

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, February 22, 2013

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Senators Davis, Fulcher, Hill, Winder, Lodge, Siddoway, Stennett and Werk

ABSENT/ EXCUSED:

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.

CONVENED: **Chairman McKenzie** called the Senate State Affairs Committee (Committee) meeting to order at 8:00 a.m. with a quorum present.

RS 22062 Concurrent Resolution to Commend Idaho Companies Who Disclose Harmful Substances. **Senator Johnson** said this bill asks for the state to recognize the harmful chemicals that are found in household products. Environmental studies have shown that toxic substances are playing a role in the prevalence of certain diseases; increases in cancer, birth defects, and difficulty in conceiving and maintaining a pregnancy. There are links to the exposure to these toxic substances to the most vulnerable which is the fetus. We have reviewed the State of Washington "List of Chemicals of High Concern to Children" and have obtained good research on these chemicals. By this resolution, the Idaho State Legislature encourages companies to avoid potentially harmful substances and substitute safe alternatives in household products whenever feasible.

Chairman McKenzie recognized Senator Buckner-Webb as a co-sponsor.

MOTION: **Senator Winder** moved to send **RS 22062** to print and refer it to the germane committee. Seconded by **Senator Fulcher**. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** introduced Andrea Wassner who has been reappointed to the Idaho Commission on Human Rights (Commission) and asked her to discuss her role on the Commission, activities, and what future activities may come before the Commission.

Ms. Wassner stated that the Commission reviews cases that not resolved through mediation or conciliation. Cases are reviewed on a quarterly basis along with monthly calls to review cases and make decisions.

Senator Winder asked what kind of issues come before the Commission. **Ms. Wassner** stated that generally, there are discrimination cases, but also sexual, age, gender, race; everything covered in Idaho statute.

Senator Lodge noted that Ms. Wassner had not updated her resume since 1985, yet you have served on this Commission since 2005. Would you tell a little about yourself? **Ms. Wassner** stated she has had the same job for 27 years.

Senator Davis asked if, during the years that she has served on the Commission, were there issues that were problematic under the statute. **Ms. Wassner** answered she does support the "add the words" legislation. **Senator Davis** asked if there were others and **Ms. Wassner's** response was "no."

Senator Davis asked if, as a Commissioner, do you follow statute as it is written or do you apply principles you believe Idaho law should include such as "add the words." **Ms. Wassner** answered that she follows the statute.

Senator Siddoway inquired about the number of cases that comes before the Commission in a year, how long does it take to resolve those cases and how many times does the Commission meet. **Ms. Wassner** replied that the Commission has face to face meetings quarterly; monthly they have a panel telephone call to decide cases; and each time they meet they have 20 to 30 cases. **Senator Siddoway** asked if there were penalties and fines for cases that have been resolved. **Ms. Wassner** answered that when the Commission assumes a case there are recommendations made as to whether to find cause or no cause in the case and then they look see whether they agree or disagree. The Commission tends to agree with the staff because they do a good job. When the cases come to any type of litigation, the Commission has no part in that action.

GUBERNATORIAL APPOINTMENT:

Chairman McKenzie introduced Joe B. McNeal who has been reappointed to the Idaho Commission on Human Rights and asked him to discuss what has occurred since his last appointment, the workings of the Commission and how he sees it operating in the future.

Mr. McNeal stated that this will be his second term. The Idaho Department of Labor is an outstanding and hard working team headed by Roger Madsen. The Commission is independent within the Idaho Department of Labor. The Commission staff is second to none led by Administrator, Pamela Parks, who faces demanding changes and challenges head-on with courage, conviction and a high sense of professional pride. The Deputy Attorney General, Jeanne Goodenough, demonstrates a superior knowledge in civil rights law which is the cornerstone to the Commission's success. Commission President is Estella Zamora.

Senator Fulcher asked Mr. McNeal how many years he had served on the Commission. **Mr. McNeal** replied that he had served three years. **Senator Fulcher** inquired if he had seen a trend towards any certain type of cases. **Mr. McNeal** responded that there are more sexual harassment cases coming before them.

