

MINUTES  
**SENATE AGRICULTURAL AFFAIRS COMMITTEE**

**DATE:** Thursday, March 04, 2021

**TIME:** 8:00 A.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman Bayer, Senators Patrick, Den Hartog, Johnson, Zito, Ricks, Nelson, and Rabe

**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 Burtenshaw** called the meeting of the Senate Agricultural Affairs Committee (Committee) to order at 8:00 a.m.

**MINUTES APPROVAL:** **Senator Den Hartog** moved to approve the Minutes of February 16, 2021. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

**Vice Chairman Bayer** moved to approve the Minutes of February 23, 2021. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

**Chairman Burtenshaw** indicated the virtual presence Chanel Tewalt, Deputy Director/Communications, Idaho State Department of Agriculture (ISDA), to answer any technical questions from the Committee members relating to **H 167**.

**H 167**

**Relating to the Department of Agriculture Regarding Rulemaking. Bob Naerebout**, Idaho Dairymen's Association (IDA), stated **H 167** ensures regulatory certainty for producers, allows greater flexibility in rulemaking, and provides suitable considerations in establishing rules during the negotiated rulemaking process. He pointed out that the bill does not change nor impede ISDA's ability to enforce nutrient management plans on dairy or beef operations. Furthermore, he said that **H 167** is broadly supported by the agricultural industry: IDA, Idaho Farm Bureau Federation (IFBF), Idaho Cattle Association, Milk Producers of Idaho, J.R. Simplot Company, Idaho Association of Commerce and Industry, and Food Producers of Idaho.

**DISCUSSION:**

In response to Senator Johnson's questions, **Mr. Naerebout** cited examples of research from other states that do not apply to the agricultural conditions in Idaho. He emphasized **H 167** does not prohibit ISDA to apply scientific studies from other states to its rules, but it gives the agricultural industry's stakeholders the chance to debate on the studies and recommend which ones best apply to the State. He indicated that there are 45 best management practices in the rule, which ISDA cannot amend without going through the negotiated rulemaking process. Subsequently, the rules have to be reviewed and approved by the Legislature.

**Senator Rabe** asked Mr. Naerebout to expound on what impelled the dairy industry to draft the bill. **Mr. Naerebout** recounted that H 270 in 2011 set a scientific sideboard on ISDA's rulemaking process. He further said that, after 10 years, the industry's stakeholders decided there was a need to include economic component in the negotiated rulemaking process. He emphasized that **H 167** extends beyond **H 51**, which amends existing law to provide nutrient management standards on dairy farms. He pointed out that **H 167** provides regulatory assurances for the agricultural industry.

**Senator Nelson** and **Mr. Naerebout** discussed the need to consider current economic conditions on a proposed rule during the negotiated rulemaking process. **Mr. Naerebout** acknowledged the agricultural industry impacts the environment. Moreover, it is also accountable to control those impacts. However, he said that the State also has the responsibility to help the industry remain economically viable.

**Senator Johnson** expressed his concerns about the following: elevating economic viability to the same level or higher as protecting resources, ambiguity in some language in the bill, practicality in making scientific studies available to the public during the rulemaking process, and the effects of changes to two Idaho Code sections mentioned in the bill. He added that he is also concerned that **H 167** would unintentionally create conflict between the agricultural industries and some State agencies. **Mr. Naerebout** explained that public access to the scientific studies during the rulemaking process was established for the purpose of transparency. He affirmed that ISDA has expressed its concerns with **H 167**, and its legal counsel worked with ISDA to compromise on their concerns. He highlighted that **H 167** suggests the rules must be based on best available peer reviewed science and its economic feasibility based on the current economic condition.

**TESTIMONY:**

**Chairman Burtenshaw** announced that there were two written testimonies from Idaho Organization of Resource Councils (IORC) and Idaho Cattle Association. (See Attachment 1.)

