

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, March 10, 2016

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Brackett, Vice Chairman Hagedorn, Senators Keough, Winder, Nonini, 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 1:32 p.m. He said that Committee Page Logan Snell was unavailable; filling in for him would be Cardston Stanford of Rexburg, Idaho, who is currently serving as the Committee Page for the Senate Judiciary and Rules Committee. **Chairman Brackett** welcomed Mr. Stanford and thanked him for helping out.

H 513AA **Chairman Brackett** welcomed Representative Joe Palmer, Chairman of the House Transportation and Defense Committee, and asked him to present **H 513aa**. **Chairman Palmer** said that this legislation will make Idaho Real ID compliant and keep its citizens protected, safe and comfortable as the State deals with driver's license and identification card (ID) information. When the federal Real ID Act of 2005 first came out, Idaho placed a moratorium on it and decided not to allow that legislation to affect the State. He said Idahoans don't like the idea of the federal government looking over their shoulders. There was also a concern that Real ID licenses would have chips that could literally track where you were. But one of the biggest reasons Idaho placed a moratorium on the federal legislation was that the cost of implementing the program was very expensive.

Chairman Palmer continued that over the past seven years, the Idaho Transportation Department (ITD) has been able to get extensions with regard to implementing the Real ID Act. Idaho is now at the point where it can no longer get extensions.

Because of the modernization of the Department of Motor Vehicles (DMV), Idaho driver's licenses are now considered as secure as those required by Real ID. He made it clear that the federal government was not telling Idaho that it has to comply with Real ID, the federal government does have jurisdiction over certain properties like military bases and security at airports and other facilities. For the federal government, it's all about security. ITD has done a great job of improving Idaho's licenses through modernization. In fact, the new driver's licenses are made in a secure location and are very hard to copy. The only thing left to make them Real ID compliant is for individuals to back up their driver's license with a certified copy of their birth certificate. Checks will then be run on the documents to verify the identify of the individual.

Chairman Palmer said that **H 513aa**, before it was amended in the House, lifted Idaho's moratorium by recognizing the Real ID Act of 2005. The bill was sent to the amending order to place a few more protections on it. **Chairman Palmer** said that he would answer questions regarding the original bill, but questions regarding the amendments should be directed to the amendments' author, Representative Sage Dixon who was in the Committee as well.

Chairman Brackett asked the Committee if there were any questions of Chairman Palmer before he had to leave for a prior commitment.

DISCUSSION:

Senator Winder asked if repealing the moratorium language of the bill conflicts with some of the amended language. **Chairman Palmer** said that it is a circular discussion, but he believes that even with the amendments, the bill is still directing ITD to get Idaho to a point to be Real ID compliant. **Chairman Palmer** said he understood the concern. **Senator Winder** thanked Chairman Palmer for his insight and for his hard work on the legislation.

Senator Nonini said it was his understanding that if Idaho were not compliant with Real ID, a traveller would need a passport to get through airports. He wanted to know how that would apply to military bases and the Idaho National Laboratory (INL). **Chairman Palmer** said he believes the same would apply although not all bases are the same. Guard bases have different rules. **Senator Nonini** asked about INL. **Chairman Palmer** said he has been told they would accept a passport.

Senator Winder asked about page 1, lines 36 to 38, regarding grant money. Sometimes ITD receives grant money and perhaps some of that grant money could be used for these types of activities. He wanted to know if there was discussion on the House side about concerns that this language could hinder funding for implementing ITD modernization for Real ID. **Chairman Palmer** deferred to **Representative Dixon**, who said the question was raised on the House floor and any grants in compliance with the Real ID Act would be acceptable; line 37 and 38 refers back to paragraph (a), or back to line 22.

Senator Winder read line 39, subsection (3), and said it infers to do something in current law located elsewhere in Idaho Code that didn't get amended or repealed in this legislation and then there is the moratorium that prohibits ITD from doing anything with regards to Real ID. In his opinion, this appears to be a conflict; he asked Representative Dixon if he had suggested changes to the amended bill to resolve what he identified as structural problems. **Representative Dixon** said those concerns did not come up with ITD or with the Department of Homeland Security (DHS) when he proposed the amendments. He said that his intent was that in subsection (a) that requirement was being met. He, therefore, had no answer to repealing the moratorium question Senator Winder had. **Senator Winder** said it seems like it could be okay structurally, but with the moratorium out there stating they can't do anything, there is a clear conflict. **Senator Winder** said he would like Representative Dixon's help in dealing with the problem. **Representative Dixon** said he would be happy to help.

