

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, March 06, 2012

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Smyser, Senators Corder, Pearce, Hammond, Vick, Nuxoll, and Schmidt

ABSENT/ EXCUSED: Senator Bock

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER **Chairman Siddoway** called the meeting to order at 8:01 a.m.

MINUTES The Committee considered the minutes from the Agricultural Affairs Committee meeting of February 21, 2010. **Senator Pearce** moved, seconded by **Senator Schmidt**, to approve the minutes as written. Motion carried by **voice vote**.

The Committee considered the minutes from the Agricultural Affairs Committee meeting of February 23, 2010. **Senator Vick** moved, seconded by **Senator Hammond**, to approve the minutes as written. Motion carried by **voice vote**.

The Committee considered the minutes from the Agricultural Affairs Committee meeting of February 28, 2010. **Senator Corder** moved, seconded by **Senator Nuxoll**, to approve the minutes as written. Motion carried by **voice vote**.

HCR37 **Chairman Siddoway** invited **Karen Ewing**, Executive Director, Idaho Board of Veterinary Medicine (IBVM), to the podium to present HCR37. **Ms. Ewing** said this concurrent resolution relates to part of the rules that were considered by this Committee earlier this session. The original idea was to remove refunds of the original certification fee for Certified Veterinary Technician (CVT) applicants who withdraw their application, with the intent being it would allow IBVM to recover its expenses in processing the application up to that point. However, there was an unintended consequence in the language of the rule change that became an issue in the House, so the House voted to reject this part of the rule.

Ms. Ewing said the IBVM agrees that the wording needs to be fixed because it created a fairness issue, saying they didn't realize the rule didn't strike the section that would allow giving refunds if an application is denied. She said what IBVM would like to do is make the rule that all application fees are non refundable. So today, HCR37 would reject that section of the rule and they will come back next year with a new rule to fix the wording.

MOTION **Senator Corder** moved, seconded by **Senator Nuxoll**, to send HCR37 to the floor with a do pass recommendation. Motion carried by **voice vote**. In discussion after the vote, **Ms. Ewing** asked for input from the Committee on whether the Committee would be willing to hear this issue again next year or if they would prefer IBVM to just drop this issue. **Chairman Siddoway** replied that he would prefer to see the rule with the correct wording to reflect the needs of IBVM.

H512 **Chairman Siddoway** invited **Stan Boyd**, Idaho Sheep Commission and Idaho Wool Growers Association, to the podium to present H512, relating to changes to the Idaho Sheep Commission.

Mr. Boyd said this bill does three things. First, it changes the name of the Idaho Sheep Commission to the "Idaho Sheep and Goat Health Board." He stated the Idaho Sheep Commission was created in 1929 as a regulatory animal health program for the sheep and goat industries, one that receives general fund monies.

However, since 1929, many other commissions have been created, with their primary function being for promotion and advertising. **Mr. Boyd** said he has been asked for several years to change the name, but it has taken a while for the sheep industry to get used to the idea. At their last convention, the stakeholders agreed it was okay to change the name, so this legislation will change every reference of Idaho Sheep Commission to Idaho Sheep and Goat Health Board.

Secondly, this bill will give the new Board authority to collect an assessment of up to twelve cents per head. Currently, he said, the Commission is allowed to accept six cents, three cents of which goes to the animal damage control program. The bill asks for a ceiling of twelve cents, but plans to leave the assessment at six cents for now. **Mr. Boyd** noted the wolves are doing more harm to the industry right now than any health problem.

Mr. Boyd outlined the third aspect of the bill that eliminates many of the audit requirements. He said in Idaho Code, the Sheep Commission collects the money for the promotion program. When it was written, a lot of audit requirements were automatically put in that pertain to Commission personnel. Commission personnel are part of the Department of Agriculture as non-classified exempt employees. There is no checkbook handled by the employees. The Department of Agriculture collects and pays the bills, so the feeling is there is no need for an independent auditor to come in and audit the state of Idaho.

Mr. Boyd then pointed out the bill was given two amendments in the House. The first is to include an allowance for an assessment on goats, since those animals would come under the authority of the Idaho Sheep and Goat Health Board. For years, goats have been under the Sheep Commission without an assessment, so sheep basically took care of the goats.

