

MINUTES

HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DATE: Thursday, March 10, 2022

TIME: 1:30 pm or Upon Adjournment

PLACE: Room EW41

MEMBERS: Chairman Ehardt, Vice Chairman Wisniewski, Representatives Vander Woude, Horman, Scott, Amador, Armstrong, Furniss, Hartgen, Lickley, Young, Adams, Yamamoto (Yamamoto), Chew, Necochea, Nash

**ABSENT/
EXCUSED:** Rep. Lickley

GUESTS: The sign-in sheet will be retained in the committee secretary's office; following the end of the session the sign-in sheet will be filed with the minutes in the Legislative Library.

Chairman Ehardt called the meeting to order at 1:35 p.m.

MOTION: **Rep. Necochea** made a motion to approve the minutes of the March 8, 2022, meeting. **Motion carried by voice vote.**

S 1264: **Michael McCurdy**, Waste and Remediation Division Administrator for the Department of Environmental Quality (DEQ), recapped **S 1264**.

Alex LaBeau, President of the Idaho Association of Commerce and Industry stood before the committee for questions. He noted how cost prohibitive it can be to develop contaminated properties. He explained that cities find themselves building into rural areas rather than redeveloping city areas that have contamination. He believes that the Certificate of Completion and the Covenant Not to Sue were incentives to develop contaminated sites. Mr. LaBeau felt that this bill helped developers and environmental regulators work together to redevelop property and protect public health. He emphasized that this legislation would help downtown revitalization. He indicated the Idaho Association of Commerce and Industry was pleased that DEQ is expanding this legislation to encourage more participants.

In answer to committee questions, **Mr. McCurdy** explained some sites have the perception of contamination solely based on the types of businesses that have been on the property. This program would help them get samples for testing, and then determine if they need to move forward with cleanup. Mr. McCurdy emphasized this program is voluntary, and outside parties complaints are not addressed in this legislation. Property owners must give permission if a non-property owner wants to participate in this program. He noted that this legislation was also broadened to include residential properties. He also clarified there are no federal funds involved in this program and the state does not pay for cleanup or reviews.

In response to committee concerns, **Jess Byrne**, the Director of the DEQ explained that the definition of who could participate was purposely broadened because it used to exclude property owners who owned the land when contamination occurred.

Committee members expressed concern in the word 'perceived'. They felt it could be leveraged with those that have nefarious intent. Some committee members recognized how important it was for cities to encourage clean up on contaminated properties. Others noted that the fiscal note was misleading since the cleanups are participant funded and not self-funded through DEQ. They worried the definition of 'participant' was much too vague, and did not protect owner property rights.

In answer to committee questions, **Mr. McCurdy** made clear that a property owner can do all the cleanup without this program. But if a lender requires paperwork, all DEQ can give is a Closure Letter, which shows a lower level of confidence, and only confirms the DEQ believes the property is cleaned up based on paperwork, but was not directly involved and cannot corroborate findings. It doesn't carry the same weight with lenders as DEQ's Certificate of Completion and the Covenant Not to Sue which are attached to the title of the property. Mr. McCurdy noted that no work can be done by a non-owner without an owners permission, but recognized that it was not clearly spelled out in this legislation, only in the application process.

MOTION:

Rep. Hartgen made a motion to send **S 1264** to the floor with a **DO PASS** recommendation.

Rep. Young spoke **in opposition** to the motion. She did not like that the intent of the program had been changed.

Rep. Necochea and **Rep. Chew** spoke **in support** of the motion. It was emphasized that property rights are already protected in state law, and felt this was good legislation.

SUBSTITUTE MOTION:

Rep. Armstrong made a substitute motion to **HOLD S 1264** in committee.

Rep. Scott, Wisniewski and Vander Woude spoke **in support** of the substitute motion. There were worries that environmental groups would be considered participants under this legislation. They noted that the wording was too vague to protect property owners.

AMENDED SUBSTITUTE MOTION:

Rep. Furniss made an amended substitute motion to send **S 1264** to the floor **WITHOUT RECOMMENDATION**.

In answer to committee questions, **Director Byrne** noted that DEQ could continue under existing rules until this proposed legislation can be improved with committee suggestions.

ROLL CALL VOTE ON AMENDED SUBSTITUTE MOTION:

Roll call vote was requested. **Amended substitute motion failed by a vote of 5 AYE, 8 NAY and 3 Absent/Excused. Voting in favor** of the motion: **Reps. Furniss, Hartgen, Chew, Necochea, and Nash. Voting in opposition** to the motion: **Reps. Wisniewski, Vander Woude, Horman, Scott, Armstrong, Young, Yamamoto, and Chairman Ehardt. Reps. Amador, Lickley and Adams** were absent/excused.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Roll call vote was requested. **Substitute motion carried by a vote of 8 AYE, 5 NAY and 3 Absent/Excused. Voting in favor** of the motion: **Reps. Wisniewski, Vander Woude, Horman, Scott, Armstrong, Young, Yamamoto, and Chairman Ehardt. Voting in opposition** to the motion: **Reps. Furniss, Hartgen, Chew, Necochea, and Nash. Reps. Amador, Lickley and Adams** were absent/excused.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 2:48 p.m.

Representative Ehardt
Chair

Maggie Price
Secretary