

MINUTES  
**HOUSE BUSINESS COMMITTEE**

**DATE:** Wednesday, February 15, 2012

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

**PLACE:** Room EW41

**MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon (Malek), Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/  
EXCUSED:** None

**GUESTS:** Leon Duce, Association of Idaho Cities; Marty Durand, Idaho Building Trades Council; Gilbert Pond, Pond's Plumbing; Dennis Butterfield, Meridian Plumbing; Kenny Calkins, Cloverdale Plumbing; Roger Hales, Board of Real Estate Appraisers; Brbara Jorden, Idaho Trail Lawyers Association; Jack Lyman, Idaho Housing Alliance; Jesse Taylor, William Gallagher, and Russ Westerberg, Crown Cork & Seal; John Nielsen and Steve Keys, Division of Building Safety; Lane Triplett, Local 296; Kate Haas, Kestrel West for Idaho; Benjamin Davenport, Risch Pisca

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

**MOTION:** **Rep. Bilbao** made a motion to approve the minutes of February 9. **Motion carried by voice vote.**

**H 376:** **Rep. Bayer** presented **H 376**, explaining this legislation deals with the asbestos-related liability of successor corporations. He said under current law subsidiary corporations avoid liabilities by "siloing" the assets of the businesses they acquire. In mergers, however, the liability of the acquired company passes to the parent company.

**Rep. Bayer** reviewed provisions of **H 376**, stating that it contains definitions for "asbestos claim," "corporation," "successor corporation" and "successor asbestos-related liabilities." He pointed out the January 1972 effective date for a successor corporation assuming or incurring asbestos-related liabilities, which is the point in time at which the dangers of asbestos became public knowledge. **Rep. Bayer** said that prior to that time asbestos was a commonly-used and widely-accepted material.

**Rep. Bayer** stated the legislation includes a section on applicability and specifies that it is applicable only to businesses that do not continue in the asbestos business. It places limitations on successor asbestos-related liabilities and sets a method for establishing fair market value of total gross assets of a successor corporation. **Rep. Bayer** also noted that liability insurance shall not affect any portion of this statute. Finally, the "scope of chapter" section of the bill specifies that it will apply to claims filed after the effective date as well as pending asbestos claims in which trial has not commenced as of the effective date.

According to **Rep. Bayer**, legislation similar to this bill has been passed in 15 states. In two states there have been legal questions regarding the retroactive clause, and **H 376** was crafted to include language that clearly addresses those concerns.

**Jesse Taylor**, representing Crown Cork & Seal, testified in support of **H 376**. Mr. Taylor stated the founder of this company in 1890 invented the crown-shaped bottle caps commonly used on beverage bottles. At present, one in five beverage cans is produced by Crown Corporation, which employs 4,000 people in the United States. Mr. Taylor gave the historical background of this legislation, stating that in 1963

Crown Corporation started acquiring stock from one of its competitors, Mundet Cork Company. Three years later Crown acquired the company and merged it into their corporation. Because of asbestos-related liabilities of the former company, which had once operated an asbestos insulation business, Crown has paid out more than \$700 million in asbestos claims, and their bond rating has been reduced to "junk" status. Mr. Taylor said this legislation is needed to address the injustices faced by successor corporations in dealing with asbestos-related liabilities. It will allow any company that merged with another prior to the 1972 regulations, and as a result incurred legal liability over asbestos production, to treat the acquired company as a separate subsidiary.

**Russell Westerberg**, representing Crown Cork & Seal, testified in support of **H 376**, saying this will protect successor corporations and their employees. Mr. Westerberg said passage of this bill will help the Department of Commerce in its efforts to attract businesses to Idaho, since it will put Idaho on record with the 15 other states who have decided not to hold someone responsible for damages they had no hand in causing. He offered to respond to any questions about similar legislation that has passed in other states.

Responding to committee questions, **Mr. Westerberg** said Crown does not have plants in Idaho, but 22 Crown retirees live here. He said Crown used to operate a can company in Pocatello, which was one of the assets dissolved to pay claims brought against them. Mr. Westerberg said he could not name other companies, besides Crown Cork & Seal, that would be affected by this bill. He said he does not think this legislation will change the incentive of a company to do the necessary due diligence studies when acquiring a business. He said when Crown acquired Mundet, asbestos was not known to be harmful; in fact, it was advocated in all parts of industry. It wasn't until well after the acquisition that its harmful effects were detailed in an environmental impact statement.