Senator Keough had a question for Senator Winder. **Senator Keough** asked where else the moratorium language appeared other than on page 1, lines 30 to 35, which are being struck in this bill. **Senator Winder** said it is in existing law that is located elsewhere in Idaho Code. **Senator Keough** thanked Senator Winder and Chairman Brackett. **Chairman Brackett** asked Representative Dixon if he had additional comments. **Representative Dixon** said he did not at this time before he digs a little deeper. He was amending what was before him.

Senator Buckner-Webb asked what DHS was threatening if Idaho is not Real ID compliant. **Representative Dixon** said it is his understanding Idahoans will not be able to travel by air using driver's licenses as identification cards, and employees or citizens will not be allowed onto the INL site. **Senator Buckner-Webb** asked if DHS has threatened action for noncompliance. **Representative Dixon** said he believes it has been an ongoing discussion. **Senator Buckner-Webb** asked what specific requirement does Idaho need to become compliant. **Representative Dixon** said the language in subsection (a) came directly from ITD; it was their suggestion of how to cover Idaho for the final required pieces.

Chairman Brackett asked about **H 513aa's** Statement of Purpose; he believes what was attached to the original bill is also attached to this amended bill. It states that this bill will lift the moratorium on Real ID; **Chairman Brackett** said he is not clear the moratorium is lifted by the amended bill. **Representative Dixon** said they are trying to get the final waiver without doing harm to Idaho citizens or businesses, complying with Title II. That is what he heard in his committee and in his discussions with ITD. That seemed to be the critical portion that needed to be implemented in order to move forward. What is stricken on page 1, in lines 30 to 35, addresses removing that moratorium. **Chairman Brackett** asked about perhaps narrowing that a little to address Title II in the Statement of Purpose. **Representative Dixon** said he would be happy on working on this further to get to that point, but he received no feedback in that direction.

Vice Chairman Hagedorn commented that he does not remember all that happening ten years ago, but he does recall the moratorium. He directed attention to page 1, lines 19 to 21, stating that in his recollection those were the words the Legislature used in 2007 that directed ITD to not implement anything with Real ID.

There were no further questions for Representative Dixon. **Chairman Brackett** thanked Representative Dixon and said that there were a number of people who had signed up to testify.

TESTIMONY:

John Watts, with Veritas Advisors and representing the Idaho Chamber Alliance (ICA), testified in favor of the bill. **Mr. Watts** said that the ICA represents 20 major chambers of commerce in the State of Idaho, including those in Boise, Coeur d'Alene, Moscow, Lewiston, Pocatello and Idaho Falls. There is a letter of support from the Greater Idaho Falls Chamber of Commerce in each Committee member's packet. Real ID is all about commerce. The ICA supported the bill in its original form as well as some of the added amendments; it does not have a strong position on the changes to page 1, lines 36 to 38. ICA wants to protect Idaho citizens so their driver's licenses will be acceptable at airports as well as at military and federal facilities. Although they support the bill, they are concerned it could be overly amended. **Mr. Watts** thanked the Committee and offered to stand for questions, but there were none.

TESTIMONY:

Kathy Griesmyer, Public Policy Strategist for the American Civil Liberties Union (ACLU) of Idaho, testified in opposition to the bill. **Ms. Griesmyer** said that they oppose enactment of this legislation because of privacy concerns regarding the private information of individuals being scanned and stored in a national database. It is the collection of private information that they object to as it creates a one-stop shop for identity thieves. They suggest a compromise to alleviate concerns and protect security concerns of individuals. She offered language changes on page 1, in lines 19 to 22. **Ms. Griesmyer** thanked the Committee and stood for questions.

Senator Vick asked if the language was amended as suggested, would Idaho's driver's licenses be compliant for use at airports and federal facilities. **Ms. Griesmyer** said it was her understanding that DHS is not asking that the information be scanned and stored; they want IDs that cannot be copied or forged. That is their primary concern. If that threshold is met, then they should be satisfied. There were no further questions for Ms. Griesmyer.

