

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, February 24, 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** convened the meeting of the Senate Transportation Committee (Committee) at 1:35 p.m. and welcomed everyone.

MINUTES APPROVAL: **Vice Chairman Nonini** moved to approve the Minutes of February 3, 2015. **Senator Lacey** seconded the motion. The motion passed by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Brackett** asked the Committee to consider voting on the gubernatorial reappointment of Rodger Lee Sorensen to the Idaho Transportation Department's (ITD) Aeronautics Advisory Board to serve a term commencing January 31, 2015 and expiring on January 31, 2020.

Senator Winder said that he met Mr. Sorensen 15 years ago when he was first appointed to the Aeronautics Advisory Board. He said that Mr. Sorensen's knowledge of commercial and private aviation has been invaluable to his position as chairman on the Aeronautics Advisory Board.

Senator Winder moved to send the gubernatorial appointment of Rodger Lee Sorensen to the Aeronautics Advisory Board to the floor with a recommendation that he be confirmed by the Senate. **Senator Keough** seconded the motion. The motion passed by **voice vote**. **Senator Winder** offered to carry Mr. Sorensen's appointment on the floor.

PASSED THE GAVEL: Chairman Brackett passed the gavel to Vice Chairman Nonini.

RS 23688: **Vice Chairman Nonini** invited Chairman Brackett to present **RS 23688**. **Chairman Brackett** said that **RS 23688** facilitates the development of an autonomous driven vehicle industry in Idaho. **Chairman Brackett** stood for questions, but there were none.

UNANIMOUS CONSENT REQUEST: **Senator Lacey** asked for unanimous consent to send **RS 23688** to the Senate State Affairs Committee for printing. There were no objections.

H 96: **Vice Chairman Nonini** invited Chairman Brackett to present **H 96**. **Chairman Brackett** said the United States Congress passed the Real ID Act (RIA) in 2005 in response to the September 11, 2001 terrorist attacks. The estimated cost to enact the legislation was between \$20 and \$30 million, with an ongoing annual cost of \$5 million.

In 2008, the Idaho Legislature unanimously passed H 606 which became Idaho Code § 40-322. The Legislature saw RIA as an unfunded mandate. H 606 passed unanimously.

The primary unknowns at that time were changes that were to come later in the enforcement schedule. There is a series of deadlines that the State has not been meeting. The most recent was Phase 3a – Facility Security Levels 1 and 2, with a compliance deadline of January 19, 2015. The impact to Idaho was that entrance into the Idaho National Laboratory (INL) had been restricted based on RIA enforcement of Phase 3a. Idaho's driver's licenses and identification cards are no longer accepted for entry. Passports are now required. Beginning in October, 2015, that prohibition will extend to all secure federal facilities, including military bases, research labs and federal courts. Starting no sooner than 2016, Idaho licenses also won't be valid for boarding commercial airline flights. **Chairman Brackett** read through the bill explaining the effect of each section and emphasizing the emergency clause at the end of the bill making it effective when signed by the Governor.

Passage of **H 96** will demonstrate to the Department of Homeland Security (DHS) that the State of Idaho is making progress on their benchmarks and timetables. The State will submit compliance extension requests and status reports to DHS. There is an expectation that ITD will take reasonable and necessary steps to enhance the security of Idaho's driver's licenses and identification cards to ensure their acceptance for commercial airline travel within the United States. ITD shall report to the Senate and House Transportation Committees on their progress toward upgrading and implementing the Division of Motor Vehicle's (DMV) automated system. **Chairman Brackett** stood for questions.

Vice Chairman Nonini thanked Chairman Brackett and asked the Committee to hold their questions for Chairman Brackett until Alan Frew, ITD's Motor Vehicles Department Administrator, shared his testimony. **Vice Chairman Nonini** welcomed Mr. Frew to the podium.

TESTIMONY:

Mr. Frew thanked Chairman Brackett for accurately outlining the current situation. The State of Idaho is in noncompliance with the federal RIA. He referred the Committee to their map handout depicting the status of the 50 states with regard to the implementation of RIA. Those states in noncompliance are: Idaho, Arizona, Louisiana, New Hampshire and Maine. Those in light green are operating in approved extensions, those in dark green are in full compliance, Minnesota and New York have an enhanced driver's license that is RIA compliant. **Mr. Frew** stood for questions.

