

REGULAR MEETING OF THE IDAHO TRANSPORTATION BOARD

August 20, 2020

Due to the COVID-19 virus, the meeting was conducted remotely.

Idaho Transportation Board Chairman Bill Moad called the meeting to order at 8:30 AM on Thursday, August 20, 2020. The following principals participated:

Bill Moad, Chairman
Jim Kempton, Vice Chairman – District 4
James R. Thompson, Member – District 1
Janice B. Vassar, Member – District 2
Julie DeLorenzo, Member – District 3
Dwight Horsch, Member – District 5
Bob Hoff, Member – District 6
Brian W. Ness, Director
Scott Stokes, Chief Deputy
Larry Allen, Lead Deputy Attorney General
Sue S. Higgins, Executive Assistant and Secretary to the Board

Safety/Security Share. District 2 Engineering Manager Bob Schumacher mentioned that the fire danger is high in the area due to the wet spring and recent high temperatures and thunderstorms. Fires were reported this week near Elk City and Grangeville. He encouraged checking 511 for road closures and urged caution to prevent fires, especially from vehicles: avoid parking hot vehicles on dry vegetation and don't drag items like trailer chains.

Engineering Manager Schumacher also warned about scams. He stressed the importance of verifying the credibility of the caller if financial or personal information is involved and check the validity of the message and the sender before responding to emails.

Chairman Moad thanked Engineering Manager Schumacher for the important messages.

Board Minutes. Member DeLorenzo made a motion to approve the minutes of the regular Board meeting held on July 16, 2020 as submitted. Member Vassar seconded the motion and it passed 6-0 by individual roll call vote.

Board Meeting Dates. The following meeting dates were scheduled:

September 16, 2020
October 15, 2020
November 19, 2020

Consent Items. Executive Assistant Higgins said the FY20 Account Write Off item had an error. The background information stated that there are 35 accounts greater than \$1,000 that need Board approval to write off; however, the recommendation requests Board approval to write off 30 accounts. The correct number is 35 accounts.

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Vice Chairman Kempton asked about the process to prioritize local projects for the end-of-year plan and redistributed obligation authority. Chief Deputy Stokes said the amount of money Idaho will receive as part of the federal redistribution of obligation authority from other states is not known at this time. Projects on the list will be obligated as funding becomes available.

Local Highway Technical Assistance Council Administrator Jeff Miles elaborated on the prioritization process. The 2020 commitments are the highest priority for funding followed by special commitments, such as the Cherry Lane Bridge that received a special grant award, and then other projects in out years that are ready, starting with 2021 projects. Because the total available funding is unknown at this time, the list is extensive so local highway jurisdictions will be ready to obligate all available funds.

Member DeLorenzo made a motion to approve the following resolution with the correction of 35 accounts to be written off. The motion was seconded by Member Vassar and passed 6-0 by individual roll call vote.

RES. NO. WHEREAS, consent calendar items are to be routine, non-controversial, self-ITB20-46 explanatory items that can be approved in one motion; and

WHEREAS, Idaho Transportation Board members have the prerogative to remove items from the consent calendar for questions or discussion.

NOW THEREFORE BE IT RESOLVED, that the Board approves the Performance Measurement Report for the Division of Financial Management; the FY20 account write-off; the FY20 local public agencies' end-of-year plan and prioritized project list for redistributed obligation authority; modifications to the Rail-Highway Crossing Program; and consultant agreements.

1) Performance Measurement Report for the Division of Financial Management. Idaho Code requires all state agencies to submit an annual Performance Measurement Report before September 1. The report is to provide an agency overview, core functions of the department, revenues and expenditures, cases managed and key services provided, and requirements for the Red Tape Reduction Act and Licensing Freedom Act.

