

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Wednesday, January 25, 2017

**TIME:** 3:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Heider, Senators Martin, Lee, Harris, Agenbroad, Foreman, and Jordan

**ABSENT/ EXCUSED:** Vice Chairman Souza and Senator Anthon

**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 Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:00 p.m.

**GUBERNATORIAL APPOINTMENT:** **Consideration of Gubernatorial Appointment of Wendy Jaquet to the Board of the Idaho Department of Health and Welfare (Board).** **Chairman Heider** introduced Wendy Jaquet and asked her to tell the Committee about herself and why she would like to be reappointed to the Board. **Ms. Jaquet** informed the Committee she was elected to the Legislature in 1994 and served on Governor Batt's Medicaid Reform Committee. At that time, **Ms. Jaquet** was executive director of the Sun Valley Chamber of Commerce. She served in the Legislature until 2012 and enjoyed her time on the House Health and Welfare Committee. After she became Minority Leader, she served on JFAC for four years where she handled the Department of Health and Welfare budget. **Ms. Jaquet** said she currently teaches two 100-level courses and one 500-level course at Boise State University. She is also a Ph.D. candidate but is unsure whether she will complete that degree. **Ms. Jaquet** stated she splits her time between Boise and Ketchum. She enjoys serving on the Board because so much of what the Board does involves things she worked on at the Legislature.

**Senator Harris** asked what Ms. Jaquet feels has been her best accomplishment on the Board. **Ms. Jaquet** replied one of the Board's roles is to approve rules, and for a long time, she was involved with the Emergency Medical Services Bureau's old rules. After many meetings, it didn't seem like the rules would ever be updated. **Ms. Jaquet** stated she is pleased that issues with the rules are now straightened out. She feels good about the work done, and the four counties she represents now have rules that will work for their rural communities.

**Chairman Heider** mentioned he has attended the Board meetings and Ms. Jaquet is a valuable member. Her experience in the Legislature brings a important quality to the Board.

**MOTION:** **Senator Jordan** moved to send the Gubernatorial reappointment of Wendy Jaquet to the Board of Health and Welfare to the floor with recommendation that she be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Stennett offered to carry the appointment on the floor of the Senate.

**S 1005**

**Relating to Child Protection. Miren Unsworth**, introduced herself to the Committee as the Deputy Administrator in the Department of Health and Welfare's Division of Family and Community Services. **Ms. Unsworth** explained the issue of sex trafficking of minors is an issue of increasing concern at both the state and federal level. While there is no official estimate on the number of human trafficking victims in the United States, in 2015, an estimated one out of five endangered runaways reported to the National Center for Missing and Exploited Children were likely child sex trafficking victims. Since 2007, the National Human Trafficking Hotline has received 366 referrals from Idaho regarding both adult and minor victims.

**Ms. Unsworth** informed the Committee the Idaho Child Protective Act does not currently include a definition of human trafficking. The Justice for Victims of Sex Trafficking Act of 2015 (JVSTA) amends the Child Abuse Prevention and Treatment Act (CAPTA) state grant program requirements and specifically requires states to consider any child who is identified by a state as a victim of sex trafficking or severe forms of trafficking as a victim of "child abuse and neglect" and "sexual abuse." The law utilizes the definitions of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000 (TVPA). The TVPA defines "sex trafficking" as the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. The law further defines "severe forms of trafficking in persons" as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

**Ms. Unsworth** advised "human trafficking" is currently defined in Idaho Code § 18-8602 as: 1.) sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or 2.) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. The proposed legislation will include this definition of human trafficking in the definitions of abused and sexual conduct in the Idaho Child Protective Act. The current definition of human trafficking meets the definitions under the TVPA and the requirements of the JVSTA.

**Ms. Unsworth** mentioned the Division of Child and Family Services has worked with the Administrative Office of the Courts on this proposed legislation and has shared the legislation with the Governor's Task Force on Children at Risk; representatives from the Idaho Children's Trust Fund; the Idaho Coalition Against Sexual and Domestic Violence; the Idaho Department of Juvenile Corrections; and attorneys for each of the Idaho tribes.

