

Subject to approval of the Interim Committee

**MINUTES
SOIL CONSERVATION INTERIM COMMITTEE
TUESDAY, JANUARY 5, 2010
STATE CAPITOL, ROOM WW54
BOISE, IDAHO**

The meeting was called to order by **Cochairman Senator Joe Stegner** at 9:35 a.m. Committee members present included **Cochairman Representative Ken Roberts**, Senator Lee Heinrich, Senator Bert Brackett, Senator Kate Kelly, Representative Darrell Bolz, Representative Judy Boyle and Representative Liz Chavez. Staff members present were Brooke Murdoch and Keith Bybee.

Others present included Representative Bert Stevenson, District 26; Terry Halbert, North Side Soil and Water Conservation District; Dennis Tanikuni, Idaho Farm Bureau; Sara Schmidt, J. Morgan Evans and Richard L. Bronson, Idaho Soil Conservation Commission; Ken Stinson, Cody Anderson and Kari Schwendiman, Latah Soil and Water Conservation District; J. Kent Foster, Kyle Hawley, Kit Tillotson, Randy Purser, Steve Miller and Wayne Newbill, Idaho Association of Soil Conservation Districts; Karma Bragg, Custer Soil and Water Conservation District and the Idaho District Employee Association; Pamm Juker, Idaho State Department of Agriculture; Steve Becker and Kyle Wilson, Nez Perce Soil and Water Conservation District; Scott Koberg, Ada Soil and Water Conservation District; Dustin Hurst, IdahoReporter.com; Bill Spence, Lewiston Tribune; Dar Olberding, Idaho Grain Producers Association; Bonnie Butler, Governor's Office; Harriet Hensley, Attorney General's Office; Lyla Dettmer, Franklin Soil and Water Conservation District; JoAnn Taylor, Bear Lake Soil and Water Conservation District; Lynn Tominaga, Idaho Ground Water Appropriators; Kathy Merrill, Central Bingham Soil Conservation District; Wayne Batts, Custer County Commissioner; and Sidney Erwin.

Representative Chavez made a motion to approve the minutes from the December 12, 2009 meeting. **Senator Heinrich** seconded and the motion was approved unanimously by voice vote.

Cochairman Stegner invited **Cochairman Roberts** to open the discussion regarding the new draft legislation. **Cochairman Roberts** said that as a result of the many comments received at the December meeting regarding the draft legislation, he, **Senator Brackett**, **Representative Stevenson** and **Representative Bolz** put together a different concept, which is reflected in the new draft. The new draft legislation is available online at <http://legislature.idaho.gov/sessioninfo/2009/interim/soil.htm>. **Cochairman Roberts** noted that there is no preconceived end game. The Committee is trying to resolve the issues and preserve some resemblance of the Soil Conservation Commission. Due to budget constraints, it is easy for such budgets to be targeted for zero funding. He clarified that he does not want to see this happen; rather, he wants to preserve the Commission and the districts in viable states so that projects continue to be put on the

ground on a voluntary basis. He then invited comments and discussion from the Committee members.

Senator Heinrich noted that the goal is to preserve the structure of a commission, but that no new department would be formed.

Representative Bolz explained that in the new draft, districts are subject to audit requirements provided in Section 67-450B, Idaho Code. He said that the goal is to establish consistent audit requirements throughout state government.

Senator Brackett commented that there have been a number of issues raised and, for the most part, the solutions have been met with some degree of agreement. Generally, the issues have included the distribution formula, audits, appointments and the proper placement of the Commission in state government. He said that he wants the work to be done on a voluntary basis and to maintain the basic conservation partnership structure. The first draft legislation housed the Commission in a regulatory agency, which he found to be problematic because the voluntary aspect of conservation would be compromised, resulting in reluctance of the electors to cooperate.

Representative Boyle commented that it is vital that all elected officials are treated the same. She would like the current language allowing the Commission to remove district supervisors be struck and replaced with reference to code sections dealing with recall of public officers. She also noted that in the new draft, all loan applications are required to go directly to the Office of Soil and Water Conservation and commented that applicants are more likely to walk into a local office than to send an application by mail. For this reason, she suggested that both the Office and the local districts be permitted to accept applications.

Senator Kelly explained that her biggest interest is in ensuring that there is a streamline process to get money on the ground for conservation. Another issue is the accountability of appropriated general fund dollars.