Senator Davis asked if any statutory modifications to the Human Rights Act are made, do you believe the Idaho Legislature should consider making the Commission's job easier? **Mr. McNeal** answered that he would like to see the investigators have some subpoena power to make questioning easier. **Senator Davis** asked if there is currently a problem in acquiring the information that the Commission needs to perform their duties. **Mr. McNeal** stated he did not think there is a problem but having the subpoena power would assist them. The investigators do an outstanding job processing these cases before they come before the Commission.

Senator Winder stated that the legislature tries to recognize and protect individuals rights. Are their similarities in the Commission's dealings as they in process their case work? **Mr. McNeal** explained that he supports the add-on language which will assist in resolving the cases by performing a thorough and fair investigation.

Senator Winder asked what impact will the add-on language have on your current case load. **Mr. McNeal** explained that the add-on language would assist the Commission to cover everyone. The add-on language will pinpoint a case that might come before the Commission. **Senator Winder** inquired

about current cases; what percentage of them would fall under add-on language and would there be a significant increase in cases if the words were added?

Mr. McNeal stated that there would be some increase in cases and that some cases would be defined differently using this language.

RS 21986

Relating to a Financial Interest in the Marketing of Beer presented by Jeremy Pisca, Attorney, Risch and Pisca Law Firm representing the Idaho Beer & Wine Distributors Association.

Mr. Pisca explained that the three-tier system is designed to keep the manufacturing tier (brewer) independent from the distribution and retail tier. There is a strict prohibition on financial interest between brewers, distributors and retailers. There is no strict prohibition between breweries owning distributorships. The Idaho Beer and Wine Distributors Association would like to clarify that law, as many states have done. The legislation before you is a simple clarification stating that no brewer, other than those that are exempted out under the small brewer exception which currently exists in Idaho Code, may have a financial interest in a distributors business. This legislation mimics the aid to retailer statute; Idaho Code § 23-1033.

Senator Siddoway asked for a definition of a small brewer. **Mr. Pisca** explained that in 23-1003, subsections d, e, and f, a small brewer is defined as a brewer that brews 30,000 barrels of beer or less. A brewer that produces less than 30,000 barrels can own a brew pub license, an on-site or off-site retail license and they can self distribute. This legislation will not affect small brewers that are already exempted out of the three-tier system. **Senator Siddoway** asked what volume the largest brewer is producing in the state? **Mr. Pisca** said the largest Idaho brewer in the state, Grand Teton, brews 12,000 barrels annually.

Senator Fulcher asked what problem is to be solved through this bill? **Mr. Pisca** stated this a potential future problem that should be prevented. Currently in Idaho there are no brewery owned branches. There has been larger brewers in other states who have actively gone out and sought to purchase distributorships. In those cases, when the larger supplier comes to distribute through your family-owned business, it creates a hardship for that smaller distributor.

MOTION:

Senator Stennett moved to send **RS 21986** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

RS 22002

Authority having Jurisdiction Over Its Road May Designate Routes for Loads. **Chairman McKenzie** explained that this is a print request from the Transportation Committee.

Jeremy Chou, Givens & Pursley stated that in the state of Idaho, truckloads are limited to 105,000 pounds with some exceptions. Thirty-five routes in southern Idaho are designated as part of a pilot project that will enable the state, specifically the Idaho Department of Transportation (ITD), to conduct a ten-year study on the maintenance and impact of those heavy trucks carrying up to 129,000 pounds. ITD came out with a study in 2013 that determined that there was no significant maintenance impact or affect on the roads and no significant safety issues. This bill allows authorities to designate roads that would allow up to 129,000 pound loads within their jurisdiction so long as they use the criteria that is established by the ITD.

Senator Stennett requested Mr. Chou to elaborate on the criteria that would be used. **Mr. Chou** said the criteria must be established by ITD. The legislation states that engineering standards to maintain the roads must be used as well as standards for bridges, and public safety. **Senator Stennett** asked if there was a component for permitting fees to keep the roads repaired. **Mr. Chou** responded that there is no fee attached to this legislation.

MOTION: **Senator Fulcher** moved to send **RS 22002** to print. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: The Department of Environmental Quality's Update on the Vehicle Emission Testing Program.
Chairman McKenzie stated that this presentation is related to legislation that was passed last session. The Committee requested that the Department of Environmental Quality (DEQ) review the Vehicle Emission Testing Program and then report back to the legislature with recommendations for modification or termination of that Program.

