

MINUTES

HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

DATE: Tuesday, March 08, 2016

TIME: 1:30 PM Or Upon Adjournment

PLACE: Room EW41

MEMBERS: Chairman Thompson, Vice Chairman Anderst, Representatives Raybould, Hartgen, Vander Woude, Nielsen, Anderson, Mendive, Trujillo, Beyeler, Chaney, Nate, Scott, Smith, Rusche, Jordan, Rubel

**ABSENT/
EXCUSED:** Representative(s) Vander Woude, Beyeler

GUESTS: John Tippetts, DEQ; Rob Hanson, DEQ; Jonathan Oppenheimer, ICL; Darrell Early, Idaho Attorney General; Norm Semanko, IWUA; Mary Anne Nelson, DEQ; Doug Conde, DEQ; Jess Byrne, DEQ; Jeri DeLange; Greg Casey, Veritas; Paul McKay, MPI; Chris Halvorson, EFIB; Sharon Hawkins, IACI

Chairman Thompson called the meeting to order at 2:40 p.m.

MOTION: **Rep. Smith** made a motion to approve the minutes of the March 2, 2016, meeting.
Motion carried by voice vote.

S 1238: **Mary Anne Nelson**, Program Manager, Idaho Pollutant Discharge Elimination System (IPDES), Department of Environmental Quality (DEQ), presented **S 1238** to the committee. The purpose of this bill is to amend the Idaho public records law to ensure it is consistent with the requirements of the Clean Water Act. It ensures access to certain water quality records and the protection of trade secrets associated with the federal Clean Water Act and the new IPDES program.

Under the direction of the legislature, DEQ is seeking primacy for the National Pollutant Discharge Elimination System (NPDES) program, currently administered by the EPA. Idaho Code states: "the department shall submit a Complete Application consistent with the requirements of the Clean Water Act and 40 CFR 123 to the environmental protection agency to obtain approval for a state National Pollutant Discharge Elimination System (NPDES) program by September 1, 2016." The bill was discussed with the Association of Idaho Cities, Idaho Association of Commerce and Industry (IACI), Association of Consulting Engineering Companies, Idaho Water Users Association, and the Idaho Conservation League.

Ms. Nelson answered questions from the committee, stating there is no fiscal impact from **S 1238**. The ruling that was passed on February 2, 2016, laid out the fiscal impacts of the program. There will be a cost of \$3.04 million to fund the program. Part of the funding will come from the state General Fund, and some will come from fees accrued. Enacting bill **H 406** laid out the cost of the program.

John Tippetts, Director, DEQ, reiterated there would be no fiscal impact from this bill. The purpose of this bill regards the permitting process to gain access to records DEQ does not currently have, giving DEQ expanded information. This is information that ought to be available to the public. In 2014 the legislature requested DEQ to seek primacy from the EPA; this legislation is required to achieve primacy.

Director Tippetts continued by saying passage of this bill would require additional staffing to meet the work load. DEQ currently has 6 employees, and would have to hire 4 to 29 more people to meet the demand. Currently, under EPA, Idaho is not being adequately monitored. Per the national pollutant discharge standards, permits must be reviewed every five years. Idaho has permits that have not been reviewed in 25 years.

Doug Conde, Deputy Attorney General, doing legal work for DEQ, said in the case of a lawsuit against DEQ, there is a process in place to meet the challenge. Appeals would be at the state level only.

MOTION: **Rep. Anderst** made a motion to send **S 1238** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Scott, Nate, and Nielsen** requested to be recorded as voting **NAY. Rep. Chaney** will sponsor the bill on the floor.

S 1239: **Mary Anne Nelson** presented **S 1239** explaining, as with **S 1238**, this proposed legislation is necessary for Idaho to submit a complete application to EPA requesting authorization to implement a state NPDES program. The legislature directed DEQ to submit a complete application consistent with the requirements of the Clean Water Act to EPA by Sept. 1, 2016. The application will request authorization for what will be known as the IPDES program. This proposed legislation establishes the process for appealing IPDES permits issued by DEQ, and provides DEQ with necessary minimum enforcement authorities.

The bill adds a new section to Idaho Code that describes the IPDES permit decision appeal process as follows. The department shall provide public notice of draft permit decisions and an opportunity for the public to submit comments. The department then develops a response to public comments received and includes that in the administrative record along with the draft permit, public comments received, and the basis for the final permit decision. This legislation states that the department decision is not subject to the contested case provisions of Idaho Code. A person aggrieved by the permitting decision may appeal that decision. The appeal will then be heard by a hearing officer appointed by the department director. Appeals shall be based on the administrative record developed for the permitting decision. To ensure impartiality during the hearing, no hearing officer nor the director may have a conflict of interest. Aggrieved parties may appeal the hearing officer's decision to the courts. It provides DEQ authority to adopt rules regarding the permit appeal process. These appeal rules are part of the IPDES rules heard by this body on February 2, 2016.

Ms. Nelson explained the bill also adds a new section titled Investigation, Inspection, and Enforcement Authority. This section states DEQ must follow existing Idaho Codes for inspection and enforcement authorities. It authorizes DEQ to enforce pretreatment standards, including local limits developed by publicly owned treatment works with approved pretreatment programs. This is a requirement of the CFR for the IPDES program and must be in state law.