He said if there is a goat assessment, it would be on a per head basis, at a rate comparable to the rate assessed for wool. For example, in a mature ewe worth \$200, they are assessing six cents per pound of wool. The average weight is ten pounds in Idaho, so they are assessing sixty cents per head. In this example, that would probably mean an assessment for goats would be thirty cents per head. He said they have yet to determine how that would be collected. One idea that has been suggested is to collect it at auction, but he said he thought auctioneers might not be fond of that idea, so that will be up to the new Board to figure out.

Mr. Boyd said the second amendment in the House came at the request of the Lieutenant Governor to add wording to state the Commissioners, soon to be members of the Health Board, would serve at the pleasure of the Governor, such that he approves them and also has authority to remove them.

Senator Schmidt asked about the line in the bill that states members shall be experienced wool growers and if that is the case, can a goat herder be on the Board. **Mr. Boyd** replied he thought they could be on the Board, but the language does not reflect that, so if they were to initiate an assessment on goats, they would add wording to reflect that a goat herder would be allowed on the Board.

Senator Schmidt pointed to the language of how the Board is populated, and if the current Commission members will stay there and be appointed per this statute or if the Board will need to be repopulated. **Mr. Boyd** said everything is staying the same with the members, just the name is changing.

Senator Pearce asked how much general fund money goes into the Sheep Commission and how many sheep and goats are in the State. **Mr. Boyd** answered around \$54,000 and there is a current sheep population of about 180,000 head of breeding stock, and he does not know an exact count of goats.

Senator Pearce asked if combining sheep and goat into one board is like mixing oil and water, or if the two are compatible. **Mr. Boyd** answered he thinks they are compatible. He said back in 1929, they didn't know what to do with the goats, so they put them with the Sheep Commission. They do authorize goat permits, and pack goats are popular for Hells Canyon. They do have a health certificate requirement and dairy goats are required to have a negative brucellosis test.

Senator Pearce asked if general funds are being put in to the Board, what is the split of the cost between goats and sheep. **Mr. Boyd** said off the top of his head, he would say ten percent to goats and ninety percent to sheep. He added there are dairy goat operations in Idaho, but they are handled by **Marv Patten** and the Department of Agriculture.

Senator Nuxoll asked how goats can be given an assessment if there is no one on the Board who is a goat grower. **Mr. Boyd** said that's a good question, but that while this would provide the authority to make an assessment, there is currently no plan to do so. He said they would need to figure that out. **Mr. Boyd** said he agrees with **Senator Schmidt** that when the time comes, if the time comes, and there is an assessment needed, the Board would come here and ask for it to be permitted.

Senator Nuxoll asked if there was any resistance to the assessment. **Mr. Boyd** replied the assessment has been there since 1929, collected by the wool buyers who work the state of Idaho. They collect it when they buy the wool and submit it on a quarterly basis. The industry decides how much and what it is used for, noting the sheep industry has always been proud of conducting its own program.

Senator Nuxoll asked if there was a survey done about the assessment and she'd also like to hear **Chairman Siddoway's** opinion on this legislation. **Mr. Boyd** said the issues were discussed long and hard at their most recent convention, and the Wool Growers Association passed a resolution calling for the name change and also requesting the assessment ceiling be raised, since it has been maxed out at six cents for about eight or ten years.

Senator Nuxoll asked about the percentage of the vote. **Mr. Boyd** said about 100 of the 600 wool growers in the state of Idaho were at the convention, noting that about 50 wool growers own about 60 to 70 percent of all the sheep in the state. The other 500 owners have maybe 20 head here, 20 head there. **Mr. Boyd** said if a person's livelihood is on one item, in this case sheep, they show up at the meeting and so they were in attendance at the convention.

Senator Nuxoll asked **Chairman Siddoway** if he was at the conference and how he feels about the legislation. **Chairman Siddoway** said he was able to make the end of the conference, and he is in full support of this.

Senator Vick asked when was the last referendum done and what questions were asked at that time. **Mr. Boyd** said it was held in 2000, and he cited the legislation that outlines the question being submitted by secret ballot asking, "Do you favor a promotion, research and education program for the sheep industry that is funded by all producers with no refund provision?" There are directions to place on the ballot a yes or no with an x-mark. That referendum passed, and he said he thinks it was with around 80 percent voting yes.