Curt Fransen, Director, DEQ, stated that the Inspection and Maintenance Program (I/M) was implemented pursuant to Idaho Code § 39-116B. **Mr. Fransen** introduced three DEQ staff members: 1) Tiffany Floyd, Air Quality Administrator; 2) Dave Luft, Air Quality Manager, DEQ Boise Regional Office, DEQ Vehicle Emission Program; and 3) Rick Hardy, Discipline Lead for the Modeling and Risk Analysis Group in DEQ's Technical Services Division. Rick leads a group of scientists and engineers that, among other duties, perform emission modeling and risk analysis.

Requirements of the legislation provide for annual and five-year reviews of the program. Specifically, Section 5 of the statute provides, "The Department shall annually review the result of the I/M and that the review shall include among other things the estimated emission reductions obtained." Section 6 of the statute, amended last year by S 1231, requires that every five years beginning in 2013 the Director shall review air quality data and make recommendations to the legislature for their determination whether the program should be continued, modified or terminated. On January 7, 2013, the DEQ provided reviews and recommendations to the legislature by sending a letter and report to Speaker Bedke and President Pro Tempore Hill. (See Attachment 1)

Mr. Fransen briefly reviewed the events that led to the DEQ's creation of the I/M under this statute.

- In 2005 the legislature passed the Treasure Valley Air Quality Counsel Act. Under that act, Governor Kempthorne appointed the Treasure Valley Air Quality Counsel.
- In 2007 the Treasure Valley Air Quality Plan was completed and submitted to the legislature.
- In 2008 Idaho Code § 39-116B was enacted and signed into law.
- In 2009 the DEQ went through the negotiated rulemaking process and those rules were adopted by the Idaho Board of Environmental Quality and subsequently approved by the legislature.
- In 2009 DEQ signed a joint powers agreement with Ada County which had an existing I/M.
- In 2010 DEQ implemented the program in Canyon County and Kuna.

The purpose of the statute is to establish an I/M to control air pollution emissions from vehicles and air sheds that were approaching nonattainment with applicable health-based air quality standards by establishing an I/M in areas that are nearing the point where air quality standards are not being met. There are National Ambient Air Quality Standards (NAAQS) for criteria pollutants that include carbon monoxide, nitrogen oxides, particulates, sulfur dioxide, lead and ozone. This statute provides for an I/M in areas that are at risk of exceeding air

quality standards and are close to nonattainment as set forth in the Clean Air Act (CAA). It is in the effort to avoid that nonattainment designation and the requirements of the CAA that is behind the statute.

If the valley were to reach the nonattainment designation set by the Environmental Protection Agency (EPA), there would be more stringent permitting requirements for major and minor sources of air pollution. Additional monitoring, reporting and pollution control requirements for facilities that pour pollutants into the air would be required. In addition, the DEQ would have to submit a compliance attainment plan to the EPA which would include control measures designed to bring the area back into attainment with the federal quality standards. The local areas would have to implement those control measures until they reached attainment then plans would have to be prepared and adopted to maintain attainment for a twenty year period. All of those plans, once they are reviewed and approved by EPA, become federal standards. The consequences would have a potential negative impact on the Treasure Valley economy.

The purpose of this review of the I/M is to determine whether or not it is still required by Idaho Code § 39-116B. This statute provides for two tests as criteria for the implementation of the I/M: 1) An air shed, as defined by DEQ within a metropolitan statistical area, that has ambient concentration design values equal to or greater than 85 percent of an NAAQS; and 2) The Department determines that air pollutants from motor vehicles constitute one of the top two emission sources contributing 85 percent to the design value. Both of these prerequisites were determined to exist in the Treasure Valley in 2008 therefore requiring the implementation of a vehicle I/M in Ada and Canyon counties.

Do these two prerequisites continue to exist and therefore require an I/M Program in the counties. Do the counties have an ambient concentration value equal to or above 85 percent? (See Attachment 1 Charts and Graphs)

Chairman McKenzie asked if, at this point, is the entire program still in effect because, out of all these particulates in your charts, only ozone is above the 85 percent level and is still less than the five parts per billion? **Mr. Fransen** replied yes, as of the first criteria provided by the statute, 85 percent of the maximum ozone remains at 68 parts per billion and the 2012 number will be around 67 parts per billion. They are still over the 85 percent level established by the statute for the Treasure Valley. The EPA is estimating that the new ozone standard will be between 60 and 70 parts per billion; the new standard will go into effect next year. **Chairman McKenzie** asked, if the ozone standard is set above where the valley's statistics fall, what will be the effect? **Mr. Fransen** stated that as the ozone standard drops to 67 based on the 2012 design value, it will push the valley closer to nonattainment.

