

MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Friday, February 14, 2014

**TIME:** 1:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Senators Cameron, Siddoway, Brackett, Heider, Tippetts and Lacey

**ABSENT/ EXCUSED:** Vice Chairman Bair and Senator Stennett

**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 Pearce** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:10 p.m. and said that today's meeting would be to continue the discussion of **H 406**.

**TESTIMONY:** **Mr. Curt Fransen**, Director of the Idaho Department of Environmental Quality (DEQ), testified regarding **H 406**. He stated that Mr. LeBeau outlined on Wednesday the major benefits and challenges of the State seeking Primacy for the State. **Director Fransen** said that those benefits and challenges have been examined by the Legislature, prior administrations, and industry for over a decade. At Legislative direction, DEQ has created reports and analysis regarding the issue in 2001, 2002 and 2005. **Director Fransen** said his role today is not to advocate for or against this legislation, but he wants to acknowledge that the Idaho Association of Commerce and Industry (IACI) sought DEQ's input into the drafting of this bill and into the development of the information regarding the cost, personnel, resources, time and steps necessary to implement the directive this legislation would provide to DEQ.

**Director Fransen** said he appreciated that opportunity of being a resource to IACI and he would like to be a resource to this Committee. He stated that DEQ is currently implementing a number of State Environmental Programs pursuant to State statutes and rules. These programs meet the minimum requirements of most Federal Environmental Acts, including: the Clean Air Act; the Resource Conservation Recovery Act; the Safe Drinking Water Act; and the Underground Tank Storage Program. Idaho has Primacy to implement these Acts in Idaho in lieu of EPA implementing those Acts in Idaho. Implementation of those State programs is an exercise of State sovereignty and our authority to protect the health of our citizens and to manage our own natural resources. Obtaining Primacy over this particular program would be consistent with the approach that Idaho has taken to obtain Primacy as to these other federal major environmental programs.

**Director Fransen** said he also wanted to note the costs of the personnel estimates provided in the Statement of Purpose of **H 406** are reflective of and consistent with the past analysis that DEQ has performed and also that of the Idaho Association of Cities. Funding will be a significant challenge. The legislation authorizes the Board of DEQ to negotiate a rule making to not only establish the program requirements, but to also establish reasonable fees to support the program. Securing adequate funding to run this program is critical not only to obtaining the authorization, but to ensure that we, as a State, gain the benefits of the program that has been outlined and to minimize the amount of conflict with the federal government and to minimize the amount of federal oversight. **Director Fransen** stated that if we can only do

this program halfway, then we shouldn't do it. It needs to be done as a full, robust program to ensure that Idaho gets the full benefits of the program.

**Director Fransen** said the Statement of Purpose also outlines the implementation tasks and the schedule. It is consistent with their past analysis of other states that have recently gone through this process, particularly Alaska. Implementation is going to take awhile and the benefits will be in the future.

The last point **Director Fransen** said he wanted to make is that to obtain State Primacy, the issue to enforce these permits will not resolve or relieve all the many concerns or frustrations that are experienced by the regulated entities concerning the current process. State issued permits must still protect water quality and must meet Idaho's water quality standards, just as they do today. State permitting process must provide for public review and input into the drafting of the permits can provide an appeal process to the public to contest the provisions in the permits or the actual issuance of the permits. EPA will still have an oversight role to ensure that the State's program is consistent with the Federal Clean Water Act program.

**Director Fransen** stated that from his perspective, **H 406** simply initiates the process of establishing the support of the State's permitting program. There will be additional pieces of legislation, in the coming years, that will be necessary to complete this process. In summary, **Director Fransen** said this legislation is the first of many steps and will be significant legislative direction, oversight, and support necessary to finalize this process.