Senator Vick drew Mr. Frew's attention to page 1, lines 33 and 34, which says "to ensure their (driver's licenses and ID cards) acceptance for commercial airline travel." This is what will impact people the most. He wanted to know what Idaho needed to do to be compliant with airline travel. **Mr. Frew** said there are several enhancements that need to be made. The requirements of RIA are extensive and onerous. ITD needs to collect and scan breeder documents like birth certificates and documents establishing a legal presence in the United States. They would also scan documents for resident aliens who are also subject to enforcement under RIA. In 2011, IBM estimated it would cost Idaho between \$20 million and \$30 million to comply with RIA, and \$5 million per year to operate it once it's built. If Idaho asks for extensions, ITD will identify which items will be accomplished during the period of the extension. When that expires, ITD will identify other requirements they will accomplish during the time of the next extension, and so on. **Mr. Frew** said he could provide a list of requirements for the Committee. **Senator Vick** asked if those requirements were needed just to travel on airlines or would they make Idaho fully compliant. **Mr. Frew** said that ITD would be requesting extensions. Each of them would delineate those requirements Idaho would be coming into compliance with. They are part of RIA but would not make Idaho fully compliant. It is counter-intuitive, but it is what DHS allows. The states in light green on the map are in a similar phase of

operating under extensions. As long as a state is operating under an extension, an Idaho ID card or driver's license will be accepted to board a commercial airplane. **Senator Vick** said there were other concerns besides the cost of complying with RIA, like privacy issues. He wanted to know if those concerns were still valid and how ITD was considering those concerns. **Mr. Frew** said that in 2006 there were several things not in place with the requirements of RIA. All of those issues caused former Representative Phil Hart to bring forward the resolution stating Idaho would not comply. **Mr. Frew** said that Wyoming was fully compliant, and there have been no privacy or data breaches. He suggested that circumstances have changed since RIA was initiated.

Senator Lacey asked if the extension allowed holders of Idaho driver's licenses to enter federal facilities or if it just made them able to get on commercial airlines. **Mr. Frew** said the same rules would apply to both if Idaho was under an extension.

Senator Hagedorn wanted to make sure he understood the distinction in the colors on the RIA enforcement map. **Mr. Frew** confirmed the color distinction of each state on the chart: dark green is compliant, dark blue is noncompliant, light green is operating under extensions, and light blue is not fully compliant but they have an enhanced driver's license that is compliant with RIA.

Senator Buckner-Webb asked if Idaho was only asking for extensions and wondered if Idaho would ever be compliant. **Mr. Frew** said that in the process of accepting an extension, ITD will tell DHS what ITD expects to accomplish in getting closer to becoming compliant. ITD would list some of the incremental items to be accomplished in a specified time period. ITD would file a report of their success in achieving those accomplishments at the end of the time period.

Senator Buckner-Webb asked if all ITD was doing was notifying DHS that ITD did what ITD said it would do. **Mr. Frew** said that it sounds counter-intuitive, but she was correct. Other extension states are doing the same.

Senator Keough said she would like a list of the items ITD needs to do to become compliant. **Mr. Frew** said he would provide the requirements needed to become compliant. **Senator Nonini** asked Mr. Frew to submit that list to the Committee Secretary.

Senator Hagedorn asked how the delay in the DMV modernization program played into implementing RIA. **Mr. Frew** said that the DMV had an order for accomplishing things; the extension for RIA compliance will change that order. He said they will continue to modernize the system. It has a five-and-a-half year timeline.

Chairman Brackett asked if passing **H 96** will allow ITD to request an extension. **Mr. Frew** said that passage and the Governor's signature are required, but some steps are ready to go and the request can be sent the day the bill is signed.