Senator Pearce asked what kind of Commission and assessments they have on goats in states like Texas and New Mexico. **Mr. Boyd** said in the primary goat raised in Texas is angora, and their hair is very valuable and sold and assessed by the pound. In Idaho, most goats are for meat, not for angora, because angora goats need a very dry climate.

MOTION

Senator Hammond moved, seconded by **Vice Chairman Smyser**, to send H512 to the floor with a do pass recommendation. Motion carried by **voice vote**.

H513

Chairman Siddoway invited **Benjamin Kelly**, representing the Idaho Honey Industry Association, to the podium to present H513, relating to the Idaho Honey Advertising Commission, which represents commercial beekeepers in Idaho. He said Idaho ranked eleventh in production in the United States and as of December 1st, there are 94 registered beekeepers in Idaho with 87,109 colonies.

Mr. Kelly shared with the Committee an example of a product that people believe is honey, but it is actually only seven percent honey. He said the packet used for demonstration is correctly and legally labeled, but is indicative of what is being considered.

He said the purpose of H513 is for the promulgation of rules to prohibit the adulteration of honey produced by Idaho beekeepers. The bill provides for rulemaking, sampling and analysis, and includes parameters for penalties for violations and "stopsale, use, or removal" orders. There is no fiscal impact to the General Fund. All expenses will derive from the Idaho Honey Advertising fund.

Mr. Kelly said the reason this came about is that large shipments of adulterated or contaminated Chinese honey are frequently transported in from other countries, in order to avoid U.S. import fees, protective tariffs or taxes imposed on foreign products that intentionally undercut domestic prices. He shared that in a series of shipments two years ago, tons of honey produced in China passed through the ports of Tacoma and Long Beach after being fraudulently marked as a tariff-free product of Russia. Thousands of pounds of honey entering the U.S. each year come from countries that raise few bees or have no record of honey for export.

Mr. Kelly shared the story of how just last October in Jacksonville, three people were accused of misclassifying Chinese honey as a rice fructose in order to avoid more than one million dollars in duties. He said those individuals represented a number of honey importation companies. The investigation found that once the containers of honey passed through customs, they were forwarded to a warehouse, washed of all markings and relabeled as amber honey, which was then sold to domestic purchasers, bypassing a \$2.63 per kilo anti-dumping duty.

He stated U.S. Customs and Border Protection are in the process of seizing or detaining 123 containers of falsely manifested rice fructose located at eleven ports of entry in the U.S. The loss of duty owed to the U.S. government on those containers alone is about \$1.15 million. To combat misclassified honey, Florida in 2007 began the process of placing measures into state code to help fight against illegal honey sales. Since then, 29 states have passed laws or are in the process of creating rules to address the issue.

Mr. Kelly then went through the legislation section by section to outline the changes. Supporting documents related to his testimony have been archived and are accessible in the office of the Committee Secretary. (See Attachment #1.)

Senator Corder commented that a simple little thing about honey is more complex than people thought. He asked what part of statute did Section 6 come from. **Mr. Kelly** replied that came from Idaho Commercial Feed Law Title 25.

Senator Corder asked if there are any other substantive changes in Sections 5, 6, 7 or 8 from where they already exist. **Mr. Kelly** said no, they followed the guidance of **Representative Darryl Bolz**, and ISDA's **Lloyd Knight** and **Mike Cooper**, and through the process tried to make as few changes to current code as possible, just referencing honey instead of feed.

Senator Corder asked about the wording on page 7 where it says, "The commission shall make available to any pest applicator registered with the department, abatement or pest control district..." a list of beekeepers registered with the commission. He asked if that is being done now, and if all of the people listed in the section are furnished with a list of beekeepers. **Mr. Kelly** said he'd have to defer to **Lloyd Knight** on that. **Senator Corder** expressed that if the wording "shall" is included and holds others responsible, that it should be made certain the bee industry is complying with their end on that.