Representative Chavez commented that dismantling the Commission during uncertain times might cause more problems than is necessary. She suggested the Committee may need to hit a “reset” button on the Commission. She emphasized the importance of preserving the conservation partnership. She said that the new draft legislation does not prohibit the Office from taking on projects of its own and, in her opinion, the Office is the support piece for the districts and it should continue in a supportive role. She suggested adding the language “and all other working lands” to Section 22-2716(1)(a), Idaho Code. She also suggested amending Section 22-2718, Idaho Code, by adding language that promotes facilitation between the districts and the Office. For example, she suggested that every two years there be a vote of confidence from districts as to the performance of the board members. Also, she suggested that the funding go through the Office and directly to the districts with no diversions, providing a seamless and transparent process for audit purposes. Finally, she expressed her appreciation for the

work that went into the draft, but said she has concerns regarding housing the Office in the Office of the Governor.

Cochairman Roberts asked **Brooke Murdoch, Research Analyst, Legislative Services Office**, to explain the substantive changes made by the new draft legislation. **Ms. Murdoch** explained the changes made to the existing Soil Conservation District law by the draft legislation, referencing a handout titled “Soil Conservation District Law – Changes Made by Draft Legislation.” This handout is available online at <http://legislature.idaho.gov/sessioninfo/2009/interim/soil.htm>.

Representative Chavez explained that there needs to be a mechanism in place whereby districts can provide feedback regarding the board members’ performance so that we do not end up in the same situation in the future. **Cochairman Roberts** commented that district communication regarding board member performance goes through the Association.

Cochairman Roberts made a motion for consideration of draft legislation DRSBM077 for Committee discussion and recommendation. **Senator Kelly** clarified that an affirmative vote would mean supporting the discussion of the draft legislation. **Cochairman Roberts** agreed. **Representative Bolz** seconded the motion and the motion was approved unanimously by voice vote.

Cochairman Stegner invited the Committee members to provide further discussion on the draft legislation. Being none, he invited **Steve Miller, President, Idaho Association of Soil Conservation Districts**, to address the Committee.

Mr. Miller provided a handout titled “Suggested DRSBM077 Draft Considerations,” which is available online at <http://legislature.idaho.gov/sessioninfo/2009/interim/soil.htm>. His suggested changes include a name change for the Office, changes to the length of term and selection process for board members, changes to the audit process, supervisor removal process, allocation process and the RCRDP, grants and loan application and approval process.

Cochairman Roberts said that the \$50,000 match allocation limit was included in the draft in order to protect the smaller districts. He said that the Legislature will entertain future recommendations to raise or lower that limit. **Mr. Miller** said that staff often move around to different districts depending on projects and that the \$50,000 allocation cap on each district might be a problem in terms of funding staff.

Cochairman Stegner asked **Mr. Miller** what his intentions were in referring to “rules” in his handout. **Mr. Miller** replied that a negotiated rulemaking process is preferable and questioned whether this needs to be specified in statute. **Senator Kelly** said that anyone with rulemaking authority is subject to the Administrative Procedure Act, which requires negotiated rulemaking.

Cochairman Stegner invited **Kyle J. Wilson, Nez Perce Soil and Water Conservation District**, to address the Committee next. **Mr. Wilson** posed the following questions: what discretion does the executive branch have to alter soil conservation district law; who develops the budget and who presents that budget to JFAC; why is there no provision for a vote of confidence from the districts; why is there no conflict resolution in the statute; and will the administrator position change every time the Governor changes. He concluded by emphasizing the need for conflict resolution in statute.

Cochairman Roberts asked **Mr. Wilson** whether he views the meetings held by this Interim Committee as a conflict resolution process. **Mr. Wilson** replied yes. **Cochairman Roberts** asked if it is working. **Mr. Wilson** replied somewhat.

Cochairman Stegner then asked **Morgan Evans, Idaho Soil Conservation Commission**, to speak. **Mr. Evans** said that in terms of the loan application process, there is some concern that financial information be kept private. **Cochairman Roberts** asked if the language in the draft specifying that the Office is required to consult with local districts regarding loan applications would suffice. **Mr. Evans** replied yes, but local ranchers and farmers are concerned because they do not want their personal financial information disclosed, other than to a loan officer. **Representative Boyle** asked whether the language would be acceptable if it provided that applicants can apply either at the local district or at the Office. **Mr. Evans** said that would be fine.

