

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, March 12, 2013

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Bair, Vice Chairman Guthrie, Senators Brackett, Tippetts, Rice, Nonini, Patrick, Durst and Buckner-Webb

**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 Bair** called the meeting to order at 8:01 a.m.

MINUTES: The minutes from February 21, 2013, and February 26, 2013 were read.

MOTION: **Senator Patrick** moved that the minutes from February 21, 2013, be approved. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Guthrie moved that the minutes from February 26, 2013 be approved. **Senator Brackett** seconded the motion. The motion carried by **voice vote**.

H 110 **Chairman Bair** introduced **Suzanne Budge**, representing Idaho Dairy Products Commission, who introduced **Representative Vander Woude**, who presented the **H 110**. This bill amends existing law relating to dairy products to provide that the Idaho Dairy Products Commission may employ a director and to remove provisions relating to fidelity bonds; to revise certain duties, authorities and powers of the commission; to revise bonding requirements; and to revise liability provisions. **Representative Vander Woude** stood for questions.

Senator Tippetts asked if the language at the top of page four was an expansion of authority or has the board had this in the past. **Representative Vander Woude** asked legal counsel, Susan Buxton, General Counsel to the Idaho Dairy Products Commission, to answer the question. **Ms. Buxton** answered that they researched the other commission's statutes and used that as their base. They made technical changes to the power, duties and authority, similar to sections of the Potato and Wheat commissions.

This section is consistent with the Idaho Potato Commission statute, and came about because of the lawsuit in New York over protecting its brand. This was included to make sure the dairy industry has the same opportunity, as they basically have the same goals and duty with regard to their statutory make up and wanted to have the same powers to protect their brand. Senator Tippetts asked if the commission had this authority in the past or is it an expansion. Ms. Buxton felt like there was implied authority, but due to Idaho case law in the Supreme court, the commission felt it was important to make sure they had the actual authority to undertake those actions to protect the rights and duties of the commission pursuant to the statute.

Vice Chairman Guthrie asked about the significant transfer of liability to the state as stated on pages four and five. **Ms. Buxton** answered that this clarifies the liability of Idaho for acts that the Idaho Dairy Product Commission does and aligns with the language in Idaho Potato Commission statute. The purpose of the change is to protect the IDPC from being sued in federal court and thereby incurring costs of defending a suit outside of Idaho. The reference to chapter 9, title 6 is the Idaho Tort Claims Act. The Idaho Tort Claims Act protects the sovereignty of the state as its agencies underneath, including the self-governing boards like IDPC, so that they would be able to limit the liability of the state and the agency itself.

Senator Durst asked why the definition of director was struck. **Ms. Buxton** said the term director was inconsistent throughout the statute and was done to make it more consistent. The definition of director was deleted because director is not currently used elsewhere in the statute, and because the legislation also substitutes the term director for administrator. No other commodity commission statute defines the head of its commission within the definition section so it also creates uniformity among the commodity commission statutes.

Page 3, lines 3 through 10 substitutes the term director for administrator which is a modernization of the head of the commission and was done to benefit the commission in terms of marketing, hiring and public relations. IDPC also prefers not to use the term Executive Director to avoid confusion with the head of the Idaho Dairyman's Association, which also uses the term Executive Director. Originally the term director meant the Department of Agriculture director. For purposes of this legislation, the administrator is now classified as the director. That is why director is crossed out in some places and put back in others and there is a different definition for the director now. IDPC is recruiting for that position, and when advertising the position as administrator, the perception will be that that person is not in charge and has someone to answer to. It is better to advertise as director, because this person is the one that runs the commission.

Chairman Bair directed Senator Durst to page 3, line 3, it says director, line 4 states that the commission shall elect a chairman and may employ a director who is not a member of the commission. It gives the definition that the director will be at the behest of or authorized and hired by the commission. **Senator Durst** said that elsewhere in title 25, when reference is made to the director, it is to the director of the Department of Agriculture and since there is no definition in this particular chapter, it could be assumed that director refers to that definition that is found elsewhere in title 25. It is his opinion that for clarity's sake, director should have been defined as meaning the director of the commission as set forth in this chapter, instead of deleting it all together. With an absence of a definition, one might go elsewhere in the chapter where it is defined.

Senator Brackett and **Senator Durst** asked what does the industry think of what is proposed today and are there resolutions or letters of support with approval from the industry. **Representative Vander Woude** said the IDPC came to him with the proposal wanting to update their statutes especially as they were looking at hiring a new director. The industry is behind this rewrite of their statutes. There were no letters, and have not heard anything from the dairy industry about being concerned about the changes and updates. **Ms. Budge** stated that they worked with the agricultural organizations as the legislation was produced both through the Representatives, as well as the food producers and dairy organizations, and worked with the director of the Potato Commission to make sure the language was aligned. Mr. Gilmore, Deputy Attorney General, is present, if the issue related to the Tort and Liability needs to be further addressed. Language was adapted from the Potato Commission has included as a result of the lawsuit.

