

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, March 04, 2014

TIME: 8:00 A.M.

PLACE: Room WW53

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

ABSENT/ EXCUSED: None

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 together at 8:02 a.m.

RS 23059 **Chairman Bair** presented **RS 23059** and said the proposed legislation would allow the advisory committees of the Commodity Warehouse Fund and the Seed Indemnity Fund to receive staff reports and pertinent documents in order to provide written advisory comments to the Director of the Department of Agriculture for making decisions for claim settlements to farmers.

UNANIMOUS CONSENT: **Chairman Bair** asked the Committee for unanimous consent to send **RS 23059** to the State Affairs Committee to print. There were no objections.

S 1338 **Chairman Bair** introduced Bob Naerebout, Executive Director of the Idaho Dairymen's Association who presented **S 1338**. **Mr. Naerebout** said that the purposed legislation was to repeal statutory provisions that are antiquated, unnecessary or are comprehensively addressed by the Department of Agriculture's rules and to combine into one chapter the statutory provisions in Chapters 3 and 4 of Title 37 that relate to minimum standards for dairy product sanitary condition, quality, identity, classification and grade. He reminded the Committee that this legislation was originally presented in **S 1299**, but it was determined that this was actually two bills and should be split. This represents one part and the other part will be presented in **S 1376**.

Mr. Naerebout said the intent is to eliminate language that is found in other places. This legislation does not change the sanitation standards nor does it add or take away any oversight from ISDA authority. He said that this industry is highly regulated by the Idaho State Department of Agriculture (ISDA), and through the U.S. Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) The bill was crafted with the assistance of Brian Oakey, Deputy Director of ISDA and Marv Patten, Bureau Chief, Dairy/CAFO Bureau, ISDA. Since there are quite a few changes to the bill, **Mr. Naerebout** said he would yield to Dan Steenson from Sawtooth Law, and Brian Oakey to answer any questions.

Senator Patrick asked if there is a set minimum number of inspections. **Mr. Naerebout** responded that on average, dairies are inspected four times a year; some dairies could be inspected two times and some eight times. He said it is dependant on how they score on the inspection. If, during the inspection, it is determined there are things that need to be fixed, the dairy is generally given a certain amount of time to comply (immediately, if it impacts the quality of the milk).

Chairman Bair introduced Brian Oakey. **Mr. Oakey** said that this is industry led legislation. The ISDA was asked to help identify those certain provisions that were either redundant or antiquated. He said the ISDA is not advocating for this legislation. **Brian Oakey** addressed the question from Senator Patrick regarding inspections, and said that the minimum amount of inspections for dairies comes from the PMO, which has been incorporated into the ISDA rule that implements the sanitation program. This program requires a minimum of one inspection annually. Historically, more than one has been performed per year.

MOTION:

Senator Patrick made a motion to send **S 1338** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Patrick will carry the bill on the floor.

S 1376

Chairman Bair introduced Bob Naerebout, Executive Director of the Idaho Dairymen's Association who presented **S 1376**. **Mr. Naerebout** said this legislation will clearly define and outline the role of the Idaho Department of Environmental Quality (DEQ) and the ISDA in the oversight and enforcement of dairy operations as they pertain to the protection of the environment. He said it was necessary to recodify the provisions of the Dairy Environmental Control Act (Act) that were rescinded by **S 1338**. He said that the intent is to provide clarification on authority in implementing the National Pollutant Discharge Elimination System Permits (NPDES) and who has primacy. He said that this bill had input from both the ISDA and the DEQ.

Mr. Naerebout said the biggest change has to do with the penalty. Currently the ISDA has the right to take away the permit to ship milk if the dairy has an environmental or sanitation violation that impacts the health and quality of milk. The milk industry felt the penalty of pulling the permit to ship milk due to environmental issues was not in line with the other industries in the State and was changed to be similar to penalties the DEQ has set for those other industries. **Mr. Naerebout** said Dan Steenson, Brian Oakey, and Doug Conde from the DEQ are available, as well, to answer any questions. He stood for questions.

Senator Guthrie asked if by collecting the penalty where the violation occurred, would that county be obligated for any remediation or cleanup in the event of a default by the violator. **Mr. Naerebout** said the remediation consequences and responsibilities would be handled by the ISDA, unless it is off boundaries, then it would be up to the EPA, if they are involved, or the DEQ if the State receives primacy.

Senator Buckner-Webb asked if the bill restricts the DEQ from protecting surface and ground water from inside the dairy operation. **Mr. Naerebout** said there is no restriction. He said under the current State law, dairies are allowed zero discharge off the boundary line. This is actually more stringent than federal law. If there was an unauthorized discharge into a public lateral drain or irrigation ditch off property, then it becomes fully regulated by the EPA. He said in his opinion, the DEQ always has oversight of the Clean Water Act.

