenance). If the vehicle is 26,000 pounds or less (non-CDL) the exemptions are nationwide. **Lieutenant Horn** asked for the Committee's approval by adopting this docket, and stood for questions.

Senator Keough asked for the definition of a farm vehicle as referenced in this rule. **Lieutenant Horn** said it is a vehicle owned and operated by a farmer (includes employees and family members); a vehicle being used to transport either agricultural products, farm machinery, or farm supplies to or from a farm; one not being used in the operation of a for-hire motor carrier; one not carrying hazardous material of a type or quantity that requires the commercial motor vehicle (CMV) to display placards as stated in the regulations; and one being used within 150 air miles of the farmer's farm.

Vice Chairman Nonini reminded Lieutenant Horn to please clarify the question regarding the effective date of a federal publication incorporated by reference into an administrative rule before the Committee votes on the rules. **Senator Hagedorn** added that there are no dates on the other federal regulations referenced and wanted to start the process of adding dates to rules that incorporate federal regulations by reference. **Lieutenant Horn** agreed to send that information.

**DOCKET NO.
35-0105-1401:**

Vice Chairman Nonini welcomed Don Williams, Tax Policy Specialist for the Idaho State Tax Commission (STC), to present the first of two tax rules. **Mr. Williams** began his testimony by presenting a negotiated rulemaking report of activity in 2013 and 2014.

Mr. Williams introduced this docket as covering three non-negotiated rules that were added or amended at the request of Idaho's Office of the Administrative Rules Coordinator. The changes were made so the Motor Fuels Tax rules would conform with the requirements of the Idaho tax rules. Rule 001 is the Title and Scope rule. It is required of all rules, but was inadvertently missed when the Motor Fuels Tax rules were written. It gives the name of the rules that include the Motor Fuel Tax in Chapter 24, Title 63; portions of the Petroleum Clean Water Trust Fund in Chapter 49, Title 41; and portions of Motor Vehicle Registration in Chapter 4, Title 49. Rule 004 is amended from the Public Records Compliance Act rule and is incorporated by reference here. Rule 330 was the original rule that incorporated portions of the Income Tax Act. Rule 006 is added as the new Public Records Compliance Act rule after moving it from Rule 004. In addition to moving the rule, the International Fuel Tax Agreement (IFTA), as revised on January 20, 2013, and the International Registration Plan (IRP), as revised on July 1, 2013, are being incorporated by reference. **Mr. Williams** stood for questions.

Senator Lacey thought the rule implied (on page 13, under a. Motor Fuels Tax) that the State wants to collect tax on all motor fuels. **Mr. Williams** agreed but said there were exemptions required by IFTA. As a sovereign jurisdiction, Idaho can determine when fuel is going to be taxed and at what rate. With no further questions, **Vice Chairman Nonini** asked Mr. Williams to present the next docket.

**DOCKET NO.
35-0105-1402:**

Mr. Williams said that negotiated rules Rule 110 and Rule 311 both deal with IFTA which is an agreement between the 48 continental states and 10 Canadian provinces. IFTA simplifies the reporting of fuel use taxes by interstate motor carriers. It significantly reduces the paperwork and standardizes the reporting of fuel use taxes. It also requires the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 to promote interstate commerce by instituting a base jurisdiction concept, by maintaining jurisdiction sovereignty over tax rates and exemptions, and by applying uniform vehicle definitions.

To help simplify a complicated process, **Mr. Williams** shared an explanation of how IFTA works. When a trucker purchases fuel, the tax he pays is put into a bank. As the truck travels among other jurisdictions, the money in the bank is spent. The amount spent depends on the tax rates and miles traveled in the other jurisdictions. At the end of each quarter, the tax paid and miles traveled are reconciled. The result of the reconciliation is either a refund of tax or additional tax due.

The purpose of IFTA is to allow a trucker to license and pay tax to one state. This is the trucker's base state. The trucker's base state would disburse the tax to other states when tax is due, which is based on the reports filed by the trucker. The advantage to the trucker is that he would file one return instead of up to 58, and he could be audited by one state instead of up to 58. Each state benefits because they process fewer returns and perform fewer audits, which saves money. In Idaho, the STC nets the quarterly returns for the approximately 3,300 Idaho IFTA licensees and either pays other jurisdictions tax due or collects a refund depending on the Idaho IFTA licensees' travel report.