Senator Tippetts said this new language now states that Idaho is liable for all tort obligations arising out of acts and omissions of the commission, are binding on Idaho and as to the extent as provided for chapter nine, title 6, Idaho code. He asked what tort obligations would be arising out of acts and omissions with the commission

Mike Gilmore, Deputy Attorney General, answered that the limits of liability language dates back to a simpler time when everyone was thinking in terms of contract liability and no one was even thinking about the possibility of lawsuits involving their certification marks or trademarks. When the Potato Commission was sued in federal court in 1999, there were two allegations being made. One was that the commission was misusing its certification mark for Idaho potatoes. As the certification mark was owned by a private organization, the state of Idaho was not on the hook financially for anything the commission was doing. The argument was that the commission was a private organization subject to suit under the anti-trust laws and subject to suit under the Lanum Act, which governs trademarks, certification, use and service marks. In reviewing the language, they saw that it could be interpreted that way.

Mr. Gilmore explained that the Idaho Tort Claims Act applies to every state governmental agency and, the Department of Administration is obligated to provide a defense to every agency and every officer, if they are sued in a tort arising out of their official duties. The lawsuit established that the commission was indeed an agency of the state and that there be an explicit acknowledgement that it was part of the tort regime of the state and that the state was on the hook in theory. Tort actions, as a practical matter, have to do with offering a defense, rather than paying damages. The Idaho certification mark for potatoes was solid, so the Bureau of Risk Management defended the commission against those allegations that it had misused its certification mark against potato packers.

Mr. Gilmore further explained that the purpose of this legislation is to make it clear, that the Bureau of Risk Management will provide a defense when the tort involved is a challenge to the intellectual rights of the commodity commission. As the section reads, it is inconsistent with the Idaho Tort Claims Act, because the Tort Claims Act obligates the Bureau of Risk Management to provide a tort defense to every state agency and it has no exceptions. **Senator Tippetts** asked if this language is broader than it needs to be or could the scope be narrowed and still provide the protection needed. **Mr. Gilmore** said that that is possible, but to his knowledge, no state agency has ever been partially covered by the Tort Claims Act, they have always been covered period. The courts have never had to sort out some of this old language which pre-dates the Tort Claims Act; if you read the tort claims act, it applies to every state agency.

MOTION: **Senator Brackett** moved to send **H 110** to the floor with a do pass recommendation. **Senator Nonini** seconded the motion. Motion carried with **voice vote**. Senator Brackett will carry on the floor.

RS 22264 **Chairman Bair** introduced **RS 22264**, relating to the Domestic Cervidae testing for Chronic Wasting Disease (CWD) and to provide for facility and inventory inspections. The proposed legislation would also implement fees for the import, export and transfer of animals, as well as adjust fees for the annual inventory assessment. This legislation was brought about because the ISDA indicated that the administration fees for administering the cervidae program in the state was costing significantly more than what revenue was bringing in. The money to run the program has borrowed from other associations to cover the testing fees, research and meetings with the cervidae industry. This legislation is not unanimous, but represents the desires of the industry to be self-sustaining budget wise. Chairman Bair said this is a request for a unanimous consent to send the **RS 22264** to State Affairs to be printed.

**UNANIMOUS
CONSENT:**

Vice Chairman Guthrie made the unanimous consent request that **RS 22264** be sent to State Affairs to be printed. **Chairman Bair**, hearing no objections, ordered **RS 22264** to be sent to State Affairs to be printed. It is anticipated that this bill will come back to the committee after printing for a full hearing on it.

H 113

Chairman Bair introduced **Jim Lowe**, intern for Food Producers of Idaho and owner of the Farmstead, who introduced H 113 regarding Idaho Agritourism Promotion Act. Representative Bowles and the Idaho Trial Lawyers Association helped write the legislation, and Representative Bowles shepherded this through the amending order to meet some of their requests and language that is acceptable to all parties. It passed the House on a 69-1 vote.

Mr. Lowe said that Agritourism is not new and has been around in some form for many years. It has come to prominence in the last decade, and its gain in popularity and the benefits for both the general public and producers has come to light. Agritourism provides an opportunity for the agriculture industry to tell its story to an increasingly urban population and provide hands-on experience to connect the public with producers of food and generations within society. It is a means of diversification and supplemental income which is valuable for small farms. It can lead young people into agriculture. There is an urgent need to define and clarify some features unique to this industry. There are 26 states that currently address Agritourism specifically in their state code which Idaho needs to address as well.