Senator Ward-Engleking asked about the nutrient management plan being a trade secret. Could he explain why it is not public information. **Mr. Naerebout** said that a state statute passed three or four years ago made the information in the nutrient management plan protected and not public. However, if a dairy had an unauthorized discharge and was required to get a NPDES permit by the EPA, then that information would be available to the public.

Senator Ward-Engleking said that if the State takes primacy, then wouldn't this be in violation. **Mr. Naerebout** said that the DEQ will establish what the NPDES permit will be for a Concentrated Animal Feeding Operation (CAFO). It will be at their discretion whether they open it up for public information. He thought it would more than likely be similar to that of the EPA. He said that not every dairy is required to get this permit. **Senator Ward-Engleking** said this primacy issue would probably take a couple of years to get going, and asked why they began this legislation now. **Mr. Naerebout** said the bill addresses both scenarios of with, or without, State primacy. He said it was done to be prepared for State primacy. As for the environment and the industry, he said that this legislation is stronger and better clarifies the roles.

Senator Ward-Engleking addressed her next question to Doug Conde and asked if the DEQ supports this bill. **Mr. Conde** responded that the DEQ provided comments and helped draft the bill. This bill will allow them the authority to implement a NPDES program if required. It clarifies the roles of the ISDA and the DEQ in terms of authority at the dairy farm boundary. DEQ's authority is not limited within the boundaries of the dairy farm; it just depends upon whether there is an unauthorized discharge of surface water. If this happens, then a NPDES permit will be required. He said that there is a definite role for the DEQ through the authority section of this proposed legislation. **Senator Ward-Engleking** asked what would happen if the DEQ did not have access to the source. **Mr. Conde** said that the ISDA is the primary agency to protect natural resources as it relates to the operation of the dairy farm. They review and approve all engineering plans and specs for the dairy waste systems, and oversee all nutrient management plans as required. There is a provision in the bill prohibiting an unauthorized discharge to ground or surface water. If there is a discharge to ground water and the pollution migrates off the boundaries of the dairy farm, this bill allows the DEQ to use its authority at its discretion (with the ISDA) to address the contamination.

Chairman Bair introduced Sarah Arkle, Idaho Conservation League (League), who spoke in opposition to the bill. **Ms. Arkle** said she had two main concerns:

- The nutrient management programs being considered trade secrets and not available to the public. She said the people deserve to know the potential pollution sources.
- The "Safe Harbor" provision would shield bad practices and limit existing clean water protection and the ability of the State to enforce those protections.

She said that nitrate pollution is on the rise, especially in the Eastern Snake River Plain and the dairy industry is one of the larger contamination sources of nitrates in ground water. She felt this legislation would limit the protection to water sources. She felt it was in direct conflict with the Clean Water Act.

Senator Patrick asked her if she thought the ISDA was not managing the program. He asked her if she thought the public could be better managers. **Ms. Arkle** responded that the public needs to be able to have access to the information in the event of a water pollution issue so that they can find appropriate solutions together with the industry. **Senator Patrick** asked her why she did not trust the ISDA. **Ms. Arkle** said that the concern is that nitrate contamination is continuing to increase.

Senator Rice asked her for the sources of the scientific studies she referred to. **Ms. Arkle** said the DEQ has identified the potential sources for this contamination and suggested that Mr. Conde would be able to answer. According to the DEQ studies she has read, the sources include fertilizer, dairy industry and CAFO waste as well as septic tanks, potato and legume crops.

Senator Tippets asked her to point out the significant changes in practice within those two provisions. **Ms. Arkle** responded that the nutrient management plans that are protected is a direct violation to federal clean water laws, and she felt this legislation would embolden and strengthen that protection. She said that the "safe harbor" language was more confusing and wanted the DEQ to answer that question, as it appears to be too vague to determine who would have authority to determine compliance. **Senator Tippets** asked Ms. Arkle to explain if she thought this was a change from current practice or is it just a practice that she disagrees with. **Ms. Arkle** said that this new legislation would prohibit access to any information on the nutrient management plans.

Senator Buckner-Webb asked Mr. Conde what the rationale was for making a nutrient management plan a trade secret. **Mr. Conde** said that is a question best answered by the Dairymen's Association or the ISDA. **Senator Buckner-Webb** asked if the DEQ supports the bill. **Mr. Conde** responded yes.

Senator Tippets asked for clarification on the "Safe Harbor" provision regarding the "in an event of imminent and substantial danger " and asked if this was a change in current practice. **Mr. Conde** responded no. DEQ has always had the authority under the Environmental Health Act. Idaho Code § 39-108, provides the authority to DEQ if there is a violation to seek injunctive relief if there is an imminent and substantial danger.