**Senator Lee** stated she appreciates conformity and highlighting this issue in Idaho Code and asked if failure to pass this legislation would result in subjecting children to further abuse, or if current Idaho law has left children vulnerable to horrific situations. **Ms. Unsworth** answered the current definitions in the Child Protective Act would allow the Department to act on an instance of sex trafficking and ensure protection of the child. The law change provides clarity and highlights the importance of addressing the issue in Idaho communities. Three children have entered foster care since 2014 who were previous victims of sex trafficking.

**MOTION:**

**Senator Martin** moved to send **S 1005** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion. The motion carried by **voice vote**. **Senator Lee** offered to sponsor the bill.

**Relating to Crop Residue Burning.** **Tiffany Floyd** introduced herself as the Air Quality Division Administrator with the Idaho Department of Environmental Quality (DEQ). **Ms. Floyd** also introduced Mary Anderson, Air Quality Program Manager, and Carl Brown, Rules Coordinator.

**Ms. Floyd** informed the Committee of the two goals of the Crop Residue Burning (CRB) program: 1.) protect public health by ensuring that crop residue burning does not cause national ambient air quality standards to be exceeded; and 2.) provide flexibility to farmers to burn crop residue as an agricultural practice when it will not jeopardize public health. **Ms. Floyd** explained a 2007 lawsuit resulted in a ban on crop residue burning. Governor Otter convened a group consisting of farmers, environmental groups, and regulators to find a solution. The group reached an agreement, and in 2008 the Legislature enacted those details into Idaho Code. Before approving a burn in the CRB program, DEQ is required to evaluate a number of criteria, including: proximity to hospitals, schools and nursing homes; other burning activity; weather conditions; and pollutant concentrations. Pollutant concentrations cannot exceed 75 percent of any National Ambient Air Quality Standards (NAAQS). This creates a threshold to ensure DEQ is not approving burns that may cause a violation of NAAQS.

**Ms. Floyd** stated the proposed legislation changes the 75 percent threshold to 90 percent for ozone. EPA reduced the ozone standard and typical ozone levels can limit crop residue burning even when burning is not predicted to cause a violation of any air quality standard. The 2008 ozone standard was 75 parts per billion (ppb). Seventy-five percent of 75 is 56, and that becomes the threshold number. At or above 56 ppb, DEQ is not allowed to approve crop residue burns. The 2015 ozone standard is 70 ppb. Seventy-five percent of 70 equals 52, and that is the new threshold to approve burns (See Attachment 1). Reducing the threshold from 56 ppb to 52 ppb results in a decreased number of burn days for farmers by nearly double or triple in some areas of the State. **Ms. Floyd** mentioned ozone concentrations at Craters of the Moon in rural Southern Idaho, a clean pristine area, can show levels ranging from 30 to 70 ppb.

**Ms. Floyd** stated it can appear to be counterintuitive that increasing or providing more burn days would better protect public health. By changing the 75 percent to 90 percent using the 2015 ozone standard of 70 ppb, the threshold becomes 63 ppb because 90 percent of 70 equals 63. This provides for greater flexibility in allowing burning to occur when all burn criteria are met. Under the current program, there are days when smoke would disperse well, and the NAAQS would not be exceeded, yet DEQ is prohibited from allowing burning due to ozone levels. Instead, DEQ utilizes days when adequate smoke lift, proper mixing, appropriate air movement and direction, etc. are not as favorable, yet all burn criteria are met. DEQ believes burning on those days could have more of a negative impact on public health than increasing the number of burn days. The proposed change not only strengthens health protections but provides for better opportunities to burn when smoke dispersion is better. Spreading the burns over more days may lead to fewer burns in a day.