**Senator Cameron** inquired if Director Fransen had helped draft the fiscal note and he responded in the affirmative. **Senator Cameron** then said that he was trying to link the information on the fiscal note with a provision in the bill, that at full build out in 2022, the amount would be about \$2.5 million and asked how the \$2.5 million would be delegated and distributed between federal, state, and fee based local units of government. **Director Fransen** replied that his understanding that the only place the funding is discussed in the bill is the authority of the Board to establish fees to fund the program. **Senator Cameron** said then the only State involvement would be in determining if the fees are appropriate and an appropriate split would be during the administrative rules procedure as a proposed fee rule. He asked if that was a correct assumption. **Director Fransen** said that was correct.

**TESTIMONY:**

**Mr. Ken Harwood**, Executive Director of the Association of Idaho Cities (AIC), provided a letter (see attachment 1) to the Committee, and also spoke regarding **H 406**. He stated that there is an attachment to the letter that he has distributed which lists the Idaho municipal NPDES permits. AIC supports **H 406** and they see real value in state administration of the NPDES program.

**TESTIMONY:**

**Ms. Linda Lemmon**, Executive Secretary for the Idaho Aquaculture Association (IAA), spoke in opposition to **H 406**. She said that the Board of Directors of IAA asked her to present their testimony.

IAA represents public and private producers, processors, and support industries; however, today she will only speak on behalf of the commercial producer members (public hatcheries operate for noncommercial reasons) who have been opposed to state NPDES primacy since it was first brought before the Legislature in 2005. Opposition from commercial producers centers on perceived benefits and costs. They don't believe the perceived benefits outweigh the costs for their industry, and are not convinced that DEQ will truly have as much flexibility as it is being credited it would gain under state primacy.

**Ms. Lemmon** addressed some of the benefits of the NPDES program that they disagree with. As far as processing permits in a more timely fashion, there is no guarantee that DEQ will take any less time to process a permit under state primacy than EPA. Pollution trading is another benefit being promoted under state primacy, but aquaculture permits include some pollution trading ability already. Implementation of water quality trading is already governed by existing Clean Water Act requirements, by EPA regulations and Idaho's Water Quality standards. Another benefit being promoted is that it will be less costly for the applicant. **Ms. Lemmon** said the benefits don't outweigh the costs. A copy of her testimony is on file (see attachment 2).

**WRITTEN TESTIMONY:** Clear Springs Foods submitted written testimony in support of **H 406** through Mr. Alex LaBeau (see attachment 3).

**TESTIMONY:** **Mr. Norm Semanko**, Executive Director, Idaho Water Users Association, testified in support of **H 406**. He said they worked with EPA and DEQ on the permit. On the EPA side, they felt that they had no meaningful input into what the permit would say. With DEQ, it was a give and take and he said that he understood where they were coming from. As for the cost issue, **Mr. Semanko** said his group is not unsensitive to the fee issue.

**TESTIMONY:** **Mr. Brent Olmstead**, lobbyist for the Milk Producers of Idaho, said they support **H 406**. They like the ability to have input into the general permits, how they are written and what constitutes that permit. The provision for an agreement between DEQ and other agencies is beneficial for his industry. He said that EPA has a limited knowledge of agriculture and DEQ has the ability to work with the Department of Agriculture.

**Senator Siddoway** has a concern with the amount of the fines and asked Mr. Olmstead his opinion. **Mr. Olmstead** said that one can go into consent order and negotiate those fines and most times, the fines do not come within the levels that are in the legislation. He stated that his industry is comfortable with that system.

**MOTION:** **Senator Tippets** made the motion that **H 406** go to the floor with a do pass recommendation. The motion was seconded by **Senator Heider**. The motion passed by unanimous **voice vote**. **Chairman Pearce** will be the sponsor of this bill.

Additional handouts given to the Committee included: IACI - Discussion Points (see attachment 4) and DEQ - Decision Analysis Report 3 (see attachment 5).

**ADJOURNED:** **Chairman Pearce** adjourned the meeting at 2:01 p.m.

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Senator Pearce  
Chair

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Juanita Budell  
Secretary