

MINUTES  
**SENATE TRANSPORTATION COMMITTEE**

**DATE:** Tuesday, January 14, 2020

**TIME:** 1:30 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Brackett, Vice Chairman Crabtree, Senators Winder, Den Hartog, Lodge, Rice, Burtenshaw, 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:** With a quorum present, **Chairman Brackett** convened the Senate Transportation Committee (Committee) at 1:32 p.m. He explained the Committee would be reviewing administrative rules.

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

**ADMINISTRATIVE RULES:** **Vice Chairman Crabtree** introduced Ramon Hobdey-Sanchez, ITD's Government Affairs Project Manager, to present ITD's omnibus rules dockets.

**DOCKET NO. 39-0000-1900** **Mr. Hobdey-Sanchez** said this docket contains 37 non-fee rules; three of them are consolidation rules. He referred to ITD's handout (*contained in the official Committee record on file in the legislative library*). The docket represents months of streamlining ITD's rules to be easier to follow and understand, resulting in a simpler format with significant impact. The only rule changes within this omnibus docket since the last Legislative Session are the consolidation rules.

For both this docket and the omnibus fee docket, ITD cut 16 chapters, over 6,000 words, and nearly 175 restrictions. The variety of subject areas relate to traffic signage, right of way signage, and aeronautics (8 chapters consolidated into 1).

He said the vacated rules are represented by one of the three consolidation rules. Although every effort was made to go through this effort flawlessly, he pointed out an error in the non-fee, omnibus pending notice. Two of the listed vacated rules should not be there. It is a technical error done during the proofreading and publishing of the rules; they are Rules 39.02.09 and 39.02.46. ITD suggests the Committee approve the docket as is and ITD will run a correction docket in February moving these two vacated rules into the columns titled "proposed" and "pending."

Since April of 2019, ITD has undertaken consolidating rules that have impacted 21 administrative rules and they also wrote 9 traditional rules. This encompassed having 30 administrative rules in play at the same time, or 50 percent of the Idaho Administrative Procedures Act (IDAPA) rules under Title 39, Idaho Code.

The vacated rules were consolidated and do not require revisiting Idaho Code for comparable changes. The collaborative process undertaken by ITD worked closely with the Department of Financial Management (DFM), the Governor's office, public outreach for comments on drafted rules, and the negotiated rulemaking meetings and process. ITD put together diverse working teams that included veteran employees, new employees, managers, frontline staff, policy specialists, financial specialists, legal specialists, and subject matter experts. The rules were published in the June and November special edition bulletins and were subject to the 21 day comment period. Finally, the ITD Board was also involved in vetting the rules. ITD believes they acted in a thoughtful and transparent manner in their approach to this years administrative rules.

**DISCUSSION:** **Senator Den Hartog** voiced concern about the removal of restricted wording and asked how ITD went about that process. **Mr. Hobdey-Sanchez** responded that four specific words were searched under each chapter, they were: "shall", "must", "prohibit", and "requires". As an example, based on the analysis, many "shall"s were replaced with "will"s. From a legal perspective, the effect any of those words had or changing those words would have on the rule became the defining analysis, while continuing to focus on not changing the rule's original intent.

**MOTION:** **Senator Den Hartog** moved to approve **Docket No. 39-0000-1900**. **Senator Nelson** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO. 39-0000-1900F** **Mr. Hobdey-Sanchez** said that in addition to there being seven fee rules within this docket, two of them are consolidation rules. None of the fees within the fee rules were impacted, it was simply a clean up and consolidation of the language.

**MOTION:** **Senator Burtenshaw** moved to approve **Docket No. 39-0000-1900F**. **Senator Buckner-Webb** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO. 35-0105-1901** **Vice Chairman Crabtree** invited Tom Shaner, Idaho State Tax Commission's Tax Policy Manager, to present the Committee's one traditional fuels tax docket.

**Mr. Shaner** stated this docket went a little beyond the parameters of the omnibus activity. This is Fuel Tax Rule 110, the main purpose of which is to add an equivalent calculation for hydrogen. It has been in statute for a long time and this simply adds it to the rule as hydrogen powered vehicles are discussed more frequently. Although the tax commission is not presently aware of any hydrogen gas being sold retail in Idaho, it is being discussed within the industry. He then went through the specifics of the rule and its accompanying chart. One kilogram weight mass is the national standard to a gallon of gasoline equivalent, with the number of British Thermal Units (BTU) for one kilogram of hydrogen.

**DISCUSSION:** **Senator Rice** asked whether the statute had the definition for special gaseous fuels like hydrogen, or if it was generically inferred. **Mr. Shaner** said statute covers gaseous special fuels in a broad sense.

**Senator Nelson** asked what GGE was. **Mr. Shaner** said it was Gas Gallon Equivalent and represented the number of BTUs in a kilogram of hydrogen at a certain temperature. It is measured as the amount of energy in a gallon of gasoline being equal to a kilogram of hydrogen. **Senator Nelson** thought of hydrogen as having a much higher heating value than gasoline and was therefore confused they are measured as being equal. **Mr. Shaner** said this is only a way to measure the tax rate, but he agreed hydrogen is a more efficient fuel. **Senator Nelson** thought the factor for hydrogen would be higher than the factor for gasoline because more energy comes from combusting hydrogen than gasoline. **Mr. Shaner** agreed with his statement, but in this case it is a way to equivalently assign a tax rate.

**Senator Den Hartog** suggested that this is a new rule and the Committee has no jurisdiction over the tax omnibus rules, so she wondered whether the Committee could vote on this docket. **Dennis Stevenson**, Administrative Rules Coordinator, said if the Committee approved this docket and the omnibus docket was not approved, it would be a moot point because there would be no chapter for this rule to modify. **Senator Winder** suggested this traditional docket be held until the omnibus docket has been approved. **Senator Rice** confirmed the omnibus tax docket had not been taken up by the tax committee. **Mr. Shaner** added that the House Revenue and Taxation Committee had approved the omnibus tax docket.

**MOTION:** **Senator Winder** moved to hold **Docket No. 35-0105-1901** in Committee until the Senate Local Government and Taxation Committee has taken up and approved the omnibus tax dockets. **Senator Rice** seconded the motion. The motion passed by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Crabtree passed the gavel back to Chairman Brackett.

**RS 27272** **Mollie McCarty**, ITD's Government Affairs Program Manager, said that current law states that when a Commercial Drivers License (CDL) is revoked, the holder of that CDL is banned from reapplying even after their punishment has been satisfied. The federal law was changed so that a former CDL license holder can reapply after ten years have passed. This RS changes Idaho law to match the federal changes.

**MOTION:** **Senator Lodge** moved to send **RS 27272** to print. **Senator Den Hartog** seconded the motion. The motion passed by **voice vote**.

**RS 27287** **Ms. McCarty** explained that this RS was a customer service enhancement for the trucking industry. They will no longer have to wait for the mail to receive licenses and certificates. Although paper versions are still available, they will now be able to access their documents online.

**MOTION:** **Senator Burtenshaw** moved to send **RS 27287** to print. **Senator Buckner-Webb** seconded the motion. The motion passed by **voice vote**.

**ADJOURNED:** With no further business before the Committee, **Chairman Brackett** adjourned the meeting at 2:06 p.m.

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Senator Brackett  
Chair

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Gaye Bennett  
Secretary