2) FY20 Account Write Off. All uncollectible accounts exceeding \$1,000 are to be reviewed and approved for write off by the Board. The Director or a designee reviews and approves for write off all accounts less than \$1,000. For FY20, staff requests Board approval to write off 35 accounts totaling \$118,799, as shown as Exhibit #526, which is made a part hereof with like effect. Forty accounts in amounts less than \$1,000 have been determined as uncollectible, totaling \$15,902. The outstanding receivables are more than four years delinquent. Customers are not allowed to do business with the Department until their deficiencies are paid or the statute of limitations is reached.

3) FY20 Local Public Agencies End-of-Year Plan and Prioritized Project List for Redistributed Obligation Authority. Idaho received 90.1% of annual obligation authority. Of the \$62.3 million allotted to local public agencies, \$11.1 million remained as of July 31, 2020. The

allotments include savings, prior year released funds, and unused scheduled funds that are available to cover cost increases or to advance projects. Staff requests approval of the local public agencies' end of year plan and prioritized project list of advances and cost increases for use of potential redistributed obligation authority, as shown as Exhibit #527, which is made a part hereof with like effect. The priorities are contingent on delivery and cost estimating.

4) Modify the Rail-Highway Crossing Program. Staff requests delaying the FY20 Off System, Look Lane, Caldwell project, key #20355, for \$500,000 to FY22 and advancing the following FY22 projects to FY20: SH-19, Boise Valley Railroad Railroad Crossing, Greenleaf, key #22460 for \$110,000; Off System, North Wardell Avenue, Emmett, key #20364 for \$250,000; and Off System, North Johns Avenue, Emmett, key #20578 for \$150,000.

5) Request to Approve Consultant Agreements. In accordance with Board Policy 4001 Authority to Sign Contracts, Agreements, and Grants and Requirement to Report Certain Contracts, staff requests approval to exceed the \$1 million agreement limit for key #13476 – Half Continuous Flow Intersection, Intersection of Eagle Road and SH-44, Ada County for engineer of record services of \$100,000, bringing the total to \$1.15 million and key #20350 – US-95, Granite North and Frontage Roads, Bonner County for construction engineering and inspection services for a total of \$3 million.

Information Items. 1) Contract Awards and Advertisements. Key #20473 – Off System, SMA-7076, Lindsay Boulevard Curves Super Elevation, Idaho Falls. Low bidder: Knife River Corporation – Mountain West – \$212,080.

Keys #14049 and #20499 – Off System, Americans with Disabilities' Act Sidewalk Repair Citywide, Phase 2, Idaho Falls. Low bidder: Deapatco - \$419,127.

Keys #22265, #22270, and #22273 – I-90, SH-1, and US-95, 2020 District 1 Culvert Repair Projects. Low bidder: Razz Construction Inc. - \$338,510.

Key #20350 – US-95, Granite North and Frontage Roads, District 1. Low bidder: M A DeAtley Construction Inc. - \$21,074,793.

Key #14060 – Off System, Great Western Canal Bridge. Low bidder: Cannon Builders Inc. - \$1,099,589.

Key #22275 – I-90, FY21 Fence Repair, District 1. Low bidder: Northwest Landscape LLC – 4,500 feet.

Key #22286 – I-90, FY22 Fence Repair, District 1. Low bidder: Northwest Fence Company – 18,776 feet.

The list of projects currently being advertised was provided.

2) Professional Services Agreements and Term Agreement Work Tasks Report. From June 24 through July 28, 36 new professional services agreements and work tasks were

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processed, totaling \$10,761,554. Five supplemental agreements to existing professional services agreements were processed during this period in the amount of \$656,946.

3) Monthly Reporting of Federal Formula Program Funding through July. Idaho received obligation authority of \$286.6 million through September 30 via an appropriations act signed in December 2019. This includes \$936,200 of Highway Infrastructure General Funds carried over from last year in the Transportation Management Area. In February \$14.1 million of Highway Infrastructure General Funds were received; however, \$4.6 million will not be used until FY23. Obligation authority through September 30 is \$296.1 million, which corresponds to \$297 million with match after a reduction for prorated indirect costs. Idaho should receive notification of Redistribution of Obligation Authority Not Used by Other States by the end of this month. Idaho received apportionments via notices through February 13 of \$331.7 million, including Redistribution of Certain Authorized Funds and Highway Infrastructure General Funds. Obligation authority is currently 90.7% of apportionments. Of the \$297 million allotted, \$9.3 million remains.