**Ms. Floyd** advised in an effort to address this matter, DEQ engaged in negotiated rulemaking. Based on those discussions, DEQ is proposing to increase the 75 percent threshold for ozone to 90 percent. In the eight years of implementing this program, DEQ has learned a lot and is confident about having enough buffer to ensure the ozone standard will not be exceeded due to a crop residue burn. Some participants believe if the ozone threshold is relaxed, it is only fair to strengthen the particulate matter threshold by the same percent to 60, but this position is not scientifically supported. Instead, the science supports that crop residue burning doesn't add significantly to ozone levels. Therefore, DEQ did not change the 75 percent threshold for particulate matter. The current program is working well for particulate matter and meeting the goals of the program.

**Ms. Floyd** said if this legislation is passed, it will require Environmental Protection Agency (EPA) approval before it can be implemented. Because of timing issues related to enacting new legislation, adopting new rules, and getting EPA approval, DEQ recommends a temporary measure effective until February 28, 2018, the date of expected EPA approval. The temporary measure will maintain the 56 ppb threshold through 2017 and into early 2018 as outlined in Section 1 of the proposed legislation. The new standard would become effective on and after February 28, 2018 when the temporary measure is replaced with Section 3, which contains the 90 percent language. DEQ is confident that using the threshold of 56 ppb ensures the new ozone standard of 70 ppb will not be exceeded. This change will not have any direct fiscal impact on the state or alter resources used by DEQ to implement the CRB program, nor will the current crop residue burn fee structure be changed. In summary, DEQ is proposing to change the 75 percent threshold to 90 percent for ozone only to address EPA's lowering of the standard as well as meet the needs of the agricultural community.

**Senator Foreman** asked what percentage of burn days would be lost if the 90 percent rule is not implemented. **Ms. Floyd** answered DEQ has evaluated that question by considering the additional average number of days available for burning. If the change to 90 percent is approved, the average number of days available for possible burn days throughout the year would be 57 days in South Idaho and 31 days in North Idaho. **Senator Foreman** inquired what the impact would be on the growers if the change does not pass. **Ms. Floyd** replied there would be a negative impact because the 75 percent threshold would be used resulting in fewer burn days. **Senator Foreman** further inquired whether it is correct that the growers could lose between one-third and two-thirds of burn days. **Ms. Floyd** responded that would be correct.

**Senator Agenbroad** asked if tribal lands are included under this restriction. **Ms. Floyd** answered that tribal lands are regulated through the federal government but not through the Idaho program. DEQ works closely with the tribes during burning season to monitor activity, but the tribes follow a separate program which includes a maximum 75 percent of the particulate matter standard.

**Senator Lee** commented she has received a number of public comments on this issue and many of them come from constituents not in a rural area. **Senator Lee** asked when crops are burned in Idaho and what is the current burn period. **Ms. Floyd** said the typical burn season is March through September, but depending on weather patterns, it can extend beyond that time. **Chairman Heider** asked how long Idaho farmers have been burning crop residue, and whether it is a traditional activity on many fields. **Ms. Floyd** answered it has been an agricultural practice which was overseen prior to 2007 by the Department of Agriculture.

**Senator Jordan** asked about the Crop Residue Burning Advisory Committee (CRBAC) and its recommendations. **Ms. Floyd** said the rules provide for a crop residue advisory group consisting of environmental groups, health organizations, growers and farmers, DEQ, and EPA to provide direction, recommendations, or changes. Beginning in 2011, the CRBAC considered additional information about ozone and the fact the ozone standard was likely to change which could be problematic for the farmers. The CRBAC agreed to focus on the 75 percent of any NAAQS at negotiated rulemaking and discussed the concept of equal offset in particulate matter if the ozone standard was loosened. **Senator Jordan** asked if the CRBAC recommended an offset and commented the legislation does not include it. **Ms. Floyd** answered the CRBAC discussed the offset and the health risks associated with it. In negotiated rulemaking, DEQ presented an option of 90 percent of ozone with an offsetting 65 percent particulate matter. Questions arose about whether that reduction in particulate matter could be supported, and DEQ did not have supporting science or enough information to change the particulate matter number.