Senator Winder inquired about the impact of the federal land fires on the valley's air quality. **Mr. Fransen** stated that in 2011, based on measurements regarding two wildland fires in the surrounding area, DEQ found no increases in ozone during those events. In 2012, despite the area experiencing one of the worst wildland fire smoke impacts, they found no direct correlation to the ozone levels. The fires decrease the amount of sunlight that is available to convert the precursors to ozone, so it is a positive rather than a negative effect. **Senator Winder** asked about the impact the smoke had on our attainment or nonattainment status. **Mr. Fransen** replied that it does not have an effect on the nonattainment status because smoke is classified as an exceptional event.

Mr. Fransen concluded with recommendations from the DEQ for the I/M stating that statutory triggers continue to be met. The Treasure Valley is still within 85 percent of the ozone design value. Motor vehicles continue to be one of the top two sources of pollutants that contribute to the ozone design value. Pollution reductions are exceeding the original expectations. Counterbalancing this good news is that the EPA is expected to lower the ozone NAAQS level.

Based on these factors DEQ's recommendation is that the Treasure Valley I/M continue for the foreseeable future. DEQ recommends that the legislature approve DEQ's pending rule amendments related to this program. These pending rules will decrease the regulatory burden on the program by allowing for an extension in appropriate circumstances. For instance, military personnel out of the area for a period of time and by allowing citizens to have their vehicles tested and repaired at the same business. DEQ will continue to explore further modifications to the program to decrease the burdens of the program while trying to maintain its effectiveness. If the ozone levels in the Treasure Valley continue to decrease, and if the ozone NAAQS standard does not decrease too much, there may be a significant buffer to reduce or phase out the program. The information that will be collected in the next year or two will determine if that is possible. The five-year contract with Systech to implement the program in Canyon County and Kuna will expire in 2015 at which time the DEQ will evaluate the program.

Chairman McKenzie stated that Canyon County's interactions with DEQ's I/M has been disliked by the community from the start. The program was not well received by the citizens and is viewed as burdensome and expensive.

Mr. Fransen explained that when DEQ impacts so many individuals there is bound to be repercussions.

Senator Winder noted that the statistics show emissions have significantly improved. What percentage of the fleet in the valley is having an impact on the air quality? **Mr. Fransen** responded that approximately 10 percent of the vehicles that are tested fail the test. After repairs, the vehicle is retested and most of those are in compliance.

Senator Siddoway said that the pollutants in the valley have a direct affect on the health of the people that reside in the air sheds. It seems as soon as soon as attainment is reached, then the criteria changes; will EPA always be raising the bar?

Mr. Fransen said that the emission testing program is only one part in reaching overall attainment requirements. There have been a number of other factors related to attainment such as the reduction in the ozone design value and lowering the federal standards for air and water quality. There is scientific evidence that the new standards are necessary for health reasons. **Senator Siddoway** asked if there are financial penalties associated with not meeting the EPA standards. **Mr. Fransen** explained that the immediate effect would be more stringent air quality regulations then permit requirements would become more difficult and there would be more pollution control measures implemented. DEQ would have to come up with a plan to bring the valley back into compliance. There is no financial impact that he is aware of but potentially, transportation funds could be affected.

Chairman McKenzie asked what factor the I/M plays in comparison to other factors in the reduction of emissions. **Mr. Fransen** referred to the one number he cited based on the model reductions that DEQ recorded (3.5 percent for NAAQS and 9 percent volatile organic compounds) that points to how much the air shed has been improved through the I/M.

Chairman McKenzie stated that other factors have been removed so that the 3.5 percent is all attributable to the program. **Mr. Fransen** concurred.

Chairman McKenzie stated that he is frustrated with the program but not with those who administer the statutory requirements. DEQ has done what they can to reduce the burden on citizens and he thanked them for their presentation this morning.

ADJOURNED: There being no further business, the meeting adjourned at 9:20 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary
with the assistance of Carol Deis