Cochairman Stegner then asked **Steve Becker, Nez Perce Soil and Water Conservation District**, to speak. **Mr. Becker** made suggested changes to the draft legislation, including the appointment of board members, a vote of confidence process and the removal of supervisors. He also made the following comments and suggestions: districts should remain the lead entity for resource conservation; districts should have a role in the appointment of board members; vacancies should be filled within three months; districts should be aligned with a non-regulatory department; districts should be allowed to present budgets and special project requests to the Legislature; and districts need taxing authority.

Representative Bolz asked whether the vote of confidence would originate with the district from which the board member is from or would every district get to vote. **Mr. Becker** suggested that the vote would be statewide. **Representative Bolz** said that the reason he posed the question is because other commission members serve at the discretion of the Governor and that no other commission operates the way **Mr. Becker** suggested.

Senator Brackett noted that an issue that keeps resurfacing is the districts' interest in having some influence on the board members and to have some accountability. He asked **Mr. Becker** what his thoughts are on accountability. **Mr. Becker** said that if his suggested selection process was adopted, the board members would have a better tie back to the districts. **Senator Brackett** commented that with general fund money there are strings. He asked where the balance is on those strings and accountability that comes with receiving general fund money.

Cochairman Roberts commented that in the current law, there is no provision allowing input from districts regarding the Governor's selection of commissioners. The draft legislation provides districts the opportunity to present such input, but does not so limit the Governor. In the future, the Legislature may want to consider limiting the selection of commissioners or board members to a list from districts, but not at this time.

Cochairman Stegner commented that the proposed language is a compromise not designed to favor districts entirely but designed to allow for district involvement and input.

Representative Chavez asked what the Governor's thoughts are with regard to the draft legislation. **Cochairman Stegner** said that there have been discussions with the Governor's office about whether the Governor is interested in having the Office of Soil and Water Conservation in his Office. **Cochairman Stegner** explained that there have been conflicting indications from a number of different representatives from the Governor's Office. The issue has not been fully explored but, in his opinion, the Governor's Office has reservations about inviting an agency it does not control to be within the purview of the Office of the Governor. He noted that others in the Governor's Office have indicated that the draft legislation is a fine compromise. He said that this issue needs to be resolved through further discussions with Governor's Office.

Senator Kelly expressed concern about placing the Commission in the Governor's Office. She said that the Legislature would lose control if the Commission is placed under the executive branch and that she prefers placing the Commission within an agency structure.

Cochairman Stegner then asked **Cody Anderson, Latah Soil and Water Conservation District**, to address the Committee. **Mr. Anderson** said that with respect to the draft legislation, he agrees with and supports the changes.

Cochairman Stegner next called **Kyle Hawley, Division II, Idaho Association of Soil Conservation Districts**, to speak. **Mr. Hawley** suggested that, in regard to the grant and loan applications, the conservation management questions should go to the Office or the districts but financial information should go directly to a loan officer. In terms of accountability, **Mr. Hawley** said that the issue is addressed with audits and responsible bookkeeping of public funds. He said accountability also involves natural resource accountability; that is, what it costs taxpayers to get conservation on ground. He suggested a web-based presentation that allows the Legislature, the Governor and the citizens access to information regarding projects and how much money is going into those projects. He said a third type of accountability is the administrative accountability of the Office to the Governor and to the districts. Finally, he explained that the \$50,000 district allocation cap would have an uncertain effect on districts that voluntarily consolidate.

Cochairman Stegner asked **Bonnie Butler, Office of the Governor**, to address the Governor's opinion of the concepts embodied in the draft legislation. **Ms. Butler** said

that she spoke with the Governor on three separate occasions, reviewed and thoughtfully considered the concepts in the draft and is not supportive of putting the Commission or the Office under the Office of the Governor. She noted that given the current fiscal situation, the Governor is not supportive of creating new offices. Finally, **Ms. Butler** said that the Office of the Governor does not have the human resources to handle the day-to-day responsibilities of a commission.

Cochairman Stegner said that the Committee will continue revising the draft and members will meet with the Governor's office next week. He said that there may be another meeting to report on the visit with the Governor and to discuss options based on that visit.

Cochairman Roberts then addressed the issues in the draft legislation page by page. The first issue that appears in the draft is the consideration of geographic representation in appointing board members. **Cochairman Roberts** made a recommendation to keep this language in the legislation. **Cochairman Stegner** noted that there was no comment or objection from the Committee and the recommendation was thus so ordered.