**Chairman Heider** asked what department is referenced in the provision that a burn may not take place without pre-approval from the Department, and whether the provision is being followed. **Ms. Floyd** responded if growers submit requests to burn, DEQ evaluates the requests based on the established criteria, and DEQ gives approval or non-approval for the burn. **Chairman Heider** asked if all farmers are required to get a permit and prior approval for burning, and if the requirement includes ditch banks. **Ms. Floyd** answered all farmers are required to get prior approval for burning crop residue, which is defined as any vegetative material remaining in the field after harvest or vegetative material produced on designated conservation reserve program lands. The requirement does not include ditch burning.

**Senator Foreman** asked if there is any scientific tie or link between ozone and particulate matter to justify changing one standard in response to a change in the other. **Ms. Floyd** replied there is not. It would take a number of studies and research to determine that, and none is currently available. **Senator Agenbroad** asked if DEQ can set no standards more strict than EPA, how DEQ can reconcile setting any standard below 75 ppb. **Ms. Floyd** answered DEQ cannot set anything new or more stringent. Instead, DEQ's proposed level was designed to ensure the 70 ppb standard is not violated. **Senator Jordan** asked if the new standard is strictly for the State of Idaho or if it applies to the tribal lands as well. **Ms. Floyd** stated the change would be specific to the State. The tribal areas would continue to evaluate and utilize the program they have.

#### TESTIMONY:

**Jonathan Oppenheimer** and **Austin Hopkins** introduced themselves on behalf of the Idaho Conversation League (ICL), an association that works to protect air, water, and land, to oppose **S 1009**. Mr. Oppenheimer provided the Committee with a written statement (See Attachment 2) from Dr. Patrick Weis, a pulmonologist who conducted research specifically on the effects of ozone on lung function and who serves as the Pulmonary Director of St. Luke's Pulmonary Clinics. The ICL has been involved on this issue for over 10 years, specifically with regard to the rulemaking and the bill. **Mr. Hopkins** stated he has attended the rulemaking sessions, and ICL's major concern is that the proposed action would weaken protections for public health in Idaho. Changing the standard from 75 percent to 90 percent is a change from 56 ppb to 63 ppb. Not only is that a higher number, but it goes against EPA trends. ICL thinks DEQ should keep the current standards to remain protective of public health. It is particularly concerning for impacted populations such as youth, elderly, and those in nursing homes and hospitals. Those suffering from chronic obstructive pulmonary

disease (COPD) and asthma are much more affected by these decisions than normal healthy adults.

**Mr. Hopkins** informed the Committee the change is contrary to the opinion of Idaho State Toxicologist Dr. Craig Dietrich, who presented at some of the rulemaking about the public health impacts of ozone and particulate matter. Dr. Dietrich's findings illustrate a compounding effect if burning occurs on days with elevated ozone. When EPA requested public comment on changing the NAAQS for ozone from 75 ppb, they offered a range of 60 ppb to 70 ppb. A number of leading health associations, including the American Medical Association, American Lung Association, American Academy of Pediatrics, American Thoracic Society, and American Heart Association, all urged EPA to lower the maximum to a 60 ppb level. The Idaho standard would exceed what leading health professionals recommend.

**Mr. Hopkins** further commented DEQ has yet to prove this proposal will not exceed the NAAQS as required under the Clean Air Act. Finally, it undermines the consensus building and collaborative efforts of negotiated rulemaking. A number of public health advocates tried to offer a variety of compromises, understanding the ozone threshold might need to be relaxed or given increased flexibility. All proposals were ultimately ignored, even though science was provided to support the proposals.

**Senator Martin** mentioned DEQ's statement that the air around Craters of the Moon measures 30 to 70 ppb of ozone and inquired why it varies and why the level there is up to 70 if there is no burning going on there. **Mr. Hopkins** responded he is not an expert in atmospheric science, but there are a number of pollutants that form ozone. Ozone is a secondary pollutant and is formed through the interaction of sunlight and pollutants in the atmosphere, most notably nitrogen oxides and volatile organic compounds. Ozone travels through the air laterally. While Craters of the Moon is a pristine area, ozone from populated areas could travel there.