Monthly Report on Activities. Director Ness reported that extensive efforts to address COVID-19 are continuing, such as following safety protocols, sanitizing high-touch areas and work areas, and telecommuting. He mentioned a letter from a contractor commending District 4 Environmental Planner Connie Jones for her exceptional service. Staff met with Federal Highway Administration (FHWA) personnel, including the regional supervisor, recently. Some of the topics discussed included the US-95 rockslide near Riggins, risk management, and redistribution of federal aid. Due to the vacant Internal Review Manager position, GARVEE Program Manager Amy Schroeder will lead the Department's enterprise risk management process this year. Director Ness believes ITD is well positioned to receive additional funds, and he provided FHWA with a list of projects that are ready to obligate. When the COVID-19 pandemic hit earlier this year, the Department set aside state funds to use as match if more federal funds became available. He added that local highway jurisdictions would be eligible to receive additional funding. In closing, he congratulated Justin Wuest and Shanon Murgoitio from District 1 and the Bridge Section, respectively, for completing the Western Association of State Highway and Transportation Officials' Emerging Leaders Program.

Chief Deputy Stokes said Governor Little is calling a special legislative session next week to address COVID-19 and ensure a secure election in fall. The Board approved three legislative proposals; however, at the direction of the Governor's Office, the two Red Tape Reduction Act proposals are being combined. He also reported that 53-foot commercial motor vehicle restrictions on US-95 have been eliminated. The entire route is now open to an off-track of 6.5 feet, which will enhance mobility and economic opportunity.

Chairman Moad thanked Director Ness and Chief Deputy Stokes for their reports.

Drugged Driving Initiatives. Highway Safety Manager John Tomlinson reported that there have been 111 highway fatalities so far this year, compared to 145 at this time last year. The National Highway Traffic Safety Administration approved the Highway Safety Plan.

Grants/Contracts Officer Lisa Losness said fatalities from impaired driving crashes increased 26.9% from 2018 to 2019. Forty-four percent of all fatalities were from impaired driving. The Drug Recognition Expert (DRE) Program provides intensive training to law enforcement officers to evaluate the impairment of a suspect. Currently, there are 124 DREs throughout the state. Impairment due to marijuana is a concern, and an impaired driving campaign focusing on marijuana is underway.

Chairman Moad thanked staff for the highway safety information.

Updating the Guide for Utility Management to Incorporate Telecommunications Facilities. Robert Beachler, Senior Transportation Planner (STP), said the Guide for Utility Management (GUM) addresses the coordination and administration of utility facilities installation, relocation, and adjustment within the state highway right-of-way. The Guide covers utilities that are regulated by the Idaho Public Utilities Commission. Idaho Code regulates the right to use right-of-way for telephone lines but not broadband and wireless telecommunications. Federal regulations authorize states to manage the highway rights-of-way or to require fair and reasonable compensation, including from internet providers.

STP Beachler proposed integrating a new chapter in the GUM to address private sector for-profit telecommunications facilities to provide guidance and establish procedures for staff. It is important to protect the rights-of-way for transportation purposes while accommodating broadband and wireless facilities. He added that the Department is developing a system to track the location of utilities and encroachment permits using Geographic Information Systems.

Some discussion followed on the fee structure and what other states are doing. STP Beachler replied that some fees are set in code and others are established by the Public Utilities Commission and ITD. Chief Deputy Stokes mentioned the importance of establishing a fair market value, and the Department will involve stakeholders as part of the rule-making process. He added that other states have been more aggressive in dealing with broadband. Staff is reviewing those processes and guidelines.

DAG Allen clarified that the references to fees is actually a process to recover federal funds that were used to purchase right-of-way. There are options other than monetary, such as trading property or installing fiber.

