

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Thursday, March 01, 2018

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Rice, Vice Chairman Den Hartog, Senators Patrick, Bayer, Guthrie, Harris, Foreman, and Jordan

ABSENT/ EXCUSED: Senator Thayn

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: **Vice Chairman Den Hartog** called the meeting of the Agricultural Affairs Committee (Committee) to order at 8:03 a.m.

MINUTES APPROVAL: **Senator Harris** moved to approve the Minutes of February 15, 2018. Seconded by **Senator Guthrie**. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Jordan** moved to approve the Minutes of February 20, 2018. Seconded by **Senator Bayer**. The motion carried by **voice vote**.

DOCKET NO. 11-0201-1701 **Rules of the Idaho State Brand Board (ISBB).** **Larry Hayhurst**, Idaho State Brand Inspector, began by addressing a spreadsheet titled "Changes in Personnel Cost and Head Count." **Mr. Hayhurst** pointed out the rising costs in insurance and payroll since 2014. The ISBB has not raised the brand fee since 2006 and brand inspections have decreased by 274,000. The ISBB brand fee is capped at \$1.25 which is set in Idaho Code § 25-1160. This proposed temporary rule seeks to raise cattle inspection fees from 94 cents to \$1.19.

Senator Jordan clarified the ISBB is currently capped at \$1.25 in statute. **Mr. Hayhurst** answered that the cap in statute has been set at \$1.25. ISBB chose to increase the fee only 25 cents to \$1.19.

Senator Patrick asked if ISBB participated in the negotiated rulemaking process; if so was there any opposition to this fee increase at the rulemaking. **Mr. Hayhurst** answered initially ISBB did not process this fee rule change through negotiated rulemaking. ISBB sought approval through the Idaho Cattle Association and Idaho Dairyman's Association. When the rule took effect in July, ISBB was short a document in the rulemaking procedure. Because of this failed procedure, the rule was not valid and ISBB had to offer refunds of the increased fee. The Office of Administrative Rules recommended that ISBB conduct negotiated rulemaking to complete the correct procedures for the temporary fee rule change. At the negotiated rulemaking there were 11 individuals who testified in opposition to the temporary fee rule change.

Senator Guthrie asked for clarification on the fee increase. **Mr. Hayhurst** responded that ISBB increased the fees from 94 cents to \$1.19. **Senator Guthrie** asked if Thursday, February 15, 2018 was the only public comment opportunity. **Mr. Hayhurst** answered in the affirmative. **Mr. Hayhurst** explained, before this temporary fee took effect in July 2017, ISBB met with the Idaho Cattle and Idaho Dairyman's Associations to seek their approval of the increase.

Senator Guthrie asked if that was the reason the Committee is reviewing this temporary fee rule change so late in the session. **Mr. Hayhurst** answered the missing document in the rulemaking procedure resulted in ISBB correcting the rulemaking procedure and offering a refund of the collected fees from July 2017.

Vice Chairman Den Hartog requested that Dennis Stevenson, State Administrative Rules Coordinator, clarify procedure on this docket for the Committee. **Mr. Stevenson** stated the rulemaking of the ISBB became convoluted. When an agency adopts a temporary rule, the statute requires that the rule be published in the next available bulletin. The ISBB temporary rule did not get published in the bulletin. Because of this error in procedure, it invalidates the temporary rule.

The ISBB readopted the temporary rule and then published it in the bulletin. In this process, ISBB did get a request for a public hearing because they did not initially proceed with negotiated rulemaking. During the public hearing comment period, there is also a request period for public hearings. ISBB held the public hearing. These proceedings delayed the adoption of the pending rule and that is why this rule is before the Committee as a temporary rule for extension. The rule did not have time to finish the rulemaking to present it as a pending rule. This rule is before the Committee for extension so that the rule remains in effect after the Legislative Session concludes. This will allow ISBB to finish the rulemaking and the rule will be adopted as pending some time this year after the Legislative Session is complete. The rule will be brought before the Committee next session as a pending rule for final approval.

Tucker Shaw, President of the Idaho Cattle Association, spoke in support of **Docket No. 11-0201-1701**. He stated the service ISBB provides is essential to the cattle industry. The increase in collection fees is a necessary cost to production to keep ISBB essential services functioning. ISBB has been operating in a fiscally responsible way and utilizing its resources prudently. Over the past years, ISBB has operated on a tightened budget while the cost of doing business and requirements have increased. The funds needed to perform the regulatory duties to meet the Governor's recommendations for the 2018 budget are inadequate. It is important to the cattle industry and Mr. Shaw's family's ranching operation for ISBB to be fully functional to safeguard the cattle and assist in the commerce of the cattle industry. **Mr. Shaw** stated that a rules rejection could jeopardize Idaho's cattle industry.

Joel Van Lith spoke in opposition of **Docket No. 11-0201-1701**. **Mr. Van Lith** stated he had no issue with the dollar amount increase, but what is received for the \$227,000 his business collects for ISBB. **Mr. Van Lith's** opposition stemmed from lack of representation for his type of business on the ISBB. **Mr. Van Lith** reported he has not been reimbursed the fees from July 2017 that were collected incorrectly under the rulemaking.

Senator Harris asked if Mr. Van Lith requested or received a refund from the invalidated temporary rulemaking. **Mr. Van Lith** answered he has requested the refund and has not received the funds.

Marty Gill spoke in support of **Docket No. 11-0201-1701**. **Mr. Gill** stated the ISBB is an important element in the commerce of the industry. Brand inspectors must be on site when cattle are shipped. There are animal health issues, such as cattle being on the truck too long and truck drivers who are limited in the amount of hours they can drive.