**Mr. Oppenheimer** stated ICL has significant concerns with the bill and urges it be held in Committee.

**TESTIMONY:**

**Karen Miller** introduced herself as a medical doctor at St. Luke's Idaho Pulmonary Associates. She is the Adult Director of the St. Luke's Cystic Fibrosis Center of Idaho. **Ms. Miller** informed the Committee she mainly works in the outpatient setting and her clients have COPD, asthma, and cystic fibrosis as well as interstitial lung disease and others. Patients with COPD are not always responsible for their own disease. Up to 25 percent of Idahoans have COPD for reasons other than smoking. **Dr. Miller** said she is an advocate for her patients and opposes **S 1009**. When pollution levels are high, there is a great increase in visits to the pulmonary clinic that overflow into primary care physician offices as well as urgent care clinics. Patients go to the emergency room and get admitted for COPD, asthma, and cystic fibrosis exacerbations. There is clear evidence in the clinic that visits increase when particulate matter and ozone are high. Increasing the allowable ozone would increase these office and hospital visits and cost the State of Idaho money in taking care of patients who require urgent and emergent care for their temporary exacerbations.

**Senator Martin** asked if there is a time of year when there is typically an increase with this problem. **Dr. Miller** replied she has been working at St. Luke's for eight years and as Director for five years, and there are increased visits in July, August, and early September when the air quality is lowest. There is also an increase in January and a little bit of February when the inversion is bad because the particulate matter is trapped here. **Senator Harris** inquired if Dr. Miller has seen an increase year to year and not just seasonal. **Dr. Miller** responded there was quite an increase in office visits from the forest fires over the past three years. Some patients come from eastern Oregon, northern Arizona, and eastern Idaho. Patients remark they can't leave their house because of the air quality or get sick if they go outside. **Chairman Heider** asked if Dr. Miller knew the ppb in Boise from a forest fire in Owyhee County. **Dr. Miller** answered she did not. **Senator Jordan** asked if Dr. Miller's patients came from a wide geographical area and not just Ada County. **Dr. Miller** replied she has a large catchment area for cystic fibrosis patients, and her pulmonary patients also come from a large area.

**TESTIMONY:**

**Justin McLeod** introduced himself as a Kentucky bluegrass seed producer from Nez Perce, Idaho. He is President of the Nez Perce Prairie Grass Growers Association (NPPGGA). In addition to growing grass, he raises wheat, hay, barley, and legumes and his farm has grown bluegrass for over 50 years. The NPPGGA and the Kentucky bluegrass seed growers support **S 1009**. The NPPGGA was represented at all four negotiated rulemakings. The NPPGGA board of directors met after the May 18th meeting in Boise and discussed the draft proposal, and the board of directors agreed it was vital to continue to support a strong CRB program that addresses the concerns of environmental advocacy groups and also allows farmers to participate in approved agricultural practices to raise their crops. The proposed standard of 90 percent of EPA's revised ozone standard of 70 ppb is adequate in 2018. While the national standard is being tightened, Idaho has consistently fallen well below the ceiling due to a successful agreement and a program that has taken on responsibility of weighing both health concerns and the necessities of agriculture. The grass growing community has taken great pride there have been no adverse health effects while the agreement has been in place. **Mr. McLeod** commented he has a family and a business and he is proud of the farms in his community. The current program is successful, and tightened standards would greatly impact what farmers are able to do.

