

MINUTES

HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DATE: Wednesday, February 14, 2018

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Raybould, Vice Chairman Thompson, Representatives Hartgen, Vander Woude, Anderson, Anderst, Mendive, Chaney, Nate, Cheatham, Horman, Malek, Moon, Scott, Ehardt, Smith, Jordan (Gannon), Rubel

**ABSENT/
EXCUSED:** None

GUESTS: Alex La Beau, IACI; Jess Byrne, Department of Environmental Quality (DEQ); Barry Burnell, DEQ; J. Wintersteen; Coyote D. Short, Geologist; Benjamin Kelly, Idaho Association of Soil Conservation Districts

Chairman Raybould called the meeting to order at 1:31 p.m.

S 1218: **Barry Burnell**, Administrator, Water Quality Division, DEQ, stated **S 1218** proposes to amend the Poultry Environmental Control Act and the Environmental Health and Protection Act and is necessary for Idaho to demonstrate compliance with the Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES). The 2014 Idaho Legislature directed DEQ to submit a program primacy application for NPDES, and they submitted the primacy application on August 31, 2016, hired and trained staff, developed guidance documents and program capacity to run the NPDES program to be known as the Idaho Pollutant Discharge Elimination system (IPDES). **S 1218** ensures DEQ has the authority required by the EPA for IPDES regulation of poultry operations; corrects references from 'national' to 'state' program; provides for legislative approval of the memorandum of agreement (MOA) negotiated between DEQ and the EPA; excludes permitting authority for vessels regulated by the EPA under a nationwide general permit; and establishes a dedicated fund for IPDES fees. PDES implementation will be a 4 year phased-in approach. Overall the entire program costs are estimated to be \$3 million annually, which include 29 full-time employees.

In response to committee questions regarding checks and balances to the authority of the DEQ Director to enter into binding MOA, **Mr. Burnell** said the Director is appointed by and given oversight by the Governor; legislative approval of DEQ changes, rules and requests for funds is required; the Legislature can instruct the Director to report to this committee at any time; the Director can enter into an amended MOA to change the terms of an existing MOA; and the EPA still has oversight. Mr. Burnell further explained an MOA needs to be in place to direct the IPDES program; the 2014 Legislature envisioned the Director having the authority to sign MOAs when it adopted Idaho Code §39-175C; it is a key component to having a delegated program, the lack of which would be a fatal flaw in running the IPDES program in Idaho; and it would halt the deliberation process for four years. Mr. Brunell also clarified that the legislation ensures the DEQ administered program is separate from the Idaho Department of Agriculture administered programs.

Alex Le Beau, President, Idaho Association of Commerce and Industry spoke in support of **S 1218** saying the Legislature passed the statute under which DEQ initiated rulemaking in 2014, all of which stated the Director had the authority to sign MOAs. The Legislature has control to adjust the statute, rules and funds every year. The Director does not just respond to the Governor but to a professional group with an executive review function. To take away the Director's authority to enter into agreements would be to give authority back to the EPA. Without this legislation, Idaho will not have control over its waters.

In response to committee questions, **Mr. Le Beau** replied DEQ cannot do anything not allowed by the Legislature because they are bound to legislative authority on an annualized basis, and the DEQ cannot issue permits without binding authority to enter into the MOA with the EPA. The EPA cannot step away from the agreement, and new MOAs would not be needed unless there is a change to the Clean Water Act.

MOTION: **Rep. Thompson** made a motion to send **S 1218** to the floor with a **DO PASS** recommendation.

In support of the motion, **Reps. Raybould, Vander Woude, Anderst, Thompson, Chaney and Cheatham** said although they may share philosophical concerns regarding the impact of the federal government, primacy matters because it has a shielding effect in the way the state goes about enforcing compared to the federal government.

In opposition to the motion, **Reps. Nate and Scott** said there is a shift of authority to the DEQ Director from existing law, and the arguments against primacy are unconvincing because primacy is puppetry, and Idaho wants control of its state.

ROLL CALL VOTE: Roll call vote was requested. **Motion carried by a vote of 15 AYE, 3 NAY, 0 Absent/Excused. Voting in favor** of the motion: **Reps. Raybould, Thompson, Hartgen, Vander Woude, Anderson, Anderst, Mendive, Chaney, Cheatham, Horman, Malek, Ehardt, Smith, Gannon and Rubel. Voting in opposition** to the motion: **Reps. Nate, Moon and Scott. Rep. Thompson** will sponsor the bill on the floor.

Teri Murrison, Administrator, Idaho Soil & Water Conservation Commission (ISWCC), stated the ISWCC has no regulatory authority, and its board has five members, each serving five-year terms with a total FTP of 17.75, 4 t-FTPs. ISWCC Core Functions are: 1) conservation district support; 2) non-regulated, science-based programs and services, and 3) engaging partners and the public in voluntary conservation. Idaho has 50 conservation districts, and the districts received about 50% less than the field staff hours requested or necessary. ISWCC continues to refine the technical assistance allocation process, and the districts are encouraged to be creative, seek new partners, and ISWCC helps provide technical assistance in their grant applications. Ms. Murrison shared information on work the ISWCC did this year on soil erosion caused by high spring runoff in Weiser starting at the Galloway Diversion and including several breached levies. ISWCC provided 200 hours technical assistance to draw engineering plans, reached out to federal agencies and began permitting processes, worked with the contractor on ISWCC designs for slowing down water from future current and ice flow, and built rock banks to help protect against bank erosions. Ms. Murrison reported on revenues and expenditures, the CREP program, the RCRDP Loan Program, which no longer receives outside funds, publication of newsletters, outreach and education efforts, including the 2018 Idaho Envirothon.

Benjamin Kelly, Executive Director, Idaho Association of Soil Conservation Districts (Districts), gave their annual report saying that they obtain funding through grants and contracts with farmers. They are the primary non-government entity in Idaho leading conservation, sustainment and enhancement in performing voluntary non-regulation work on Idaho privately owned land. Mr. Kelly gave a brief history of the formation of the conservation districts. The Districts have a board of supervisors and are tasked with a number of responsibilities by statute. They facilitate projects and provide information on burn severity, post-fire debris flow, water systems at risk, fire suppression restoration needs, weeds, culverts, bridges, at-risk farm infrastructure, fish habitat at risk, wildlife habitat at risk, hydrology, hazardous trees and reforestation needs. Water quality presents a significant challenge to landowners and the Districts' water revitalization program includes constructing off stream water facilities, enhancing riparian areas, installing in stream bars and stabilization bases. The 2018 National Association of Conservation Districts hosts the Environthon in Pocatello, ID.

ADJOURN: There being no further business to come before the committee the meeting adjourned at 3:40 p.m.

Representative Raybould
Chair

Lorrie Byerly
Secretary