Mr. Lowe said this bill would offer enough clarity for producers to weigh the risks so that farms, ranches and organizations can engage in Agritourism when the market warrants. The primary concern is liability for injury of participants. Safety is and must be number one on the list but there are risks associated with visiting a farm and complete elimination of those risks is not feasible or practical in light of purposes of a farm. This bill provides a means by which Agritourism providers cannot be held liable for risks inherent in a farm and can qualify for this protection by posting signage with the specified language that warns the participants that they are assuming these risks. There would be no protection under the law in the case of negligence or disregard for safety. The amending order dealt with the signage language. Idaho Trial Lawyers Association wanted to see additional language and negotiated with all parties concerned to come up with language that works for all parties. **Mr. Lowe** showed a sample of the signage that is required.

There is also a provision outlining the existing fact that the presence of Agritourism activities on a farm does not impact the determination of property tax status of that farm. Idaho Code title 63, chapter 6, and outlines the criteria by which land is considered actively devoted to agriculture. Agritourism can and often does occur concurrently with production agriculture. This provides enough clarity that a farmer does not have to worry that the tax assessor will reclassify their operation and land status as commercial because they are conducting tours or engaging in Agritourism.

Mr. Lowe stood for questions.

Senator Nonini called attention to the letter from Attorney General's opinion on this bill. There are some concerns on whether the statute is vague or ambiguous and is concerned about it being adequate in terms of insurance and lawsuits.

Vice Chairman Guthrie said the notice of warning does not contain as much language as on the sign presented to the committee. **Chairman Bair** said the new language is dealt with in the amendment attached on the pink sheet.

Senator Durst asked where the sign must be placed. **Mr. Lowe** said it states in the bill that the sign is placed at the entry, and at the location of the event or activity. **Senator Durst** asked about multiple entries and what would happen if people missed the signage. Should a waiver be signed? **Mr. Lowe** said this type of Agritourism has high volumes of people at low dollar amounts, it would be impractical to have waivers signed. If there is more than one entrance then there needs to be more than one sign, or they would not be protected or covered under the law. **Senator Durst** disagreed because the language says "the sign" at "the entrance," not each sign at each entrance which would mean something different. **Mr. Lowe** said at any entry of the farm, even multiple entries must have clearly visible signs.

Senator Tippets agreed that there is a need for Agritourism and asked about the signage at the actual location of the activity if it is off-site and away from the location. **Mr. Lowe** said there is a sign at the entrance to the farm at the beginning of the activity and at entrance that would lead you to the off-site activity at the remote location. **Senator Tippets** said this bill provides some significant protection for the Agritourism professional. Protection seems to be removed if the dangerous conditions are not communicated to the participants. He asked if this bill would provide the protection being sought with this language. **Mr. Lowe** said this bill is to limit the liability of the Agritourism providers while providing safe conditions for the participants. There would be no protection provided for negligence on the part of the provider. This bill changes the duty for the Agritourism provider to make known the danger, rather than to inspect and eliminate the danger.

Senator Brackett asked **Mr. Lowe** if they looked at that statute for livestock activities for any dangers because some of those issues were addressed under livestock activity. **Mr. Lowe** said he is not familiar with this statute. On page 2, line 45-47, it specifies that any protection afforded by this law is in addition to any other limitations of liability. So it should not backtrack on what was done previously and should complement the livestock activities statute.

TESTIMONY: **Jennifer Elmyer**, Nutritional director of the Boys and Girls Club, spoke in support of the bill. Lee Rice, of Rice Family Farms, also spoke in support of the bill. **Dennis Takinkuni**, Idaho Farm Bureau presented written testimony in support of this bill. **Kristin Thompson**, on behalf of Rick Waitley for the Ag in the Classroom Program, spoke in support of the bill.

Barbara Jordon, Idaho Trial Lawyers Association (ITLA) answered questions from **Senator Durst** regarding the opinion letter from the Attorney General and what level of comfort did the ITLA have in drafting the language. **Ms. Jordon** said she not seen the opinion letter or reviewed it. The ITLA reviewed the language in its original form and felt the bill, as written, is actually fair for the farmer/provider and fair for the participant. They did request the signage be changed and those are noted in the amendment.

MOTION: **Vice Chairman Guthrie** moved to send **H 113** to the floor with a do pass recommendation. **Senator Tippets** seconded the motion. **Senator Tippets** still had concerns that the legislation does not provide all the protection and there may still be some issues to be worked out, but felt it a good first step in the right direction. **Senator Durst** opposed to the motion and felt the bill should be held until the liability issues could be worked out to get it right the first time. Motion carried by **voice vote**. **Senator Durst** asked to record his no vote. Vice Chairman Guthrie will carry the bill.

ADJOURNED: **Chairman Bair** adjourned the meeting at 9:35 a.m.

Senator Bair
Chairman

Denise McNeil
Secretary