**Senator Foreman** asked if there is a way to successfully conduct his business without burning or reduced burning. **Mr. McLeod** said as a bluegrass grower, he could not. Many ways have been tried to raise Kentucky bluegrass. The Inland Northwest produces 60 to 80 percent of all bluegrass in the world. It takes burning to regenerate the plant. Fortunately, there are great health effects from grass at golf courses, parks, and homes, and bluegrass greatly decreases erosion. **Senator Foreman** asked what it would do to Mr. McLeod's operation if he lost one-third to two-thirds of his burn days. **Mr. McLeod** replied if there was no burning those 31 days, there is a great likelihood in his area that the bluegrass could not be burnt. The worst case scenario is he would not have a crop the next year. In a best case scenario, the crop would be 60 to 70 percent.

**Senator Harris** inquired how many bluegrass farmers there are now compared to 20 years ago. **Mr. McLeod** answered there are probably 70 percent of what there used to be. **Senator Harris** asked whether crop acreage is going up or going down. **Mr. McLeod** said it depends greatly on factors such as the housing market, the number of parks and golf courses constructed, and weather in the East. He believes there are about 25,000 acres of certified grass seed. **Senator Harris** asked if that acreage is less than 20 years ago. **Mr. McLeod** answered it varies drastically.

**Senator Jordan** asked if there was discussion during negotiated rulemaking of developing a new formula that would maintain the current number of potential burn days without increasing them. Current law allows 56 burn days a year, and with the new 70 ppb standard, there would be 52 burn days, a loss of four days. **Mr. McLeod** explained those four days in his area mean a lot. They could get a lot of rain, or there might be a forest fire on a burn day. Decreasing the number of burn days makes it more unhealthy. Farmers have the opportunity to pick a day to burn, even if DEQ says it's a good day to burn. For example, there might be a wind blowing over a town and the farm might be in that wind, so the farmer would choose not to burn that day to avoid impacting a school or home. Decreasing burn days impacts a farmer's ability to be accountable to his neighbors. It may seem like only four days, but percentage wise it is a big difference. The stakeholders tried diligently to come to consensus but could not.

**TESTIMONY:**

**Eric Olson** introduced himself to the Committee as a farmer from Bonners Ferry to testify in support of **S 1009**. He grows wheat, legumes, and canola, and he used to grow bluegrass until it became economically unviable. **Mr. Olson** is a member of the Grain Producers Association and serves on DEQ's Crop Residue Advisory Committee. He has been involved with this issue for the last several years and all last summer. **Mr. Olson** said he participated in negotiated rulemaking meetings and heard from experts and stakeholders on all sides of the issue. DEQ did not have the justification to make changes to any other pollutant because the only pollutant with a change at the federal level that would affect crop residue burning in Idaho is ozone. All parties have agreed the CRB program has worked well with the exception of ozone. Idaho has background ozone that is here due to no fault of Idaho's farmers, present at high enough levels that it has prevented DEQ from approving burn days. The increase will keep DEQ from having its hands tied to approve burn days.

**Mr. Olson** explained there is a difference between particulate matter and ozone. Burn practices have no impact on ozone. Farmers do not create or destroy it when they burn a field. However, farmers can control particulate matter and that is the pollutant with the biggest impact on population centers. When there is a marginal day and ozone levels are lower, usually the humidity levels are so high that particulate matters are off the charts. In that case, farmers don't want to burn because it will have an impact on a school, hospital, or town, including a town 15 miles north of the border in Canada that must also be considered. During negotiations, the growers offered a compromise of reducing the standard for particulate matter from 75 to 70 percent for particulate matter but there was no further negotiation.

**TESTIMONY:**

**Roger Batt** introduced himself on behalf on the Idaho/Eastern Oregon Seed Association to speak in favor of **S 1009**. The association represents the seed companies and affiliated businesses in Idaho in the seed trade. Association members contract with their grass seed producers and other producers in the State to maintain a viable and productive seed industry and market to 120 countries. The organization has been involved in field burning since before 2008, and this legislation has been a great compromise on behalf of all parties. Growers need the viability of fire as a tool for the bluegrass and seed production in the State of Idaho. On July 20, 2017, during negotiated rulemaking, EPA said it would be willing to accommodate a 90 percent standard as long as it protected human health. No science has been brought forth that has indicated it wouldn't protect human health. Since the 2008 burn program was established, there have been no deaths or incidents attributed solely to field burning in Idaho.