Senator Kelly noted that the other change in the appointment of board members is the elimination of political party membership and asked the authors of the draft to explain. She said that political party membership provides diversity and perspective that is beneficial to Idaho. **Cochairman Roberts** replied that political boundaries should not be set on this type of issue because the board members throughout the state have the same objectives and there is no political fighting in this arena. **Senator Kelly** said that there should be an attempt to provide a balance of political persuasions to some extent on such boards and commissions. **Senator Kelly** objected to the elimination of the political party membership language.

Cochairman Roberts made a motion to strike the language regarding political party affiliation of board members. **Representative Chavez** seconded the motion. The motion passed by voice vote of seven ayes and one nay by **Senator Kelly**.

Cochairman Roberts recommended that the new language on page six, lines one through four, be kept in the legislation. This language permits the districts to submit a list of up to three names for each vacancy for the Governor's consideration in making board member appointments. **Senator Kelly** asked if districts in a particular geographic area would submit names or if districts statewide would be permitted to submit names. **Cochairman Roberts** said that there may be two highly qualified individuals in the same region who would both make great commissioners and that it is not the Legislature's job to legislate to districts how they choose to submit names to the Governor's office; rather, this is a decision that districts should make. **Senator Kelly** commented that since geographic distribution was specifically added, it may be appropriate carry this concept through to the nomination of names as well. **Cochairman Roberts** said that the language is a strong hint to the Governor that consideration should be given to geographic representation. **Representative Stevenson** noted that the Department of Environmental Quality board members are selected based on their qualifications rather

than geographic representation. He suggested defining geographic areas in rule. **Cochairman Stegner** noted that the language allows districts to submit names if they so choose. If the submission of names was mandatory, then he agrees the language would need to be more specific. He asked for further comments and objections and there being none, it was ordered that the language remain in the draft.

Representative Chavez said that she is still interested in a vote of confidence. She said that there has not been a free flow of communication and noted the periodic lack of confidence in the Commission. She is conflicted on whether she wants to insert language providing for redress for districts if there is a lack of Commission support. **Cochairman Roberts** said that giving districts the ability to submit names for consideration serves to close this gap.

Cochairman Roberts next recommended keeping the new language found on page eight, lines 22 through 24, which requires the Office to annually report to the Senate and House Agricultural Affairs Committees. He said that this language comes from the desire of the districts to be heard. **Representative Chavez** said that she has no objection to this language but she does not see where the draft addresses the issue that all projects be generated only from a district. She clarified that she does not want the Commission or the Office to solicit projects or to fund projects other than district projects. She said that all funds, from whatever source, should pass through a fiscal officer of the Commission or Office and go directly to the districts and that no funds should go toward a project that was not generated by a district. **Cochairman Roberts** asked if **Sara Schmidt, Administrator, Idaho Soil Conservation Commission**, could elaborate on this subject. **Ms. Schmidt** asked if **Representative Chavez** was commenting on instances where general fund money went to an entity other than a district. **Representative Chavez** replied yes. **Ms. Schmidt** explained the cooperative nature of the conservation partnership and noted that the Commission does have some agreements with entities other than the district. **Cochairman Stegner** suggested that **Representative Chavez** request that the Legislative Services Office draft language for her if she is interested in pursuing this issue.

Cochairman Roberts said that the next change in the draft is the removal of all references to the Idaho Association of Soil Conservation Districts. He noted that associations are not referenced in Idaho Code. He said that the current practice is to appropriate money directly to the Commission and the Commission then makes the decision to send money to the Association to fund an executive director position. He said that in this draft, the district allocation sum set in Section 22-2727, Idaho Code, was increased to \$8,500, with the idea that districts may submit dues directly to the Association to fund an executive director position if they so choose. **Cochairman Stegner** asked for comments and objections and there being none, it was ordered that reference to the Association be removed.

Cochairman Roberts said that the previous draft included a requirement that district supervisors be eligible voters in the district where they are elected. That language was not included in the current draft. **Senator Heinrich** said that language should be

included in the draft legislation requiring supervisors to be qualified electors. **Cochairman Roberts** asked **Representative Boyle** if she thinks that supervisors, as elected officials, should be held to the same qualifications as other elected officials. **Representative Boyle** replied yes. **Senator Heinrich** said that a good compromise would be to require supervisors be qualified electors in the state of Idaho. **Cochairman Stegner** asked for comments and objections and there being none, it was ordered that language be added to the draft requiring that supervisors be qualified electors in the state of Idaho.