Negotiated Rule 110 deals indirectly with IFTA. The Commission began working on amending this rule in 2013. The industry was directly involved in writing it. Some members of industry would prefer some of the changes in statute rather than by rule. The Commission has interpreted the directive in Idaho Code § 63-2424(1) as instruction from the Legislature to fix the volume of gaseous fuels and apply the motor fuel tax on that volume based on the equivalent energy of a gallon of gasoline. The Commission could not propose the change in statute that industry requested.

The rule change is required because an IFTA ballot was passed (effective July 1, 2015) requiring all states to report Compressed Natural Gas (CNG) in a gas gallon equivalent (GGE) measurement. Idaho Code § 63-2442A(9) requires that all motor fuel tax rules conform to IFTA. This rule change is necessary to conform with IFTA. It is important to note that the change is required on the reporting volume and not on the tax rate. Idaho Code § 63-2424(1) requires that gaseous fuels be taxed on the energy equivalent of one gallon of gasoline. IFTA, Article I, Section R130, says that all IFTA jurisdictions retain the right to determine their own tax rates.

Negotiated Rule 311, dealing directly with IFTA, was presented in one open meeting and received limited comment; additional comments were solicited. The most negative comment came from the American Trucking Association (ATA) who said that, in general, states are beginning to require IFTA license bonds with good success.

The rule is required to explain how IFTA license bonding will work and to allow waivers of IFTA license bonds. IFTA and Idaho Code § 63-2442A(2) allow Idaho to require bonds for an IFTA license under certain circumstances. Some portions of the agreement need further explanation for the IFTA license bonding to work properly. IFTA license bonds are only required under certain circumstances, for example if documents are not filed timely. If returns are filed and/or taxes are paid late on three or more occasions during a three year period, the Commission has determined it constitutes "failing to file timely." In addition, the Legislature allowed a fuel distributor the option of requesting a bond waiver in Idaho Code § 63-2428(1), line 9. A procedure for requesting a waiver is included in this rule, but IFTA is silent on bond waivers. Under this rule, a bond may be required of approximately 1 percent of the current IFTA licensees or about 33 of the over 3,000 licensees. Because Idaho is their base State, if any of those licensees default on their taxes owed to Idaho or to other IFTA jurisdictions, Idaho is responsible for the unpaid tax. Idaho would lose any tax money owed to it and any tax owed to any other jurisdictions. **Mr. Williams** concluded his testimony by referring the Committee to a natural gas conversion chart located within the rule. **Mr. Williams** stood for questions.

Chairman Brackett asked if the conversion chart was revenue neutral. **Mr. Williams** responded that it was and explained why.

Senator Hagedorn referred to page 17, Section 311, Dealing with Bonding, and asked if this had been adopted in Idaho Code. **Mr. Williams** said this was a new rule. **Senator Hagedorn** said he did not recall legislation dealing with IFTA license bonding and wondered if this rule was adopting this section of IFTA. **Mr. Williams** referred to Idaho Code § 63-2442A. He said that if IFTA and Idaho Code disagree, then IFTA prevails. IFTA Article 40 says the base jurisdiction of a licensee may post a bond; the Deputy Attorney General concluded that because of this article, a bond could be posted. **Senator Hagedorn** raised concerns over this process in bonding where Idaho Code does not allow a bond, but IFTA does allow one. **Mr. Williams** said that Idaho Code does not state that an IFTA license may be bonded. It leapfrogs from statute to IFTA. He said he would prefer having that language in statute, but that would be a duplication because it is already

allowed in IFTA which Idaho has incorporated by reference. **Senator Hagedorn** said he did not agree with placing issues outside of Idaho Code into regulations because in this case the process does not allow input from Idahoans on the bonding issue. IFTA allows something that Legislators have not likely read, but it is still read into Idaho regulations.

Vice Chairman Nonini agreed that Senator Hagedorn made a good point. With no further questions, **Vice Chairman Nonini** invited Chris Fisher of ITD to present the next docket.