**TESTIMONY:**

**Greg Branson** introduced himself as a farmer from Nez Perce, Idaho who supports **S 1009**. He primarily grows wheat and Kentucky bluegrass, and he also grows garbanzo beans, hot Indian mustard, lentils, peas, and canola. Bluegrass seed production is a vital crop to Lewis County because 70 to 80 percent of the world's Kentucky bluegrass is grown in the Inland Northwest. Bluegrass seed production allows him to employ more local people during the season and the local people rely on the jobs. Bluegrass seed production is a low impact crop that, once established, takes very little field work to maintain, keeping tractors out of the field. It is an environmentally friendly crop because it requires much less pesticide use than other competing crops. The wildlife love it, and it creates beautiful scenery, especially in the spring. In order for bluegrass to be a viable and potentially profitable crop, farmers must be able to burn the residue after harvest is complete. Without the ability to burn, the industry would not survive in Idaho. The process has worked very well for the farmers and the communities.

**Senator Harris** asked how many gallons of fuel it would take to get rid of the bluegrass stubble if it couldn't be burned. **Mr. Branson** said the bluegrass would have to be windrowed in some manner. If a combine couldn't do it, it would require a swather to make another pass over the field. Then a baler and a tractor would be needed to bale it up. After that, the loader tractor would have to pick up and stack the bales. There is no market for the bales so trucks and trailers would have to be hired to move it, and he is not sure where it could be taken. Even with no residue, the field still wouldn't yield nearly as well the following year. When the grass burns, fire gets down in the crown and shocks the crown of the plant to produce as much seed as possible.

**Senator Agenbroad** asked about the process for a farmer in the Nez Perce area to burn on tribal land versus non-tribal land. **Mr. Branson** described the process of bluegrass production. Throughout the year, he discs a 20-foot wide burn strip around the field to keep the weeds off and keep it black. After he harvests the crop, he visually inspects the burn strip to make sure there aren't any piles of stubble. Then he calls the tribe, and he provides a lot number that includes the specific location of the field and number of acres. **Mr. Branson** said he submits his permits with the tribe and DEQ, and his name goes on the list. The sooner the field is ready and the sooner the permits get turned in, the higher the spot on the list. He will get a call by 9:30 a.m. to let him know if and when he can burn. Burn times generally run from 1:00 to 4:00 p.m. so it will burn fast and get up in the atmosphere to leave the area. Next, he gets his equipment and fire truck ready. **Mr. Branson** stated he calls extra crew and his neighbors to come over and help. He is ready to burn at 1:00, but he makes the final call. If the wind is blowing the wrong way, he will call off the burn. After he burns the field, he keeps the fire crew around for 60 to 90 minutes to make sure the fire is

out. Without the flexibility of extra burn days, he might choose to burn even if conditions are not ideal because otherwise it might not get done.

**Senator Agenbroad** asked whether the environmental standards for burning on tribal ground are more or less restrictive than for non-tribal land. **Mr. Branson** responded the standards are nearly the same. The Nez Perce Reservation was using its own burn program before the State implemented its program, and the State used the Nez Perce program as the model for the State's program. The primary difference is he works with the tribe to get burn approval, while others contact the State to get approval.

**TESTIMONY:**

**Russ Hendricks** introduced himself on behalf of the more than 76,000 Idaho families who are members of the Idaho Farm Bureau. The Idaho Farm Bureau supports **S 1009** and appreciates the time and effort DEQ has put into working through this process. In Dr. Miller's testimony about her patients, she referenced forest fires. Forest fires are not regulated in any way so many times there is terrible air quality because of forest fire activity. Many of the calls and complaints received by DEQ about burning come in when there is a wildfire happening, not because of CRB. If the State of Idaho had more management of the forest lands, they could be thinned and reduce that problem. **Mr. Hendricks** explained the DEQ threshold is lower than the EPA standard so the EPA standard will not be exceeded, which is protective of public health. The increase in burn days will increase the availability of burn days but that does not mean there will be burning on all the additional days. More days will be available to choose from so the best days can be selected and have less impact on those around them. To illustrate a "ppb," three seconds out of a century is one ppb. An extra seven ppb equals 21 seconds out of a century. One inch in 16,000 miles is one ppb, or seven inches in 16,000 is seven ppb. This is a strict standard to begin with, and the change is a miniscule change, but it will help give additional flexibility.