Chairman Moad thanked STP Beachler for the information.

District 2 Annual Report. District 2 Engineer (DE) Doral Hoff commended the maintenance crews for keeping the roads clear of ice and snow 84% of the time during the 2019-2020 winter, exceeding the goal of 73%. This was accomplished in spite of the Clearwater Basin, which covers most of the District, recording the snow water equivalent of 108% of average and Lewiston setting a new record for snow with 29". The crews also submitted 100% of their winter road reports on time. Eight of the District's nine FY20 projects were delivered by September 30, 2019.

DE Hoff mentioned that in addition to eight major construction projects this year, staff is working on refining its winter maintenance efforts and reducing costs, and preparing the trucks for next winter. The District has responded to the COVID-19 pandemic with activities such as regimental cleaning of high-touch areas like door handles, key boards, and phones, and allowing some employees to work remotely or on a rotating schedule.

Member Vassar commended DE Hoff for his leadership, noting that there have been a number of challenges, such as rockslides, that he has managed well.

Member Horsch asked for an update on the interchange on US-95/US-12 at the casino near Lewiston. DE Hoff replied that the District has been working with the Nez Perce Tribe and its consultant on that project. The final design and environmental work should be completed by the end of this month. The Tribe is still in the process of securing funding for the construction.

Chairman Moad thanked DE Hoff for the presentation.

US-95, Riggins Rock Slide. Chief Operations Officer Dan McElhinney said he visited District 2 recently, including the rock slide near Riggins. He is impressed with the dedicated, professional employees and especially with the staff members who have been working on the rock slide. Safety is the highest priority on this project.

District Operations Engineer Jared Hopkins said the initial rock slide occurred on July 3 followed by a more severe slide on July 10. Pollock Road was used as a detour until the shoofly around the slide could be cleared and opened to traffic on July 27. Bids were opened on August 17 and the contract was awarded to Scarsella Brothers Inc. for \$3 million. It plans to remove about 14,000 cubic yards of material with 6,000 pounds of explosives.

District Materials Engineer Janet Zarate said crack sensors and tilt sensors are being used to continuously monitor the area. Naturally-occurring asbestos was discovered in the area and a mitigation plan was developed. The contractor anticipates completing the blasting in five to seven days followed by close to a week to remove the debris and re-open the US-95 shoofly, which will need to be closed during this work. Work will commence on the rock face and then the road surface will be repaired. The anticipated completion date is November 1. She expressed appreciation for the great collaboration and assistance numerous individuals and entities provided on this unique and challenging project.

Member Vassar commended staff and ITD's partners for their exceptional response to the slide. Chairman Moad also thanked staff for its efforts and the informative presentation.

2020-2021 Administrative Rulemaking. Governmental Affairs Project Manager (GAPM) Ramón Hobdey-Sánchez presented two proposed rule changes for the upcoming legislative session. IDAPA 39.02.60, Rules Governing License Plate Provisions is being modified to align the rule with changes brought to the Specialty License Plate Program per Senate Bill 1349a-2020. To align IDAPA 39.02.71, Rules Governing Driver's License Violation Point System with House Bill 614-2020, a new violation for distracted driving is being added and the points table for moving violations and assessed points is being updated. Both rules have been through the

negotiated rulemaking process and are ready to advance to the formal temporary and proposed rulemaking stage.

Member DeLorenzo moved to approve the following resolution, seconded by Member Vassar, and passed 5-0 by individual roll call vote. (Member Thompson's vote was not recorded, which may have been due to technical difficulties):

RES. NO. WHEREAS, Idaho Transportation Department staff has proposed changes to two
ITB20-47 (2) administrative rules:

- 39.02.60 – Rules Governing License Plate Provisions; and
- 39.02.71 – Rules Governing Driver's License Violation Point System;

and

WHEREAS, the changes being made to 39.02.60 - Rules Governing License Plate Provisions are being made pursuant to the passage of Senate Bill 1349a-2020 in order to reflect the changes made to the Specialty License Plate Program; and

WHEREAS, the changes being made to 39.02.71 - Rules Governing Driver's License Violation Point System are being made pursuant to the passage of House Bill 614-2020 in order to add the new distracted driving traffic violation; and

WHEREAS, these administrative rule changes were approved by the Division of Financial Management, within the Idaho Governor's Office, on August 5, 2020; and

WHEREAS, IDAPA 39.02.60 will have a temporary effective date of January 1, 2021; and

WHEREAS, IDAPA 39.02.71 will have a temporary effective date of July 1, 2020.