Wyatt Prescott, representing the Idaho Cattle Association, spoke in support of **Docket No. 11-0201-1701**. **Mr. Prescott** stated his primary occupation is in commercial cattle production by ranching cow/calf, commercial stocker cattle, and finish feeding cattle.

The ISBB is an essential service for the majority of the industry that wants to safeguard their commerce. He does not have the land assets to graze the cattle so the land must be leased and the cattle sent on a truck to a feedlot. It is critical for his operation to know that there is security in his ownership through the ISBB to secure his investment.

Mr. Prescott said he also feeds some of his cattle in Kansas, then the cattle must travel over several state lines. The cattle must have a proof of ownership and a brand record. The most important portion of his business is the security through liens on the cattle he has purchased. This is only possible because of ISBB being able to perfect these liens on the cattle through the brand inspection. This is key in the financing and resulting success of his business.

Mr. Prescott continued to explain why the increased fee request is necessary and providing ISBB with the requested resources is important. ISBB has become fiscally stretched thin with rising overhead fees and decreasing brand inspections. One of the necessary elements for shipping cattle by truck is ISBB personnel being available to be at the trucking site on time for the cattle health. A personal story that **Mr. Prescott** told was ISBB being delayed to his cattle shipment by four hours and the cattle losing weight per hour because of the delay. **Mr. Prescott** believes that if the industry can keep ISBB fully funded through this fee increase it will be beneficial for their industry.

Senator Bayer asked for details and status on the July refunds. **Mr. Hayhurst** replied that ISBB has not reimbursed any of the brand refunds. Those refunds will be sent out on or before April 1, 2018; the total refund amount will be \$36,000. **Senator Bayer** asked if these increased fees are currently being collected. **Mr. Hayhurst** explained that ISBB is collecting brand fees at the \$1.19 currently. During the refund phase, ISBB inspected approximately 400,000 head of cattle. The reason ISBB is only refunding \$36,000 is that some producers did not request a refund. **Senator Bayer** clarified the premise of the fee refund is based on a technical authorization in rulemaking. **Mr. Hayhurst** stated ISBB failed to file one document in the rulemaking procedures and that nullified the fee increase from July to October 2017. **Senator Bayer** asked since October 2017 to present if the ISBB is collecting brand fees at the increased fee of \$1.19. **Mr. Hayhurst** replied in the affirmative.

Senator Patrick asked if ISBB falls under the Idaho State Department of Agricultural. He then inquired as to how the board members are selected. **Mr. Prescott** stated that the members of the ISBB are selected by the Governor. Names are proposed by the industry and the Governor selects individuals from that list. There is a dairy representative, livestock auction market representative, cattle feeder representative, and a cow/calf representative.

David Claiborne, representing the Idaho Dairymen's Associate (IDA), spoke in support of **Docket No. 11-0201-1701**. IDA believes it is important for the brand fees to increase in order for ISBB to continue to perform its essential functions. The IDA represents 490 dairy facilities throughout the State. There are existing statutes that require IDA to have brands and this fee increase is needed so that ISBB regulatory function has the funds to function. IDA has seen a need in increased brand presence at the new slaughter facility in Kuna, Idaho, where a large number of culled cows from dairy operations are processed.

Elizabeth Criner, representing the J.R. Simplot Company, spoke in support of **Docket No. 11-0201-1701**. She stated that a functioning and effective brand board is important to the J.R. Simplot Company business, which owns the processing plant in Kuna, Idaho. This industry is very important to the Land and Livestock Division and ISBB is an important component of the success of this industry.

It is important to note that the fee supports ISBB, the Idaho Beef Council, and disease control. Having a successful branding system helps the consumer from a food safety perspective because there is traceability of the animal.

Vice Chairman Den Hartog invited Mr. Hayhurst to provide closing remarks. **Mr. Hayhurst** stated he wanted to clarify that ISBB is a division of the Idaho State Police (ISP). The full-time brand inspectors are all commissioned officers and have the same powers as an ISP trooper. ISBB works with ISDA and United States Department of Agriculture on animal health and traceability.

Senator Harris asked if **Docket No. 11-0201-1701** is procedurally correct. **Mr. Hayhurst** answered in the affirmative.

Senator Bayer asked Mr. Hayhurst for the total dollar amount of brand inspections performed during the refund period. **Mr. Hayhurst** answered that ISBB inspected approximately 400,000 head of cattle from July 1, 2017 to October 1, 2017 at 25 cents a piece which calculated to \$100,000. Of this \$100,000, only \$36,000 has been requested for refund. **Senator Bayer** asked if since October 1, 2017 to March 1, 2018, the fee set forth in **Docket No. 11-0201-1701** is being collected. He asked if this rule were to be rejected by the Committee, would there be more refund implications. **Mr. Hayhurst** answered in the affirmative.

Senator Guthrie asked from July 1, 2017 to October 1, 2017 the fees that were collected for the increase should not have been collected because of lack of notification. He asked why notification was not sent out in August when the error was discovered. **Mr. Hayhurst** stated ISBB was not notified of the error until September.

Senators Guthrie and **Harris** stated they had a conflict of interest pursuant to rules of the Senate 39(H), but intended to vote on **Docket No. 11-0201-1701**.

MOTION: **Senator Harris** moved to approve **Docket No. 11-0201-1701**. Seconded by **Chairman Rice**. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Vice Chairman Den Hartog** adjourned the meeting at 9:12 a.m.

Senator Rice
Chair

Carol Deis
Secretary