Vice Chairman Nonini asked how long the states that are compliant worked to achieve compliance. **Mr. Frew** said after RIA was signed into federal law, DHS had to provide guidelines. Wyoming became compliant in 2013. **Vice Chairman Nonini** asked if Idaho would remain out of compliance during the five-and-a-half years of DMV modernization. **Mr. Frew** said ITD had been prohibited from becoming fully compliant, **H 96** unties ITD's hand from requesting extensions. **Vice Chairman Nonini** asked if the light green states are approved for extensions submitted each year. **Mr. Frew** said that was correct, and as long as the State meets the listed requirements, extensions would be granted. He was not aware of any states not granted extensions. An extension means there would not be a time when an Idaho driver's license would not be accepted. There were no further questions for Mr. Frew.

Vice Chairman Nonini noted that no one had signed up to testify and asked Chairman Brackett to offer his closing remarks.

Chairman Brackett thanked Vice Chairman Nonini and Mr. Frew. He said that to answer Senator Vick's question, Idaho enacted legislation in the first place because of a fear of federal overreach, a violation of the 10th Amendment to the United States Constitution, and RIA was an unfunded mandate to the states. Those arguments could still be present in some ways and that is why the bill asks to allow ITD to show progress and request extensions and not to fully comply with RIA.

Vice Chairman Nonini thanked Chairman Brackett.

Senator Winder also thanked Chairman Brackett for working on this interim solution to a difficult concern.

MOTION:

Senator Winder moved to send **H 96** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion passed by **voice vote**. Chairman Brackett will carry the bill on the floor.

PASSED THE GAVEL:

Vice Chairman Nonini returned the gavel to Chairman Brackett.

H 43:

Chairman Brackett thanked Vice Chairman Nonini and invited Michael Chakarun of the Idaho State Tax Commission to the podium to present **H 43**.

Mr. Chakarun said that **H 43** was intended to make housekeeping changes with little or no policy changes while omitting duplication and simplifying the reading of Idaho Code, Title 63, Chapter 24, the Fuels Tax. It repeals five sections of the code and adds four new section using current language. Specifically, **Mr. Chakarun** described the changes as: (1) changing the name of "Distributor's License" to "Motor Fuel Distributor License"; (2) adding "Limited Distributor License" from Idaho Code § 42-4903(17) to the chapter on Fuels Tax; (3) adding appeals procedures for denial of a distributor license; (4) adding restrictions on bond waivers and raising bond limits for reinstatement of revoked motor fuel distributor licenses; and (5) clarifying when a "Qualified Consumer" must obtain a motor fuel distributor license. He concluded his presentation by summarizing the bill, section by section, and stated that violations were moved into one section and all categories were consolidated into one section of code instead of being spread throughout multiple chapters. **Mr. Chakarun** stood for questions.

Vice Chairman Nonini asked if the language on page 7 for the Petroleum Clean Water Trust Fund was relocated or if it was new. **Mr. Chakarun** said the language was placed in Fuels Tax because that's where it should be and it makes it easier to understand.

Senator Hagedorn asked if there are additional changes to sections of Idaho Code because of moving sections from other chapters into this chapter. **Mr. Chakarun** said there were none to his knowledge and that the substance has not changed.

Senator Vick asked about the reference to the International Fuel Tax Agreement (IFTA) and whether it had to be updated as these amendments are made. **Mr. Chakarun** confirmed the Senator was correct. **Senator Vick** asked if all states complied with IFTA. **Mr. Chakarun** said they did to keep the agreement viable. **Senator Vick** asked if Administrative Rules needed to be changed in order to comply with the section changes. **Mr. Chakarun** said they would look at this but thought the process could be streamlined. There were no further questions for Mr. Chakarun.

Chairman Brackett thanked Mr. Chakarun and Mr. Williams. No one had signed up to testify.

Senator Winder commented that the dyed diesel fuel issue needs to get resolved in order to stop the loss of revenue.

MOTION:

Senator Hagedorn moved to send **H 43** to the floor with a **do pass** recommendation. **Senator Lacey** seconded the motion. The motion passed by **voice vote**. **Senator Keough** offered to carry the bill on the floor.

ADJOURNED:

With no further business before the Committee, **Chairman Brackett** adjourned the meeting at 2:37 p.m.

Senator Brackett
Chair

Gaye Bennett
Secretary