

## MINUTES

# HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

**DATE:** Monday, January 28, 2013  
**TIME:** 1:30 P.M.  
**PLACE:** Room EW41  
**MEMBERS:** Chairman Raybould, Vice Chairman Eskridge, Representatives Anderson(1), Hartgen, Vander Woude, DeMordaunt, Nielsen, Thompson, Anderson(31), Anderst, Mendive, Monks, Morse, Trujillo, Smith, Rusche, Woodings

**ABSENT/  
EXCUSED:** Rep. Anderson(1)

**GUESTS:** Orville Green and Dean Ehlert, Idaho Department of Environmental Quality (IDEQ); Pat Barclay, Norm Semanko, Roy Eiguren and Joan Cloonan, Idaho Council on Industry and the Environment (ICIE); Raeleen Welton, Westerberg & Associates; Jack Lyman, Idaho Mining Association; Suzanne Budge, SBS Associates, LLC; Matt Keenan, Idaho Reporter; Russell Westerberg, Rocky Mountain Power; Todd Dvorak, Associated Press

**Chairman Raybould** called the meeting to order at 1:30 p.m.

**Chairman Raybould** turned the gavel over to **Vice Chairman Eskridge**.

**HCR 2:** **Rep. Raybould** presented **HCR 2** which would commemorate the 100th Anniversary of the creation of Madison County. He said Madison County was established on February 18, 1913 and named after U.S. President James Madison. He related moments of historical prominence for the county in addition to many memorable cultural events. In particular, he recounted helping to restore the authentic wooden Idaho Centennial Carousel. **Rep. Raybould** noted that his great uncle, R.S. Hunt, was the Idaho State Representative who drafted the bill to create Madison County. He also spoke of present day attractions in Madison County.

**MOTION:** **Rep. Thompson** made a motion to send **HCR 2** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Raybould** will sponsor the bill on the floor.

**Vice Chairman Eskridge** turned the gavel over to **Chairman Raybould**.

**H 37:** **Orville Green**, IDEQ, presented **H 37** to the committee. He explained the bill contained provisions for management of the Wood and Mill Yard Debris Committee. He said that since there has been no recent request to convene the committee, the legislation would change the twice-a-year, required committee meeting to an "as needed" committee meeting.

In response to questions from the committee, **Mr. Green**, stated that the legislation would prove a savings to the IDEQ and that his department does not work with the Endangered Species Act, and that the director of IDEQ serves as the director of the Wood and Mill Yard Debris Committee.

**MOTION:** **Rep. Morse** made a motion to send **H 37** to the floor with a **DO PASS** recommendation.

Responding to questions from the committee. **Mr. Green** said IDEQ has considered disbanding the entire section of the law but felt legislation remained necessary in case of a change in the industry. He stated the Wood Mill and Debris Industry had become very proficient in using timber waste. He related that products such as bark dust and food for hogs have been created out of materials previously considered waste and debris.

**Rep. Neilsen** requested it be recorded in the minutes that credit for the change in legislation be given to the wood by-products industry for their entrepreneurial spirit and for a safe and clean industry.

**VOTE ON THE MOTION:**

**Motion carried by voice vote. Rep. Neilsen** will sponsor the bill on the floor.

**Norm Semanko**, Idaho Water Users Association and Chairman of ICIE Environmental/Regulatory Affairs Committee, explained the Idaho Council on Industry and the Environment is a nonprofit, non-partisan group established in 1989. The mission of the ICIE is to facilitate the use of science and facts in shaping public policy on environmental issues. He said the panel presenters would bring clarification to the differences between rules, stringency and guidance,

**Roy Eiguren**, Arkoosh Eiguren, ICIE Committee Member, explained that the Idaho Administrative Procedures Act (APA) authorized state agencies to develop or promulgate rules that have the force and effect of law. They are recommended by agency directors to agency boards. APA allows persons to petition boards or agency heads to promulgate rules and that other rules are the result of negotiated rulemaking. Mr. Eiguren said the process provides for substantial public input through written comments, meetings and hearings. He related to the committee the definition of a rule and an explanation of what a rule is not. He noted that the Idaho Supreme Court in Asarco v. Idaho DEQ provided an expanded definition of a rule.

**Mr. Eiguren** said the APA provides the State Legislature with the authority to amend, modify or reject rules. He noted that Idaho is unique in that it is one of only three states in the nation which has such authority. That authority being the ability for decision making over agencies that are part of the executive branch of the state government.

In response to a question from the committee, **Mr. Eiguren**, said a statute has full force but a rule is more interpretive. He added there was no "bright line reason" and the differences can be difficult to delineate.

**Rep. Neilsen** noted that a rule can set the range of what a fee can be but the legislature makes the law setting the exact amount of the fee. **Mr Eiguren** concurred.

**Mr. Eiguren** said the legislature's authority to reject rules was tested in the Idaho Supreme Court decision of Mead v. Arnell where it was declared that rule rejection did not violate the Idaho Constitutional Doctrine of Separation of Powers, provided that legislative rejections of rules are based upon a rule being "contrary to legislative intent."

**Jack Lyman**, Idaho Mining Association and ICIE Committee Member, defined stringent as "imposing rigorous standards of performance; severe." He enumerated the laws that governed environmental rules such as the 1983 Idaho Hazardous Waste Management Act and the 1993 Idaho Clean Air Act. He pointed to the language in the Hazardous Waste Management Act stating: "The board may not promulgate any rule that would impose conditions or requirements more stringent or broader in scope than the Resource Conservation and Recovery Act (RCRA) and the RCRA regulations of the Environmental Protection Agency." Referring to the underlined words, Mr. Lyman said the language was to insure that state agencies were to act within the range of requirements established in federal law.

Responding to questions from the committee, **Mr. Lyman** said the state agencies were regulating what is unregulated by the federal government. He said that instances of regulations passed by the Idaho Legislature that are more stringent are usually preemptive measures. He noted that since Idaho is trying to maintain primacy over the federal rule, then Idaho has to stay as stringent or more stringent in order to gain administration rights.

**Joan Cloonan**, RBC Polycomposites LLC, and past ICIE president, explained that guidance could be a written documentation of how agency interprets rule, it could be agency policy or checklists. It could also be technical background information or a handbook or manual. She said that guidance does not have the force and affect of law. It can offer transparency but is not a law. Using the IDEQ's guidance policy as an example, Ms. Cloonan explained that anyone questioning "guidance" or "rule" can consult with the Idaho Attorney General's Office or an agency's director. In the IDEQ's guidance policy it also states that mandatory language should be avoided and that public input should help direct the policy.

To questions from the committee, **Ms. Cloonan** said there is much more room to negotiate within guidance. She also said that a citizen can differentiate between guidance and a rule, when issued a citation, because specific information regarding the violation is printed on the citation.

**Chairman Raybould** noted that if a rule is broken, the person or business can contest the citing. If there are objections to the method of guidance or the citation, it is up to the courts to decide.

**ADJOURN:** There being no further business to come before the committee, the meeting adjourned at 2:35 p.m.

---

Representative Raybould  
Chair

---

Jean Vance  
Secretary