**TESTIMONY:**

**Benjamin Kelly** introduced himself on behalf of the Food Producers of Idaho. **Mr. Kelly** stated his members support this legislation.

**Chairman Heider** asked Tiffany Floyd to return to the podium to close the presentation.

**Ms. Floyd** explained the difference between the tribal program and the State program. The tribal program addresses particulate matter only and does not consider ozone levels. DEQ interpreted the State Toxicologist's statements at negotiated rulemaking that he did not oppose the program change and supported protecting the NAAQS. EPA sets the NAAQS, and the ozone standard is a "not to exceed" threshold. EPA has defined high ozone as 70 ppb and that is the standard to be complied with. Prior to negotiated rulemaking, DEQ evaluated five years of monitoring data, crop burning, and weather data, and there was no major impact on ozone concentrations from CRB. **Ms. Floyd** commented DEQ takes its obligations under the Clean Air Act very seriously. DEQ respects and appreciates all views heard, and if DEQ thought public health would be jeopardized in any way, DEQ would not be presenting the proposed change.

**MOTION:**

There being no more questions or testimony, **Senator Harris** moved to send **S 1009** to the floor with a **do pass** recommendation. **Senator Agenbroad** seconded the motion.

**DISCUSSION:**

**Senator Martin** admitted he does not fully understand all the scientific information, but his priority is primacy for the State of Idaho. **Senator Martin** supports the bill and DEQ. If there was any evidence this was impacting someone's health, he would be very concerned, but he trusts DEQ is looking at the information and giving correct information.

**Senator Foreman** commented the DEQ proposal keeps Idaho at or below the EPA standard and that is reassuring. He added DEQ is concerned about protecting public health and the environment, and he thinks this proposal is a safe and intelligent solution to an issue where there are opinions on both sides. It seems the fields must be burned, or the State could lose a very important industry. The proposed legislation allows for burning while still meeting the EPA standards.

**Senator Jordan** stated she will oppose the motion and said this is not a decision about burning or not burning fields. There is obviously a scientific necessity for it and it has operated for many years under the current standards. **Senator Jordan** said she would have a better comfort level if two things were happening: 1.) if EPA reviewed and approved this change first and then legislation followed; and 2.) if a formula change would accommodate the same number of days currently available and not an increase in days. **Senator Jordan** commented she understands they are only potential burn days but she has some concerns about the advisory committee and some understandings that may or may not have been reached in that group that seem to have fallen by the wayside in the process.

**Senator Lee** advised there are only so many days that fields can be burned, and in her area, there is pressure to burn on a day that otherwise would not be the best day due to winds or dry conditions. Local growers are also subject to restrictions within counties. **Senator Lee** has talked to growers in her district who are the best stewards of the land, and this bill will give them the same number of burn days but the burning will be spread over more days, allowing them to be better neighbors and partners in the community. This issue can be revisited if it doesn't work. This flexibility will improve community health.

The motion passed by **voice vote**. **Senator Jordan** requested she be recorded as voting nay. **Senator Harris** offered to sponsor the bill.

**ADJOURNED:**

**Chairman Heider** announced the Committee will meet with the House Health and Welfare Committee for a public hearing on health and welfare issues on Friday, January 27 at 8:00 a.m. There being no further business at this time, **Chairman Heider** adjourned the meeting at 4:34 p.m.

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Senator Heider  
Chair

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Jeanne Jackson-Heim  
Secretary