DISCUSSION:

Senator Nonini asked if someone from ITD was going to speak to the Real ID issue. **Chairman Brackett** asked if there was anyone from ITD willing to yield to questions. Mollie McCarty, ITD's Government Affairs Program Manager, took the podium to address questions from the Committee.

Senator Nonini said he has had problems with Real ID for some time. He wanted reassurance that the federal authorities would not get access to personal information and asked how the new driver's licenses will differ from the current ones. **Ms. McCarty** said the information requested from individuals is not going into a national database, but there is information the authorities will have access to, like birth certificates, social security numbers and photo IDs as well. **Senator Nonini** asked for a specific list of all things that would be required to get a driver's license. **Ms. McCarty** deferred the question to Amy Kearns, ITD's Driver Services Manager. **Ms. Kearns** said that for people getting a license for the first time, they will need to present a certified birth certificate (for minors, parents must provide documentation) and proof of Idaho residency – copy or document of legal residency, like a visa or passport. **Senator Nonini** asked if that was all that is needed for Idaho to comply with the Real ID Act. **Ms. Kearns** said once Idaho is in compliance, when a person is renewing their driver's license they will have to provide the documentation again.

Senator Den Hartog asked if a citizen's ID is verified at the time they apply for a driver's license, why is ITD scanning and storing the documents. **Ms. Kearns** said that ITD reviews the information collected from their offices across the State – all the documents that are scanned – and an internal audit is done. Information is randomly pulled to verify the information is correct. If it was not done correctly, notifications are sent; the reviewers check for fraud. Security and fraud prevention is what the Real ID Act is all about. Information and documents are stored, but information is not shared with other states, other agencies or with the federal government.

Senator Buckner-Webb said she understood that under Title II copies of the documents were acceptable; is ITD mandated or does ITD select to make copies? **Ms. Kearns** said she could not really answer that question; she was not certain it was currently mandated.

Senator Vick asked if Idaho would be in compliance with Real ID with the amendments recommended by the ACLU. **Ms. Kearns** said they would put Idaho out of compliance with Real ID because of the issue regarding retaining of documents; paper copies must be retained for seven years and digital records a minimum of ten years. **Senator Vick** commented that ITD has been collecting and storing documents since 2001; DMV implemented changes that make it very difficult to duplicate Idaho driver's licenses. He wanted to know what else needed to occur in order for Idaho to be in compliance. **Ms. Kearns** said that preventing fraud and increasing security are the primary ideas behind Real ID. There are specific things needed in order to be in complete compliance: (a) mark the license as Real ID compliant or non-compliant; (b) submit a plan to conduct remote compliance re-issuance; (c) submit the final certification package to DHS stating that Idaho is in compliance with the Real ID Act; and (d) collect and re-verify documentation of new and renewal driver's licenses.

Senator Winder asked if **H 513aa** meets the requirements needed for Idaho to be in compliance with the Real ID Act. **Ms. Kearns** deferred the question to **Ms. McCarty**. **Ms. McCarty** said ITD had conferred with the House and coordinated with DHS. In order to be in compliance, in section 2(a) either the words "and associated regulations" needed to be added or the word "security" in line 22 needed to be stricken, but because if neither happened there could be a problem with being in compliance. **Senator Winder** continued by asking if lines 30 to 35 lifted the moratorium or not. **Ms. McCarty** said that ITD saw that language as lifting the moratorium.

Senator Den Hartog asked if customers are aware that the documents they provide DMV to scan when they apply for or renew their driver's licence are being stored. **Ms. McCarty** said she was not sure there was a discussion going on about how long the information was being stored. **Senator Den Hartog** asked if her understanding was correct that the only physical change still needed to be Real ID compliant is marking the driver's license. **Ms. McCarty** responded that it was, along with submitting the required information and documents.

