

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Wednesday, April 03, 2019

TIME: 1:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Brackett, Vice Chairman Crabtree, Senators Winder, Den Hartog, Lodge, Rice, Burtenshaw, McCoy(Buckner-Webb), and Nelson

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 this special meeting of the Senate Transportation Committee (Committee) to order at 1:03 p.m. He told the Committee and those in the audience that today's meeting would be to review the changes made by the House to **S 1126**, and to either concur with the House amendments or to not concur with them. Generally, public testimony is not taken, but it will be an option if time permits.

S 1126aaH **Chairman Brackett** said that when this bill passed the Senate, it had extended the sunset clause on the surplus eliminator, contained a \$100 million annual cap with \$50 million going to the Budget Stabilization Fund and \$50 million to the Strategic Initiatives Fund, and it contained a 60/40 split between the Idaho Transportation Department's (ITD) share at 60 percent and the local jurisdictions' share at 40 percent that are administered by the Local Highway Technical Assistance Council (LHTAC). Upon receiving the bill, the House amended and passed it back to the Senate for consideration. It is those amendments that the Committee will review today. With that background, **Chairman Brackett** invited Representative Joe Palmer, Chairman of the House Transportation and Defense Committee, to present **S 1126aaH** to the Committee.

Representative Palmer said he would give a broad overview of what this bill does and then have Keith Bybee, Deputy Division Manager for the Budget and Policy Division of the Legislative Services Office, give more section-by-section details of the bill.

Representative Palmer said that depending on how it's looked at, this bill is either extremely complicated or extremely simple. He has always liked the idea of an endowment-type system for transportation funding, and living off the interest instead of having to go after the principal all the time. The problem is having a corpus of funds available in order to start an endowment. The idea was to use the Budget Stabilization Fund, and keep it available for the purpose that it was designed — for an emergency or a downturn in the economy. Those ideas created this bill. By still using the surplus eliminator, a great program for putting money into transportation, it keeps the funds flowing into the endowment. There are some changes with the disbursement of the funds, but the main part is that we will have an endowment fund. He then deferred to Mr. Bybee to go through the bill.

Chairman Brackett said the Statement of Purpose really does a good step-by-step job of laying out the amendment. He gave Mr. Bybee tremendous latitude in presenting the amendment to the Committee. **Senator Winder** thanked the Chairman for that latitude. He would like Mr. Bybee to walk the Committee through the sections of the bill and would like to know how each section affects both the fiscal aspect and the policy aspect.

Mr. Bybee began by saying **S 1126aaH** creates an endowment from our rainy day fund by transferring two-thirds of the current balance in the Budget Stabilization Fund, or \$272 million, into a new fund called the Economic Reserve and Investment Fund (ERIF). It shall be invested in the same way that other endowments are invested, such as the Millennium Fund and the Veterans Recognition Fund. Section 1 of the bill is where the ERIF is funded from three sources: 1.) the Budget Stabilization Fund; 2.) transferring the remaining \$40,000 in the Economic Recovery and Reserve Fund — funds from the cigarette tax captured during the remodel of the State Capitol; and 3.) the surplus eliminator.

Distribution to the strategic initiatives program will be 5 percent of the fair market value of the most recent 12 months from the past 24 months. This is an average of an average to help stabilize those gains and losses that happen in the market or in the surplus eliminator. A key component of the ERIF is the surplus eliminator, the feeder section of the endowed portion of the fund. The distribution is independent of market earnings on the fair market value of the investment. This will develop and grow a program that will have an ongoing revenue stream that will grow over time. Currently, the Building Stabilization Fund goes into the Permanent Building Fund. That has changed so that the main liquid savings account retains its interest moving forward. In order to keep the Permanent Building Fund whole, there is an amendment to the sales tax distribution formula that increases the statutory amount from \$5 million to \$10 million.

The final piece of the bill is how the new strategic initiatives program distribution will work. It maintains the component of local grants set out by LHTAC, but also allows a provision for any single countywide highway district to opt out of that process. That opt-out period will last for two years. The way they would opt out is they would give notice to LHTAC and then they could receive the proportional amount, same as the Highway Distribution Account formula in revenues that goes to strategic initiatives for those two years. Before moving through the bill section by section, **Mr. Bybee** offered to answer any questions from his broad overview of the bill that he had just given.