**Mr. Westerberg** stated Crown Corporation has paid \$750 million in claims; this legislation will limit liability for damages to the value of the subsidiary at the time of acquisition, indexed for inflation. He said there are no active claims against Crown Cork in Idaho. He stated this legislation was crafted to avoid the experience in some other states in which the retroactive portion had undergone legal challenges. Mr. Westerberg testified there is no intent to excuse someone who had direct participation in manufacturing a product, asbestos, that is known to be harmful. He noted that many manufacturers of asbestos are already bankrupt and said a \$38.5 million trust fund, paid for by these manufacturers, has been established to pay legitimate claims.

Asked whether this bill is an American Legislative Exchange Council (ALEC) bill, **Mr. Westerberg** said he has had no conversation with ALEC regarding this matter. In response to a question about the fact that the bill is specific to one business, he said if other companies do not fall under the definition of a successor asbestos company, as contained in the bill, they would not be protected unless the bill is amended.

**Mr. Westerberg** yielded the podium to **William Gallagher**, General Counsel and Vice President of Crown Corporation, to respond to further committee questions. Mr. Gallagher said the gross assets of Mundet at the time of acquisition were about \$12 million; adjusted for inflation, the current value would be between \$60 million and \$70 million. At the time this valuation was determined, Crown had already paid out \$600 million to settle claims; since that time they have paid an additional \$100 million. Mr. Gallagher said the biggest expense has been paying legal counsel for about 30 years, and said often cases are settled so the legal fees will end. Asked where Idahoans with possible claims would go to receive compensation, Mr. Gallagher said they could pursue the companies who produced

asbestos; within the federal court bankruptcy system there is a series of trust funds set up for these cases.

**Mr. Gallagher** confirmed that legislation similar to H 376 had been challenged in Pennsylvania and Texas on the grounds that it may not be constitutional to apply the statute to cases already in the courts when the legislation was passed. He said it is left to each individual state to decide about retroactivity when crafting their legislation. Mr. Gallagher said potential claimants in Idaho could file suit against both the individual companies and the various trust funds, although those would be two separate processes. He said one of the issues in some states has been multiple funds paying the same claims.

**Rep. Patrick** expressed his opinion that this legislation could be considered a jobs bill because it will shield companies from being held liable for a product they never manufactured.

**Barbara Jorden**, representing the Idaho Trial Lawyers Association, testified in opposition to **H 376**. Ms. Jordan said Idaho does not have a large number of trial lawyers pursuing asbestos claims, nor are there large numbers of workers negatively impacted by asbestos. She said the legislation is sponsored by Crown Cork & Seal and will end the asbestos liability of Crown in Idaho. She stated the Idaho Trial Lawyers Association considers this special interest legislation which will benefit only one company or group, successor corporations. She said in the 14 other states that have passed this legislation, no other corporations have been able to use it; in 13 other states the bill has failed to pass. Ms. Jordan said Crown should have known there would be future liabilities, although they would have had no idea how much those liabilities would be. She noted that as early as 1949 the Journal of the American Medical Association reported that asbestos caused cancer.

**Ms. Jorden** stated Crown Cork & Seal is part of a larger corporation with adequate assets; she said that in 2010 Crown Holdings indicated the company believes resolution of these matters is not expected to have an adverse effect on the company's position. She said the legislation is probably unconstitutional since the Legislature is not allowed to pass laws releasing the indebtedness or liability of any corporation in this state. She pointed out this company does not do business in Idaho and yet it is asking the Legislature to limit the money they have to pay to our citizens.

In response to committee questions, **Ms. Jorden** said she would not support this legislation even if it was more inclusive of all companies in Idaho. She said this bill would limit future claims coming from Idaho citizens who are victims of asbestos, such as those suffering from mesothelioma or asbestosis. Asked whether she had consulted with the Attorney General to determine the bill's constitutionality, Ms. Jorden said she had not.

**Ms. Jorden** was asked whether claims against Crown Corporation had included punitive as well as compensatory damages. She said the settled claims against Crown were all compensatory. She said it is difficult to know whether the amount of money in the existing trust funds will be adequate to settle all the claims, not knowing how many plaintiffs there will be. She agreed it is unfair that Crown may have to pay for something they weren't responsible for, but she said the law has proven it to be their obligation. Asked whether the amount of a company's resources should have any bearing on its liability, Ms. Jorden said she could not answer that.