Senator Corder referenced the sample packet of honey sauce and asked if it would be considered an adulterated item that this legislation could stop from being sold, even though it says honey sauce and not honey. **Mr. Kelly** said through the rulemaking process, he didn't think that would be addressed. He said it is properly labeled, and as far as they know, it is high fructose corn syrup. He said if something is not labeled correctly, and they're manufactured or bottled in the state, that is what they would point to in the rules.

Senator Corder said he wants to understand this legislation wouldn't in any way have the Department promulgate rules on how rice or corn is used, and that all the rules will suggest is parameters of how honey is used, so if a packet came with all those other things, and no honey, no action could be taken unless they represented that there was honey and there was no honey.

Mr. Kelly said before the Department would address something that could be "funny honey" with a stop sale or at least testing, they would have received a letter in writing about it. As long as the additive is properly marked and labeled, as this sample packet is, and as far as they know everything is legitimate, then the Department will not address those. They would use a stop sale order only if it is mislabeled or fake.

Senator Corder said all the rules that will be promulgated will be to protect the integrity of Idaho honey and they don't care about rice. **Mr. Kelly** said that is correct, and an issue would more likely be if somebody who has adulterated their honey tries to pass it off as a local or pure honey.

Senator Schmidt asked about who will be doing the sampling and analysis of honey. **Mr. Kelly** said he wasn't sure who would be doing the analysis and that would be up to the Department of Agriculture, but it would only occur after a complaint is levied.

Senator Nuxoll said she uses honey for canning and buys it directly from a bee producer, but she is aware of going to stores and not knowing for sure if it is really honey, so she said she thinks there is definitely a need for some rules on the honey issue.

Senator Vick said it appears there is no raise in assessment in this bill, and asked who will pay for inspections. **Mr. Kelly** said the money will come from the Honey Advertising Fund, which currently has about \$23,000. He said the amount available varies depending on how many assessments are collected.

Senator Vick asked for more information on filing complaints, inspections, and licenses and what is expected in the bee industry when a complaint is filed. **Mr. Kelly** described that if a beekeeper has a certain amount of colonies, they must register, and there are 94 beekeepers registered right now. He said of those, 15 or 20 are not considered "commercial." As far as licensing, he said he'd have to defer to **Lloyd Knight** at ISDA.

Senator Vick went on to explain his concern that if someone files a complaint against a honey processor, they can face a misdemeanor with jail and a \$3,000 fine if they refuse access to their property. **Senator Vick** asked what constitutes the standard of complaint to warrant this penalty. **Mr. Kelly** said the section was taken from the Idaho Plant Pest Act and this only sets parameters that will be specified in detail during rulemaking, to set up a matrix of what compliance would be. He said they'll set up stages, for example, with a first offense as a warning, second offense is this violation, third and so on.

Senator Vick said he wants to know what would be the standard for a complaint so that someone doesn't file a complaint just because they're irritated with their neighbor, saying he doesn't want a beekeeper to be harassed and have to go to jail because he didn't let someone on their property because he doesn't think he's being treated fairly. **Mr. Kelly** said those standards have not been addressed yet, but it would be at least written complaint based, and this would be looked at in rulemaking.

Senator Corder said Section 7, subparagraph 3, refers to the Commission being able to report minor violations, and that might be a substantive change from the original statute. While **Mr. Kelly** reviewed information on that question, **Chairman Siddoway** invited **Lloyd Knight**, Administrator of Division of Plant Industries, Idaho State Department of Agriculture, to the podium to answer further questions.

Mr. Knight said the legislation as drafted would have the Commission doing the rulemaking. That is a little bit different than the way some of the Department programs work, where the Department owns the rulemaking and the fees. It is a hybrid relationship because of the marketing aspect of this where the Commission owns the rules, the funds, and the fees that are assessed. What the Department brings is the inspectors and the enforcement because the Commission doesn't have full time staff qualified to do that.

The Commission would set those standards, as has been done with similar efforts around the country, for honey, not for the bees, but rather how the honey is packaged and what it says on the ingredient statement, so that consumers know they're buying honey when they think they're buying honey. The Commission would put in rules what they want the standards for honey to be, as well as any fees or assessments they think they need to fund the effort.