DISCUSSION:

Chairman Brackett asked Mr. Bybee to explain the child protection program in the bill. **Mr. Bybee** said the Safe Routes to School portion of the bill is now an off-the-top amount from strategic initiatives, which means it is going to be \$2 million or 4.5 percent of the distribution, whichever is greater. The remaining monies will be split 60/40 for the transportation strategic initiatives program and LHTAC for local grants.

Senator Rice asked if the Fiscal Note's stated total impact on the General Fund in 2020 and 2021 was the estimated surplus eliminator amounts or if it was new money. **Mr. Bybee** responded that the amount is more due to the timing when the State distributes money into the Budget Stabilization Fund. As an example, in a year when growth is 4 to 5 percent, and under the current statute the revenue growth would be measured year-over-year, then the following fiscal year that amount would be distributed into the Budget Stabilization Fund for quarterly payments. In this bill and in the surplus eliminator language, the timing is sped up so that earning revenues means savings are occurring at the same time. At the end of the bill there is a lot of clean-up language and striking of session law and statutory law because the Budget Stabilization Fund language got tangled up over the years, but the distributions are accounted for on Joint Finance and Appropriation Committee's (JFAC) green sheets. **Senator Rice** asked if the new fund that starts in 2021 could eat into the corpus of the endowment when the State has down years. **Mr. Bybee** said the answer is no, because the conservative number is set so low.

Mr. Bybee went through the bill section-by-section, explaining where the specific items of his previous overview occurred, and responding to questions from the Committee along the way. He concluded his walkthrough by stating that the end of the bill deals with Session Law language that, over the years, had developed eight different versions of the surplus eliminator and the Budget Stabilization Fund. It had become somewhat convoluted which is why the enacting clause of **S 1126aaH** is set at June 1, 2019; a clear distance from the sunset of the surplus eliminator in May.

DISCUSSION:

Questions and comments from Committee members and responses from Mr. Bybee and Representative Palmer during the section-by-section overview included:

Chairman Brackett asked if the interest earned on the fund would stay in the fund. **Mr. Bybee** replied that any earnings stay in the fund.

Senator Den Hartog said that the current Budget Stabilization Fund earns very little interest because of how liquid it has to be. She wanted to know what the rate of return could be in the ERIF as opposed to what it currently is. **Mr. Bybee** said that currently the Budget Stabilization Fund is invested in the idle pool with the Office of State Treasurer. The idle pool is invested in very low risk financial vehicles that are tagged to the prime rate as set by the Federal Reserve, and in the past three years, the interest rate has been less than 1 percent.

Senator Nelson asked why the delay with using the first 12 months of the preceding 24 months and not just the last 12 months. **Mr. Bybee** said it is the current language used in the Millennium Fund. The principle behind that is to even out the averages; if there are losses in the first few months then there is a chance to catch up. **Senator Nelson** commented that he thought averaging over the 24 months instead of going back a full year would be just as sufficient, but he understood that consistency with the Millennium Fund is important.

Chairman Brackett asked if Mr. Bybee could confirm his calculation that the General Fund revenue for the year is about \$3.7 billion, and 1.5 percent of that would be about \$50 or \$55 million. **Mr. Bybee** said the Chairman's calculations were correct.

Senator Nelson asked about the meaning of the section of the bill dealing with single countywide highway districts, that says "or by agreement." **Mr. Bybee** said there is currently a single countywide highway district that is established to collect property taxes and has an agreement with the cities within that county highway district to distribute their share of funding. This is language from ITD to cover that scenario that allows the full distribution rather than the apportionment due to the countywide highway district. **Senator Nelson** asked why that specific agreement isn't referenced in the legislation. **Mr. Bybee** deferred that question to Dave Tolman, ITD's Controller. **Mr. Tolman** said the section talks about the distribution of funds to cities, counties, or highway districts. Currently, the single countywide highway district for that section doesn't do that in that specific code section, so ITD recommended that the language be added so that the money they are currently receiving — which includes all the monies that would go to the six cities within that highway district — would get funding through the local Highway Distribution Account. It's similar to what is already in existence. **Senator Nelson** said he understood that there is a side agreement for Ada County, but asked what protections the Legislature has that by adding this language, it doesn't adversely change the intent of the legislation. **Mr. Tolman** didn't have an answer for that question.