Regarding the anticipated costs to the state from this legislation, the appeal process is set up to be a record review, not a contested case appeal. This record review appeal process requires interested parties to provide all pertinent information in the application or during public comment. DEQ anticipates this permitting and appeal process will be an improvement from the contested case approach and will be more efficient and less costly for the agency, resulting in more informed and better permitting decisions. The costs associated with the appeal process have been accounted for in the overall cost of the program.

This bill was discussed with the following groups and no objections were made: Association of Idaho Cities, IACI, Association of Consulting Engineering Companies, Idaho Water Users Association, and the Idaho Conservation League.

Ms. Nelson answered questions from the committee, stating the purpose of this bill is to create an administrative review by an appeals board, rather than dealing with the process of contesting cases. The federal rule is the same.

For the record, **Jonathan Oppenheimer**, Senior Conservation Associate, Idaho Conservation League, requested his written testimony be included **in support of S 1239**. Under federal law, the rules must be as protective as existing federal rules under the national permitting program. At the same time, the rules can be no more restrictive. These statutory changes prevent regulated industries from deciding appeals related to the IPDES program. This is a necessary and appropriate change, and one that will ensure that appellants or other aggrieved parties will be considered by impartial parties. This is a sensible change and deserves your support. (See Attachment 1.)

MOTION: **Rep. Rusche** made a motion to send **S 1239** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Scott and Nate** requested to be recorded as voting **NAY.** **Rep. Chaney** will sponsor the bill on the floor.

S 1269: **Rob Hanson**, Mine Waste Program Manager, Waste Management & Remediation, DEQ, presented **S 1269**, stating the purpose of this bill is to give DEQ the option of investing monies obtained through settlements into the Endowment Fund Investment Board (EFIB). The Endowment Fund invests in equities for the purpose of long-term investments, and would enable DEQ to obtain a better return on settlement funds, and also allow responsible parties to settle for a lower amount.

Currently, the Treasurer's Office holds and manages any DEQ funds. The Treasurer's Office has two funds designed to hold money. One is for day-to-day operations (the IDLE Fund); the other is for medium-term use (the Diversified Bond Fund). DEQ uses both of these funds, and they meet the needs for almost all work. There are some cases, however, such as treating water long term at a site, where DEQ receives monies derived from settlements with responsible parties that are intended to fund projects that might extend into perpetuity. That was the driver for this legislation.

Mr. Hanson explained the benefits of giving DEQ the option to invest in the EFIB. First, it provides greater assurance that DEQ will be able to meet the environmental obligations from settlements by providing a potentially greater return on investments. Second, it makes it easier for responsible parties to settle. Less money is needed up front if a long-term investment option giving a greater rate of return is available.

This legislation gives DEQ the option of investing money from the already-existing Environmental Protection Trust Fund into the Endowment Fund. It requires concurrence from the DEQ Director, Treasurer's Office, and the Endowment Fund. This will make sure DEQ has a reasonable plan providing the liquidity needed to meet expenses on a year-to-year basis while managing the unused portion of settlements or grants to cover the long-term expenses. The concurrence requirement will also ensure that DEQ coordinates with both the Treasurer's Office and the Endowment Fund in the planning, timing, and implementation of an investment with the Endowment Fund.

The legislation would not allow DEQ to invest appropriated General Funds (i.e. tax-derived dollars) with the Endowment Fund, consistent with the state constitution. It allows payment of investment fees. It continues to require interest to be paid into the Environmental Protection Trust.

Mr. Hanson stated DEQ would receive funds from a settling party or a grant, and the money would be initially invested with the Treasurer's Office as has been done in the past. DEQ will work with the Treasurer's Office and EFIB to develop a plan for which of the funds would stay at the Treasurer's Office and which would be transferred to the EFIB. The plan would be presented to the EFIB and, if approved, be presented to the Land Board, which provides final authority for the investment by the EFIB.

In conclusion, this bill provides another tool for DEQ to meet its mission to address long-term environmental problems where the responsible parties are either bankrupt or otherwise trying to settle their liability. The proposed legislation provides an option to invest money in a manner that can reduce up-front costs to responsible entities that need to resolve long-term environmental liabilities.

Mr. Hanson answered questions from the committee, saying the monies in the trust fund are focused on large settlements, such as the settlement from Hecla Mining Company. That settlement money went directly into the Endowment Fund and will be used for the site treatment plan. The goal is to provide funds to help people with contaminated soil and disposal sites that need money for treatment plans that may last into perpetuity.

Chris Halvorson, Investment Officer, Endowment Fund Investment Board (EFIB), answered a question regarding beneficiaries of the fund, stating the withdrawal of funds for use is done by appropriation. Larger withdrawals would have to be approved at the discretion of the board. Smaller endowments are not inside of a trust, so there is more discretion to withdraw funds.

Darrell Early, Deputy Attorney General assisting DEQ, stated the agreement specifies how settlement dollars are to be used and where they are to be held. This statute will allow DEQ to put that money into the Endowment Fund, and the agreement would specify whether the money is a limited distribution or if a greater amount could be sought.

MOTION: **Rep. Anderson** made a motion to send **S 1269** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Scott and Nate** requested to be recorded as voting **NAY.** **Rep. Rusche** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:23 p.m.

Representative Thompson
Chair

Diana Seba
Secretary