Vice Chairman Hagedorn commented that we currently don't have Real ID. He personally has received a high-security clearance because of his military status and yet there are regular reports of cyber clearance problems in the military and other government agencies. He wanted to know what Idaho can do to keep this personal information from getting into the hands of cyber hackers. **Ms. McCarty** said ITD is always working on that problem. **Ms. Kearns** said ITD does its best to keep information secure; ITD's data management team has to go through security and finger print ID checks. **Vice Chairman Hagedorn** asked where the information was kept. **Ms. Kearns** said some license information is kept in secure places as required by Idaho Code. **Vice Chairman Hagedorn** asked if individuals who do not want a Real ID-compliant driver's license would have the option to have their information kept in a database. **Ms. Kearns** said if it is decided to offer that as an option, then the additional information would not need to be provided.

Senator Vick asked if ITD would offer both Real ID-compliant and non-compliant driver's licenses. **Ms. Kearns** said first the Legislature needs to decide on Real ID before ITD could move forward with that type of decision. **Senator Vick** asked if Idaho becomes Real ID compliant, will everyone have to get a new driver's license. **Ms. Kearns** said that a Real ID-compliant driver's license would be required to get into federal facilities and on airplanes. **Senator Vick** asked if Idaho would have to share in a national database. **Ms. Kearns** responded no.

Senator Nonini asked if Idahoans would have to pay for a new driver's license even if our current license had not yet expired. **Ms. Kearns** said that the answer to that question is not known at this time. **Senator Nonini** argued that the Committee needed to know the answer to questions like that. **Ms. Kearns** said that is a decision that can't be made until the policy decision of lifting the moratorium has been made.

Senator Winder asked if his understanding was correct that until the policy changes, which would occur by passing this bill, ITD is still authorized to issue driver's licenses as they currently issue licenses. **Ms. Kearns** deferred the question to Alan Frew, ITD's Motor Vehicle Administrator. **Mr. Frew** responded by saying that in the future, once a policy decision had been made by the Legislature, ITD would not be prohibited from issuing both Real ID-compliant and non-compliant driver's licenses.

Senator Den Hartog asked if Idaho is lifting the moratorium because ITD can no longer get extensions. **Ms. McCarty** said Idaho will not get another extension renewal once the current extension expires in October 2016. **Senator Den Hartog** asked if those citizens who have provided a certified birth certificate for their current driver's license have to renew. **Ms. McCarty** indicated that they would have to renew. **Senator Den Hartog** made an observation that any amendment offered to **H 513aa** should clearly state that Idaho does not want personal information provided for driver's licenses shared with other departments or with the federal government. It should be made clear to applicants the options they have, including for those who don't want a Real ID-compliant license. **Ms. McCarty** offered to keep in mind that things could happen that could have other, unforeseen impacts. **Ms. Kearns** wanted to make it clear that Idaho already shares information with other states, including name, date of birth and other information for verification purposes. There was no further discussion or questions.

MOTION: **Senator Nonini** moved to hold **H 513aa** in Committee at the call of the Chair. **Senator Den Hartog** seconded the motion.

SUBSTITUTE MOTION: **Vice Chairman Hagedorn** moved to send **H 513aa** to the 14th Order for amendment. **Senator Winder** seconded the motion.

Senator Vick said he would like to see drafts of the amendments, discuss them in Committee where members can get answers and have time to review them. He thought it would have been nice for the Committee to discuss the original bill before it had been amended in the House.

Senator Winder stated that he was in a quandary. Until the moratorium is lifted, ITD is in handcuffs. They can't discuss or develop policies because of existing law, so how can the Committee get acceptable answers? He believes the Committee needs to get through the process and move on; ITD suggested that striking the word "security" in this bill would make Idaho Real ID compliant.

Senator Nonini said he did not want to kill the bill, but he was frustrated that it was the end of the session and the end of the Committee meeting and this was an important decision. He felt more time was needed.

VOTE ON SUBSTITUTE MOTION: **Chairman Brackett** called for a **roll call vote** on the substitute motion. **Senators Brackett, Hagedorn, Winder, Buckner-Webb and Lacey** voted aye; **Senators Keough, Nonini, Vick and Den Hartog** voted nay. The substitute motion **passed**.

ADJOURNED: Having used the allotted Committee time on **H 513aa** and with another committee waiting to use the hearing room, **Chairman Brackett** said all remaining agenda items would be held over to the next Committee meeting. **Chairman Brackett** adjourned the meeting at 3:02 p.m.

Senator Brackett
Chair

Gaye Bennett
Secretary