NOW THEREFORE BE IT RESOLVED, that the Idaho Transportation Board approves that these two (2) administrative rules be published in the Idaho Administrative Bulletin as temporary and proposed.

GAPM Hobdey-Sánchez said the Department is working through a second year of reauthorizing its 44 administrative rules. Because none of those rules were rejected during the 2020 legislative session, the 37 non-fee rules automatically became temporarily effective at the end of the session in March, with full force and effect of law. A notice of the seven fee rules was published in the April Special Edition of the April 2020 Idaho Administrative Bulletin and now are ready to proceed to the proposed rulemaking stage and subsequently the pending rulemaking stage. The rules are being advanced with no changes.

Member Vassar made a motion, seconded by Member DeLorenzo, and passed 6-0 by individual roll call vote, to approve the following resolution:

RES. NO. WHEREAS, the Idaho Transportation Department has 37 non-fee rules and 7 fee-
ITB20-48 rules for a total of 44 administrative rules; and

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WHEREAS, the Department’s 37 non-fee rules automatically became temporarily effective (3/20/2020) with the full force-and-effect of the law at *sine die* of the 2020 Idaho Legislature; and

WHEREAS, the Department’s 7 fee-rules became temporarily effective (3/20/2020) with the full force-and-effect of the law via the publication of ITD’s “Notice of Omnibus Rulemaking - Adoption of Temporary Rule” in the Special Edition of the April 2020 Idaho Administrative Bulletin; and

WHEREAS, ITD’s 7 fee-rules are as follows:

- 39.02.04: Rules Governing Manufacturer & New Vehicle Dealer Hearing Fees
- 39.02.05: Rules Governing Issuance of Certificate of Title
- 39.02.22: Rules Governing Registration and Permit Fee Administration
- 39.02.26: Rules Governing Temporary Vehicle Clearance for Carriers
- 39.02.41: Rules Governing Special Provisions Applicable to Fees for Services
- 39.02.60: Rules Governing License Plate Provisions
- 39.03.03: Rules Governing Special Permits – General Conditions and Requirements; and

WHEREAS, no changes are being proposed to ITD’s 7 fee-rules; and

WHEREAS, these rules implement the duly enacted laws of the State of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws; and

WHEREAS, the Governor has found that the fees within these rules are justified and necessary to avoid immediate danger to the Department’s budget, to the state budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho’s constitutional requirement that it balance its budget.

NOW THEREFORE BE IT RESOLVED, that the Idaho Transportation Board approves ITD’s 7 fee-rules be advanced to the Proposed Rulemaking Process via publication in the September 2020 Special Edition of the Idaho Administrative Bulletin.

Chairman Moad thanked GAPM Hobdey-Sánchez for the presentation on rules.

State FY20 Financial Statements. Controller Dave Tolman said the Department’s revenue was below the forecast for the fiscal year due to impacts of COVID-19. Revenues to the State Highway Account from all state sources finished the fiscal year below projections by 1.3% or \$4.6 million. Total receipts from the Highway Distribution Account were 1.2% or \$2.6 million less than forecast. State revenues to the State Aeronautics Fund were below projections by 5.4%, or \$176,000. Expenditures were within planned budgets. Unspent cash balance is being reserved

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in anticipation of further lower receipts to mitigate impact to operations. Personnel costs had savings of \$11 million or 8% prior to transferring \$2 million to operating expenditures. The savings were due to reserves for horizontal career path increases, vacancies, and timing between a position becoming vacant and being filled. Contract construction cash expenditures of \$451.8 million were essentially the same as last year.