**DOCKET NO.
39-0203-1402:**

Ms. Fisher said she represented the Dealer Licensing Section of the Division of Motor Vehicles of ITD. The purpose of this rule change is to further define Idaho Code § 49-117(15) to clarify the term "reasonable times" by adding a section for "declared business hours." This addition requires a vehicle dealership to declare their regular business hours which will provide their customers and ITD a time frame of when the dealership is available to be contacted. The rule change specifies that these hours will be no less than 20 hours per week for retail dealers and at least 4 hours per week for wholesale dealers. A portion of those hours must be during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

The rule change also adds details related to the Idaho Consumer Asset Recovery (ICAR) Fund which was enacted during the 2013 Legislative Session. It provides that all dealers, unless otherwise exempt, will pay into the ICAR Fund and that the fee will be set by the ICAR Board annually. There are other minor changes. Liability insurance and surety bond requirements are moved to general provisions. The rule specifies that a surety bond is needed for the first three years after a dealership is initially licensed.

Upon legislative approval, this rule will go into effect at the end of this Legislative Session. **Ms. Fisher** said she would stand for questions.

Senator Vick wanted to know why it was necessary for automobile dealers to declare their business hours. **Ms. Fisher** said that the requirement has been implied for years; it provides clarification for wholesale dealers in particular. Wholesalers travel to auctions and conduct business outside their offices making them not readily available. Retail dealers are not really affected. **Senator Vick** asked what the reaction was from dealers on this rule change. **Ms. Fisher** said the reaction was positive and the Dealer Advisory Board had approved this change.

Vice Chairman Nonini asked if ITD had received any written comments from dealers. **Ms. Fisher** said they received none.

With no further questions, **Vice Chairman Nonini** thanked Ms. Fisher and invited Regina Phipps of ITD to the podium to present the next docket.

**DOCKET NO.
39-0310-1401:**

Ms. Phipps introduced herself as ITD's Vehicle Size and Weight Specialist. This proposed rule change was a request from the industry. It adds wording that will allow a self-propelled vehicle to haul a motorized vehicle on a trailer. It also allows the towing of a motorized vehicle for the return trip after delivery of the self-propelled vehicle. No hearings were requested nor did ITD receive any comments. **Ms. Phipps** stood for questions.

There being no questions, **Vice Chairman Nonini** asked Ms. Phipps to present the next docket.

**DOCKET NO.
39-0316-1401:**

Ms. Phipps said that as requested by the industry, the proposed change to this docket adds a permit type to Administrative Rule 39.03.16. It allows kiln lumber stacks to be hauled side-by-side and to exceed 8 feet, 6 inches wide, but they cannot exceed 9 feet, 3 inches. It specifically affects the half mile stretch of State Highway 3. No hearings were requested nor did ITD receive any comments. **Ms. Phipps** stood for questions.

RULE 39(H):

Senator Keough disclosed that she may have a conflict of interest with this rule because of the nature of her employment outside the Legislature.

Senator Keough inquired whether county commissioners had been notified of this rule change. **Ms. Phipps** said local officials were notified but ITD received no comments.

Senator Winder asked if State Highway 3 was the only highway impacted by this rule. **Ms. Phipps** said it was the only highway affected, but it is not specifically mentioned in the rule. **Senator Winder** said if there is a concern about a specific width, then the specific highway should be mentioned; otherwise, if another highway matches the description there will be no evaluation to determine if hauling that width on that highway is safe. **Ms. Phipps** said this specific width of 9 feet, 3 inches is the maximum allowed, if the width is more it would have to be evaluated separately. She said that this rule is in keeping with how other rules have been handled.

Vice Chairman Nonini thanked Ms. Phipps and invited Dave Jones of ITD to the podium to present the last docket.

**DOCKET NO.
39-0350-1401:**

Mr. Jones introduced himself as ITD's Chief Engineer. This pending rule more clearly defines "soliciting" and "fireworks" as requested by the Legislature last year. This rule also increases the occupancy time limits at rest areas to comply with federal law concerning rest times for commercial vehicle operators. No hearings were requested nor did ITD receive any comments. **Mr. Jones** stood for questions.

Vice Chairman Nonini noted that there were no questions. He remembered the discussion over this rule from the last legislative session. **Vice Chairman Nonini** thanked Mr. Jones and explained to the Committee that a vote on each rule would be taken up at a future meeting.

**PASSED THE
GAVEL:**

Vice Chairman Nonini returned the gavel to Chairman Brackett.

ADJOURNED:

Chairman Brackett thanked the Committee and Vice Chairman Nonini for his hard work on the administrative rules. With no additional comments from the Committee, **Chairman Brackett** adjourned the meeting at 2:53 p.m.

Senator Brackett
Chair

Gaye Bennett
Secretary