Senator Ward-Engelking said that this legislation was confusing, so she asked for an Attorney General opinion on the Clean Water Act (CWA). She read a statement from the opinion. "... if Idaho obtains CWA primacy and a dairy applies for an individual NPDES permit or for coverage under a general permit, the nutrient management plan would be public information." She said the bill seems to counter that. **Mr. Conde** said there is nothing in the bill that affects the ability to implement an NPDES program, and in the authority section the ISDA has the sole responsibility to protect surface water quality for those dairy farms that are not under, or required to be under, an NPDES permit. Those farms currently under this permit are governed by the EPA and their nutrient management plan is accessible to the public. The main change is that the State will issue those permits, not the EPA.

Mr. Naerebout gave his closing remarks. He said that the NPDES as it stands now is poorly written and many of the dairies will not apply for this permit for that reason. He said it would be impossible to be in compliance with it. He advises the dairymen to follow the State requirements. He addressed the rise in the nitrate level and said that his association has spent over \$1.3 million on environmental studies in the last 5 years not just identifying these problems but trying to solve them.

Chairman Bair asked for definition and meaning of "imminent and substantial danger" as it applies to the "Safe Harbor" provision. **Mr. Steenson** said these are existing terms under the code. He said the basic concept of this subsection is that if an extraordinary event takes place in a dairy that is in compliance, which occurs beyond the anticipation of both the dairy farm operator and the ISDA, that dairy should not be subject to immediate and ordinary enforcement actions or penalty.

MOTION:

Senator Rice made a motion to send **S 1376** to the floor with a **do pass** recommendation. **Senator Nonini** seconded the motion. The motion carried by **voice vote**. **Senators Buckner-Webb** and **Ward-Engelking** voted nay. Senator Rice will carry the bill on the floor.

H 495

Chairman Bair introduced **Bob Naerebout**, Executive Director of the Idaho Dairymen's Association, who presented **H 495** and said the proposed legislation will change the compensation provisions to a fixed amount of \$150 per day and fix the reimbursement for travel and necessary expenses for each day they shall be away from their place of residence while engaged in the business of their office. They struck the language "January 15th deadline" for reporting to the two committees as there is no fiscal impact to the General Fund, and this will allow them more time to prepare an audited report. He said they set the compensation at \$150, because there has been no raise since 1980, which had the compensation set at \$50. He stood for question.

MOTION:

Senator Guthrie made a motion to send **H 495** to the floor with a **do pass** recommendation. **Senator Brackett** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor.

PRESENTATION:

Chairman Bair introduced **Rick Waitley**, Food Producers of Idaho, who introduced Leland Tiegs, Chairman of the Idaho Alfalfa and Clover Seed Growers Commission (IACSC)

Highlights from **Mr. Tieg's** presentation are:

- The Idaho Alfalfa Clover Seed Commission represents growers in southwestern Idaho and the Magic Valley. In FY 2013, Idaho produced approximately 8.8 million pounds of alfalfa and clover seed, up from last year's 7.6 million pounds. The 2013 assessment for the seed was \$0.004 per pound. They are currently receiving assessment payment from ten seed dealers in Idaho or Eastern Oregon.
- Idaho is the third largest alfalfa seed producing state behind California and Washington State. It is considered a minor crop, however, it is the foundation of an alfalfa forage industry that ranks third nationally in planted acres behind corn and soybeans and is among the top five agricultural crops grown in the U.S.

In 2013, the IACSC funded two research/education projects:

- Treasure Valley and Pacific Northwest Pest Alert Network. IACSC funds of \$500 were combined with other resources to help fund their website whose objectives are: increasing timely communications about pest outbreaks within the agriculture industry in the Treasure Valley and southern Idaho; and providing growers with Integrated Pest Management (IMP) information they can use to make decisions regarding pest control.
- Idaho One Plan: Pesticide Applicator Reporting Program. The IACSC funds of \$750 were combined with other resources to help fund the program that helps farmers comply with the record keeping rules for restricted use pesticides and the Worker Protection Standards in an easy to use digital format.
- The IACSC actively participated in educational activities including the Food Producers of Idaho Ag Pavilion and the Western Idaho and Twin Falls county fairs, and supports the University of Idaho (U of I) Ag Econ Public Policy Tour. They provided bridge funding to assist the Idaho Alfalfa Clover Seed Growers with sponsorship of the Idaho Eastern Oregon Alfalfa and Clover Seed Winter School and Conference jointly sponsored by the U of I.

Mr. Tieg stood for questions.

ADJOURNED:

Chairman Bair adjourned the meeting at 9:27 a.m.

Senator Bair
Chair

Denise McNeil
Secretary