Moving forward, the Commission and the Department would work together on enforcement, which would be complaint based. For example, someone goes to the market and buys a significant amount of honey to work on canning, and they think something doesn't look right. They would contact the Commission or the Department and say they think they have a product that does not look right, and the Department would respond.

Mr. Knight said most of the complaints would happen in a retail setting with closed packages like the sample displayed for the Committee. When sampling is done in programs like feed, fertilizer and seed, the Department actually purchases containers of the product with dedicated funds, so they could do that with honey.

The rule would define what the standards are, and it would be something they could deal with in a sampling and analysis way, and send the product to labs for testing to verify if it had something other than honey in it, and then follow that up with enforcement.

He said this will deal with honey more on a retail end, not on the production end, and the retailers are comfortable with the Department being there for other programs. This would not be a new group of inspectors. It would be the existing inspectors who already handle other programs. Honey would be a complaint based program, so the inspectors would not actively be looking for problems.

Mr. Knight said the Honey Advertising Fund, which the Commission owns, has about \$23,000 in it. It is understood that if they get into a lot of activity with the program and that fund runs out, the Department will not be able to do the activity.

Senator Pearce asked if there are any major manufacturers who use honey in their production here in Idaho that is being checked for adulterated product coming in from other places. **Mr. Knight** described how a stopsale works. It starts in a retail setting at the point of distribution, and statute allows for a statewide stopsale, too. At that point, they go to the manufacturer if possible.

If it's out of state, they send a certified letter. Because they're not regulating the production of honey, only regulating the label, the Department's duty would stop at getting it off the shelves if it is labeled incorrectly. If production is in the State, and there's something happening in the state, it makes it easier to deliver the stopsale, but as he reads the legislation and proceeds with the rules, the Department's work will be focused primarily on the point of sale, not production. They are looking at the labels and what is on the shelf more than what they are doing at production.

Senator Pearce said if there really is a problem of adulterated honey coming in, someone is purchasing it. And he asked if someone in this state is using big barrels of honey for candy bars or honey oats or something, are there manufacturers that utilize large volumes of honey who would use the adulterated honey because it's cheaper.

Mr. Knight said he doesn't know if there are manufacturers in Idaho using large quantities. For the Department's purpose, and how the bill is written, and how he'd see the rules come out, the Department's involvement would be on how they labeled it, and if someone thought there was an issue. He said they don't check for that now. If this passes and goes forward, they will have to talk about how to think ahead on how to approach manufactured products.

Senator Corder referred back to Section 7 and the cumulative effect with certain violations adding up to a maximum of \$13,000 and asked if **Mr. Knight** has experienced that. **Mr. Knight** said in his time at the Department, he doesn't think he has ever had an access issue, nor has the Department had to deal with that. In most cases, the enforcement issue is usually dealing with a product itself. If it's an access issue, with a large retailer for instance, they usually go to the manager, and if they don't get anywhere with them, they go to the corporate office to try and gain access without having to go to this statute. In other plant pest act enforcement issues, they have had to deal with administrative warrants, search warrants in essence, but have not had to deal with penalties.

Chairman Siddoway said, for clarification, in section five on page three of the bill, there is an indication of how the money was collected, with five cents per hive, ten dollars for registration, and how the Commission will do the advertising and promotion.

Chairman Siddoway invited **Tom Hamilton**, honey producer from Nampa, to the podium. He asked him if he could shed some light on how people who use large quantities of honey might be tempted to use adulterated honey from outside sources. **Mr. Hamilton** said he and two sons are in the honey business, and they also produce honey in Montana. He said he has been on this issue for many years trying to get something done. He said he is not envisioning people coming out to his facility and sampling from it. He said he sells a million to a million and a half pounds of honey each year, and every pound is sampled for purity. He said they deliver honey to a legitimate packer of honey, and his reputation is based on what he can sell at market.

Mr. Hamilton said where he's in conflict is the competitors of his legitimate packer that will undercut him in price because they can get cheaper honey that is adulterated. There are large bakeries in Idaho that use honey as an ingredient, and on the national level, there are big food processors who put an ounce of honey in a box of corn flakes. If they use adulterated honey, that is what **Mr. Hamilton** said he's trying to stop. He said when they compete on the shelf, like with honey at the dollar store that says it's honey but the shopper pays half the price, the shopper should figure that out. **Mr. Hamilton** said they need to stop people from calling something "real honey" that is not "real honey" to keep it on a competitive level.