The balance of the long term investments was \$110.4 million at the end of June. These funds are obligated against construction projects and encumbrances. The cash balance was \$93.4 million. Expenditures in the Strategic Initiatives Program Fund for FY20 were \$25.4 million, and deposits into the Transportation Expansion and Congestion Mitigation (TECM) Fund were \$21.5 million. The federal CARES-ACT Fund provided new revenue of \$27.3 million for public transportation in FY20. Expenditures in the fiscal year were \$1.7 million. Due to COVID-19's potential negative impact to ITD's revenue, a mitigation plan has been established, with \$75 million identified. The objective is to hold operations and personnel as appropriated and to use uncommitted funds to mitigate impacts to the Idaho Transportation Investment Program.

Controller Tolman said expenditures in the GARVEE Capital Projects Fund were \$19.5 million. He said market conditions are currently favorable. If the callable portions of the 2011 Series bonds are refinanced, the rate would be 1.1%, which would save the Department about \$1.8 million a year. The interest rate for new bonds is about 2.2%, which is about 1% less than the bond rate of the most recent bond sale in 2019.

Member DeLorenzo asked for clarification on other bonding options. Controller Tolman said the legislature provided the Department with authority to bond TECM funds. The program is guaranteed a minimum of \$15 million annually from sales tax receipts. No additional legislative authority is required to use this tool.

Member DeLorenzo questioned pursuing this bonding option due to the favorable market conditions. The consensus of the Board was to have staff look at TECM bonding options.

Chairman Moad thanked Controller Tolman for the presentation.

August 2020 Revenue Forecast and FY22 Appropriation Request. Economist Bob Thompson presented the revised revenue forecast. The projected FY22 revenue from all sources is \$725.93 million, which is a slight decrease from the projected revenue presented at the June workshop. Revenue to the Aeronautics Fund is expected to decrease 14 to 15 percent.

Financial Manager Justin Collins proposed an FY22 appropriation request of \$669,778,300 and 1,648 full-time positions. Highlights include an increase of \$1.15 million for a 1% change in employee compensation; \$28.7 million for replacement equipment; \$68.6 million for debt service; and four line items totaling \$17.2 million, with \$4 million in on-going costs.

Member DeLorenzo made a motion, seconded by Member Vassar, and passed 6-0 by individual roll call vote to approve the following resolution:
RES. NO. WHEREAS, the FY22 Idaho Transportation Department budget request will be

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ITB20-49 prepared in accordance with instructions in the Division of Financial Management's Budget Development Manual; and

WHEREAS, the Idaho Transportation Board has reviewed the proposed FY22 budget request summary.

NOW THEREFORE BE IT RESOLVED, that the Board has reviewed the budget request estimates reflected in the Department Summary and Certification, submitted for approval August 20, 2020, as shown as Exhibit #528, which is made a part hereof with like effect, and authorizes the estimates and guidance provided to serve as the basis for the FY22 budget request submitted to the Division of Financial Management and Legislative Services Office.

Chairman Moad thanked staff for the presentation.

Executive Session on Personnel and Legal Issues. Member DeLorenzo made a motion to meet in executive session at 11:40 AM to discuss personnel issues as authorized in Idaho Code Section 74-206 (b) and legal issues as authorized in Idaho Code Section 74-206 (c). Member Vassar seconded the motion and it passed 6-0 by individual roll call vote.

Chairman Moad announced that the Board meeting will adjourn immediately after the executive session.

The discussion on legal matters related to acquiring real property. The discussion on personnel matters related to the performance of an employee.

The Board came out of executive session at 12:45 PM.

WHEREUPON, the Idaho Transportation Board's regular monthly meeting officially adjourned at 12:45 PM.

signed

BILL MOAD, Chairman
Idaho Transportation Board

Read and Approved
September 16, 2020
Rigby, Idaho

August 20, 2020