Chairman Brackett asked about section 6 on the last page of the bill which refers to H 312 (2015) being repealed. The legislation distributed money for roadway maintenance purposes and asked if that provision was also repealed. **Mr. Bybee** said it only refers to the Budget Stabilization Fund in that section and would not affect the provision the Chairman was referring to.

Senator Nelson asked if the funds for the carve-out for a single countywide highway district — which he believed was referring to Ada County — could be used in an unlimited way. He believes that goes beyond the intent of the strategic initiatives fund with regard to significant problems throughout the State. **Mr. Bybee** deferred that question to Representative Palmer for a response. **Representative Palmer** said there is more than just one countywide highway district, and generally those highway districts are bigger and have the mechanisms in place to make those decisions. The opinions of House lawmakers on this particular issue as to whether any or all proposals should go through LHTAC was thoroughly considered and this was the language that everyone agreed on. The larger countywide highway districts could do what they needed, and the others need options for more funding. Each highway district has unique priorities that this bill attempts to help them address and, hopefully, achieve their goals. **Senator Nelson** asked where the other countywide highway districts were located. **Representative Palmer** said there were several, more than just one or two, but he did not have his list with him. They function differently. Ada County Highway District is the only one operated by elected countywide commissioners, other countywide highway districts are operated by their county commissioners. **Senator Nelson** remarked that if the others are operated by their county commissioners then it appears they would not qualify under this language. The language says "provided, however, a single countywide highway district;" he asked if that included all of them or just the single one in Ada County. **Representative Palmer** said he believes it would include any countywide highway district.

Senator Rice asked if there was someone from ITD or from the highway district who could answer the question about how many countywide highway districts there are in Idaho. There was no one who could provide that information.

Chairman Brackett asked if the countywide highway districts are limited to using the funds for maintenance or can they be used at their discretion. **Representative Palmer** said it was their intention to use the same formula as the strategic initiatives program outlines. **Chairman Brackett** said then they would be for maintenance. **Representative Palmer** agreed.

TESTIMONY: **Chairman Brackett** offered that before taking a motion there was still time to hear public testimony, although no one had signed up to testify. He asked if anyone had comments with regards to the amended bill that they would like to share with the Committee.

Mollie McCarty, ITD's Government Affairs Manager, offered a piece of information that she thought may be helpful to the Committee. She assured the Committee that for the single countywide highway district's language in the bill, ITD had legal counsel review the language and is confident that the concern Senator Nelson raised would not be a problem. There is also existing language in another statute that says "for a single countywide highway district, the cities' monies within that highway district shall be paid to the county auditor for that highway district." ITD does not believe there should be concern with the distribution of those funds.

Chairman Brackett asked that the record show no one else came forward to present public testimony.

MOTION: **Senator Den Hartog** moved that the Committee **concur** with the House amendments to **S 1126**. **Senator Winder** seconded the motion.

DISCUSSION: **Senator Rice** said he wished he had time to look at and study this bill. He had hoped to look at the single countywide highway district issue and the growth over time on the endowment fund. These are complex amendments; however, they are also pretty straightforward. He was comfortable with the growth and distribution aspects of ERIF, and it should help move away from bonding as the main way to fund highway projects. The single countywide highway district piece is interesting, but he doesn't see a way to opt in and opt out for them. The opt in is for future years, and then they're stuck for two years. The smaller highway districts do need the funding opportunities, so he will be supporting the motion.

VOICE VOTE: The motion to concur with the House amendment to **S 1126** passed by **voice vote**. **Chairman Brackett** asked that the record show it was a unanimous voice vote, and said he would carry the bill on the Senate floor.

ADJOURNED: With no further business before the Committee, **Chairman Brackett** adjourned the meeting at 1:53 p.m.

Senator Brackett
Chair

Gaye Bennett
Secretary