Cochairman Roberts said that the next change is to the district audit requirements. **Representative Bolz** noted that those changes appear on page 17, lines 21 through 26, and again on page 20, lines 6 through 11. **Representative Bolz** spoke with **Don Berg, Audits, Legislative Services Office**, who indicated that all of state government should be on the same page in terms of audits. **Cochairman Stegner** clarified that the change merely brings districts within state law and asked for comments and objections and there being none, the change to the district audit requirements was ordered to remain in the draft.

Cochairman Roberts said the next issue appears on pages 17 and 20 and relates to the removal of supervisors from office by the Office of Soil and Water Conservation. **Representative Boyle** reiterated that because supervisors are elected officials, they ought to be removed only by those who voted them into office. She said she would be satisfied if the current language was replaced with reference to Section 34-1701, Idaho Code, and there being no further comment or objection to this recommendation, it was so ordered.

Cochairman Roberts said the next changes appear in Section 22-2727, Idaho Code, where the district allocation was increased to \$8,500. There being no comment or objection to leaving this language in the draft, it was ordered to remain in the draft.

Cochairman Roberts also noted that Section 22-2727, Idaho Code, was changed to include a \$50,000 cap on match funds to any one district in a fiscal year. **Representative Chavez** expressed concern with imposing a limit on districts. **Cochairman Roberts** explained that the reason for the cap is to provide a safeguard for the smaller districts. **Representative Chavez** agreed that smaller districts should have protection but that the cap limits those districts that gather funds from other sources to expand projects. **Cochairman Roberts** disagreed with this assessment because the cap is in reference only to the portion of the match that is general fund money from the state. Money from other sources is not subject to the cap. **Representative Chavez** said that as the economic conditions improve, the Legislature can revisit and perhaps increase the cap in the future. **Cochairman Stegner** asked for additional comments and objections and there being none the cap was ordered to remain in the draft.

Cochairman Roberts said that the last change to Section 22-2727, Idaho Code, was the addition of the language “in the previous fiscal year” as a measure for the match allocation. He said that it is easier to determine a budget when a solid number with a

history is used. There being no comment or objection to this language, it was ordered to remain in the draft.

Cochairman Roberts asked for clarification from **Ms. Schmidt** about the loan application process. **Ms. Schmidt** said that there are three sections in current law that refer to loan, grant and cost-share applications and allow applicants to apply either to the district or to the Commission. The draft legislation requires all such applications be filed with the Office of Soil and Water Conservation. **Cochairman Roberts** asked **Ms. Schmidt** if she suggests that in Section 22-2732, Idaho Code, the loan portion of the application containing financial information go directly to the state. **Ms. Schmidt** said that current law will suffice and that the Commission can work closely with districts. **Cochairman Stegner** clarified that the recommendation is to remove the changes made in the draft so that current law applies and, there being no objection, it was so ordered.

Cochairman Roberts said that changes were made in several Titles of Idaho Code, removing reference to the Commission. He asked **Harriet Hensley, Attorney General's Office**, to clarify and provide comment. **Ms. Hensley** pointed out that on page 30 in lines 16 through 17 of the draft, payments under contract must be made on vouchers approved by the director of the Department of Agriculture and that this language should be revised to reflect the Committee's intent. She also recommended deleting the Department of Agriculture and inserting the Office of Soil and Water Conservation on pages 33, 34, 37, 38 and 43 of the draft. **Senator Brackett** sought clarification on whether both the Department of Agriculture and the Office would be included on those pages. **Cochairman Roberts** responded yes, that the language would revert back to the original language so that the Office would be involved in those decisions. There being no objections, it was so ordered.

Cochairman Roberts said that the final issue to be resolved is whether the Commission should remain a separate entity within the Department of Agriculture, be moved to another department or be moved to the Office of the Governor. This is a question that would need to be explored further through discussions with the Governor's Office.

Senator Brackett noted that there was previous discussion regarding providing incentives for district consolidation. He reiterated that this must be entirely voluntary and if districts choose to pursue consolidation then they should be provided assistance, including an avenue for efficiency. He suggested the addition of language on page 14, line 37, requiring the Office to assist districts in the consolidation process. **Cochairman Stegner** agreed and suggested that at the next meeting, the Committee consider language offering consolidation-related incentives.

Cochairman Stegner said that he expected the Committee would meet again, at a date to be determined.

The meeting was adjourned at 1:08 p.m.