Senator Schmidt asked if honey labeled as honey is labeled by the Food and Drug Administration. **Mr. Hamilton** said he does not have a problem with that because it is properly labeled, and they can't do anything about that. He said he'd like to tell them to sell real honey, but they are doing it legally. Retail stores are demanding U.S. produced honey only, and they are getting a premium for it. **Mr. Hamilton** said he has a reputation with his standards, so he's asking the legislature to help beekeepers implement their standards.

MOTION

Senator Pearce moved, seconded by **Senator Nuxoll**, to send H513 to the floor with a do pass recommendation. Motion carried by **voice vote**. **Senator Corder** will carry the bill on the floor.

PRESENTATION

Chairman Siddoway invited **Linda Lemmon**, representing the Idaho Aquaculture Commission and Secretary-Treasurer of the Idaho Aquaculture Association, to the podium for her presentation of their annual report and budget statement. **Ms. Lemmon** shared a few statistics including: 46 percent of all fishery products consumed worldwide are farm raised, not wild caught; 89 percent of the world's farmed fish are produced in Asia; and, only one percent of the world's fishery products are produced here in the United States. She said that indicates there is a serious trade deficit in aquaculture, with 88 percent of fishery products in the U.S. being imported.

Ms. Lemmon said at the same time, Aquaculture is the fastest growing animal agricultural industry in the world, noting that the 2010 dietary recommendations suggest increasing the amount and variety of fish in people's diets. Idaho contributes to that variety, raising rainbow trout, sturgeon, tilapia, catfish and cavear. Idaho was the number one trout producing state in the nation, contributing 72 percent of all trout consumed in the U.S. The price of trout increased last year, but that did not keep pace with increase in the cost of feed. Fish farmers are still having a difficult time.

Ms. Lemmon said the Commission was founded in 2005 to promote the marketing aspect of aquaculture in Idaho. The Association handles most of the research end.

Ms. Lemmon described the new website to promote Idaho aquaculture that should be finalized and up and running in the spring of 2012.

Ms. Lemmon shared how the Commission is funded by a checkoff, but it is voluntary. She said the Commission struggles that it is not mandatory. Since producers are selling most of their product to processors, the processors handle most of the marketing for their specific needs, so producers don't see the need to be part of the Commission. If they are both a producer and a processor, they also don't participate because they don't want to be involved in generic advertising. She said that puts a lot of pressure on the people who are part of the Commission.

Ms. Lemmon shared the income and expense and budget sheets, noting that they are spending more than they're bringing in, and she said they see that continuing as they try to garner more local producers to become members of the Commission. She said she hopes that will improve as the economy picks up enough to take the burden off the few members who are carrying the Commission.

Ms. Lemmon said they also are doing activities such as fairs, tasting events and recipe development. In 2012, they are involved in a feasibility study on a new culinary center with funding that came through from a USDA grant. It looks at the opportunity to bring tourists to agriculture operations along the Highway 30 byway that would allow visitors to have cooking demonstrations and retreats and experience education. She mentioned the Ag Summit and how the grilled lemon sturgeon was so well received.

Chairman Siddoway asked in the water mitigation plans, there are a couple aquaculture businesses that have mitigated water and so made deals with the state, and how does she see that affecting the industry, if there will be fewer fish available for sale for example.

Ms. Lemmon said she was really not sure how that would play out as she hasn't personally been involved. She said it is her understanding that the facilities will not be retired, and should still be operated, just by different people. If a water source is not protected or enhanced, and it declines or is stopped, aquaculture will not increase as an industry. As water goes down, the industry will go down. The number of fish that were reported for sale went down, while the size of the fish went up, so the value of the aquaculture increased because the price paid was greater. They are all hopeful that the facilities will continue to run at maximum.

Ms. Lemmon said they have a concern about trucking, and if fish are taken out of production, that means fewer trucks coming to the Valley. She said they hope all they see is a shift in operations and not taken out of production.

Chairman Siddoway called the meeting adjourned at 9:27 a.m.

Senator Siddoway
Chairman

Christy Stansell
Secretary