**Mr. Gallagher** was asked to respond to further questions. He said the theory of the plaintiffs in the liability lawsuits filed against Crown had been the failure to notify of the asbestos danger, although OSHA hadn't found any danger. He further stated that there was no cause of action on asbestos before 1973, because no one knew of the danger.

**Rep. Bayer** yielded to **Mr. Gallagher** to conclude testimony on **H 376** and to respond to legal and other questions that arose during testimony. Mr. Gallagher said this legislation had failed to pass in three states and had been passed by 15 other states. In Washington it was tabled by the Speaker of the House; in Virginia it passed the House and was tabled by the Democratic leader of the Senate. In Delaware the legislation went nowhere. Mr. Gallagher clarified that Crown Corporation was created ten years ago because the former name (Crown Cork & Seal) had to be changed in order to get financing from banks who were unwilling to lend to Crown Cork & Seal. Mr. Gallagher briefly recounted the history of Crown Cork & Seal in Idaho, and testified that Crown Corporation has assumed responsibility for 20,000 retirees from various businesses they had acquired. He also told the committee that they produce billions of cans in Wyoming, under the name of Rocky Mountain Can Company.

**Rep. Bayer** made final comments, noting that if Crown had been operating under a business subsidiarity model, the assets of the acquired company could have been separated, which would have limited Crown's liability. The principle that needs to be established is that a successor company should not be connected to the liabilities of a former company they acquire. He said similar legislation had recently passed in Wyoming and was being considered in Utah.

**MOTION:**

**Rep. Patrick** made a motion to send **H 376** to the floor with a **DO PASS** recommendation. He stated this company had done nothing wrong, and noted they could have declared bankruptcy and absolved themselves of all liabilities, but have chosen instead to remain in business.

**Rep. DeMordaunt** stated he would not support the motion, saying this is special interest legislation. He said he appreciates Crown's plight but said that, since asbestos was a known health issue, it comes down to a matter of due diligence when Crown acquired the previous company. He also mentioned that this company wants to be exempt but they don't want insurance companies to be exempt.

**Rep. Barbieri** stated that he still has some concern about the constitutionality, but also realizes that the main concern should be Idaho citizens' actual damages, not punitive damages. He noted there is a fund to protect the citizens, assuming their claims are valid.

**Rep. Thompson** argued in favor of the motion, saying Crown Corporation has paid out three-quarters of a billion dollars in trying to do the right thing.

**ROLL CALL  
VOTE:**

A roll call vote was requested on the motion. Motion carried by a vote of **14 AYE, 2 NAY, 1 Absent/Excused. Voting in favor of the motion: Reps. Henderson, Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, Guthrie, Batt, Smith (30), and Chairman Black. Voting in opposition to the motion: Reps. DeMordaunt and Rusche. Rep. Bayer** will sponsor the bill on the floor.

**H 419:**

**Roger Hales**, an attorney representing the Bureau of Occupational Licenses, presented **H 419**. Mr. Hales said this legislation accomplishes two things. First, it allows the Board the authority to discipline a licensee if he or she violates an order of the Board. Second, it allows the Board to certify out-of-state appraisers who meet Idaho's requirements, even in the absence of a reciprocity agreement. Mr. Hales explained that previously Idaho could license an out-of-state applicant only if the applicant's state had a reciprocity agreement with Idaho.

**MOTION:**

**Rep. Thompson** made a motion to send **H 419** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Thompson** will sponsor the bill on the floor.

**H 466:** **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **H 466**, saying this legislation would adopt the Idaho State Plumbing Code as the minimum requirement for plumbing installations in Idaho. He said the core of the bill is the same as that approved last year, but it incorporates some revisions to gain the endorsement of the Association of Idaho Cities and the Idaho Association of Building Officials. Mr. Keys said the most significant change is that the amendments will continue to be reflected in administrative rule rather than in the Code.

**MOTION:** **Rep. Palmer** made a motion to send **H 466** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Palmer** will sponsor the bill on the floor.

**H 467:** **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **H 467**. This legislation from the HVAC Board clarifies the Legislature's intent relative to the regulation of installation of solid-fuel burning appliances such as wood stoves and factory-built fireplaces. Mr. Keys said pellet stoves also qualify as solid-fuel burning appliances. Mr. Keys gave details of the bill, saying it changes the term "solid-fuel burning fireplaces" to "solid-fuel burning appliances." He said the Division believes the installation of these appliances is a legitimate public safety concern and they should be included in the HVAC program.

**MOTION:** **Rep. Rusche** made a motion to send **H 467** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Rusche** will sponsor the bill on the floor.

**H 468:** **Steve Keys**, Deputy Administrator of the Division of Building Safety (DBS), presented **H 468**. He said Congress passed legislation in 2000 requiring that all installations of new manufactured homes be inspected. The Department of Housing and Urban Development (HUD) developed regulations and then gave state agencies the opportunity to decide if the state wanted to conduct its own inspection program or defer to HUD. DBS has accepted responsibility for assuring the mandatory inspections are conducted. Mr. Keys said DBS is working with local jurisdictions to leverage existing programs in meeting the federal requirement. He said the \$50 installation tag requirement will enable DBS to track the location of all new installations, according to HUD requirements, and will produce revenue to facilitate training of inspectors and support quality assurance activities. Mr. Keys said DBS will issue permits and conduct inspections of new manufactured home installations in those areas that are not covered under other inspection programs.

Responding to questions from the committee, **Mr. Keys** said some Idaho counties, particularly in more rural areas, do not have building departments or inspection programs. He said DBS intends to utilize existing plumbing and electrical inspectors by giving them additional training and certifying them as building inspectors. He said DBS believes it will not be necessary to hire additional staff. Mr. Keys said the anticipated inspection fee for a single section home would probably be \$300 and for a double section home, \$400.

Asked why inspections are not done at the manufacturing site, **Mr. Keys** explained that, although there are inspections in manufacturing plants, the HUD-required inspection deals with installation procedures, assuring that such things as foundations and supports are done according to manufacturers' specifications. Mr. Keys said it is their intention to allow local jurisdictions to continue inspections, but it is DBS's responsibility to assure that the inspections meet HUD requirements. He said DBS believes the local inspection fees may be lower.

**Mr. Keys** was asked which entity makes application for the required inspection, and who is responsible for resolving problems. He said that under federal law the manufacturer and the installer will be responsible for resolving problems if

they arise. He said the permit fee is typically paid by either the retailer or the installer, and noted that sometimes the retailer is also the installer. He said that, because of the new regulations, all inspections would heretofore be conducted either by HUD or by a state program. Asked whether HUD would charge a fee if they performed the inspections, Mr. Keys said they would engage independent contractors who would set their own fees.

**Jack Lyman**, representing the Idaho Housing Alliance, a trade association that represents manufacturers, retailers, and installers of housing, testified **in support of H 468**. Mr. Lyman said in order to enforce the requirement that installations need to meet HUD standards, his group has worked with the Division of Building Safety to take on the responsibility of providing the inspections. He said if HUD were to handle the program, independent contractors employed by HUD would charge much higher inspection fees, possibly as much as three or four times as high. Mr. Lyman said the inspection fees will ultimately be paid by homeowners since they will be passed through by retailers. He said there will be administrative rulemaking that will establish the fee and he looks forward to being involved in the negotiated rulemaking process. Mr. Lyman said he expects that all parties will be on board with the negotiated rulemaking. He reported that **Rep. Henderson** has expressed his willingness to sponsor this bill on the floor.

**Kate Haws**, representing the Idaho Association of Building Officials, testified **in support of H 468**. She said her organization has a few concerns about clarifying some of the language, but she is confident those concerns will be addressed and settled during the negotiated rulemaking process.

**MOTION:**

**Rep. Smith** made a motion to send **H 468** to the floor with a **DO PASS** recommendation.

Asked whether it is DBS's intention to engage in negotiated rulemaking, **Mr. Keys** said they anticipate getting together with all parties to put together the temporary and pending rules. He said, however, that they need to get fees in place to start doing inspections by the end of the year. It was pointed out that a \$300 inspection fee might be too high, given that the Division intends to cross train existing inspectors to carry out these inspections. This will be a consideration when the Division submits its administrative rules to next year's Legislature.

**VOTE ON MOTION:**

**Chairman Black** called for a vote on the motion to send **H 468** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Barbieri** requested that he be recorded as voting **NAY**. **Rep. Henderson** will sponsor the bill on the floor.

**Chairman Black** recognized the committee's Page, **Benjamin Ovard**, and thanked him for his service during the first half of the session.

There being no further business to come before the committee, the meeting was adjourned at 3:10 p.m.

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Representative Max C. Black  
Chairman

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MaryLou Molitor  
Secretary