The following testified in opposition to **H 167**: **Jonathan Oppenheimer**, Idaho Conservation League; and **Elaine Kazakoff**, IORC. They addressed the following issues and concerns regarding the bill:

- It would require ISDA to ignore or modify any scientific studies if rules are not considered economically feasible to implement.
- It would place ISDA in a challenging position in determining what is economically feasible for dairy and beef industries.
- It would generate additional expenditure to regulate clean up caused by environmental pollutants.
- It would create unfair advantage, in favor of businesses regulated under ISDA.

**Russ Hendricks**, IFBF; **Wyatt Prescott**, Idaho Cattle Association; and **Marv Patten**, Milk Producers of Idaho, testified in favor of **H 167**. They stated that the bill would place reasonable sideboards on potential future regulations that could, under the current law, be solely based on the best available science. They said that the bill would guarantee that the proposed rules, during the negotiated rulemaking process, are scientifically proven, practically available, and economically feasible. They emphasized **H 167** proposes that the economic viability of the rules are to be considered in the negotiated rulemaking process.

**DISCUSSION:**

**Senator Johnson** agreed with the intentions of **H 167** but expressed concerns on the way **H 167** was written, and said it would cause some problems and unexpected expenditure in the future. He also expressed his willingness to spend time with the industry to assist in resolving the issues he conveyed earlier.

**Chairman Burtenshaw** asked Mr. Prescott if it is advantageous to farmers to knowingly pollute or destroy natural resources. **Mr. Prescott** affirmed that farmers depend on the agricultural industry for their livelihood. He said that polluting the environment is not favorable to farmers and would put them out of business.

**Senators Rabe** and **Nelson** asked Ms. Tewalt to explain what transpired in the three-year long negotiated rulemaking on rules governing dairy by-products as well as ISDA's capacity to validate rules if it is economically feasible as defined in the bill. **Ms. Tewalt** introduced Scott Leibsle, Administrator and State Veterinarian, ISDA, to explain the outcome of above-mentioned rulemaking process. **Mr. Leibsle** explained why the rulemaking process was discontinued. He said there were topics that were not able to reach consensus between the stakeholders and ISDA. Thus, ISDA developed a new nutrient management standards to discuss issues that affect the dairy industry. **Ms. Tewalt** acknowledged that ISDA has some questions on how to move forward regarding the rulemaking process. ISDA would be asked to look into data presented by stakeholders rather than gathering its own information. She added ISDA would seek legal counsel to better understand and plan on the best way to put together a transparent assessment of rules.

**Senator Patrick** asked Mr. Naerebout to clarify the negotiated rulemaking process. **Mr. Naerebout** agreed that during the negotiated rulemaking process all parties involved – stakeholders, community members, and agencies could voice their opinions and views on rules being discussed. After the rulemaking process, the rules will be brought to the Legislature for review and approval.

**MOTION:**

**Senator Patrick** moved to send **H 167** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**, with **Senators Johnson, Nelson, and Rabe** requesting that they be recorded as voting nay.

**PRESENTATIONS:**

**Chairman Burtenshaw** indicated that Wolf Depredation Control Board Updates will be rescheduled to a later date due to time constraints.

**Idaho Seed Industry Introductions. Roger Batt**, Idaho-Eastern Oregon Seed Association (IEOSA), stated that Idaho ranks third in the world among seed producers. He added that Idaho produces 50 species of seed crops and ships to 120 countries. (See Attachment 2.) He indicated the presence of IEOSA's Board of Directors to give a short presentations on the different sectors of the seed industry.

**Idaho Bean Industry. Gina Lohnes**, IEOSA, gave the 2019 State Agriculture Overview. She mentioned that 2020 numbers are not available yet. She announced that agriculture is the single largest economic contributor in Idaho and contributes 20 percent of the gross state product. She also discussed the challenges the bean industry faced in recent years. (See Attachment 3.) She highlighted that due to urban development, farmland in Idaho has decreased.

**Ms. Lohnes** indicated that there is a working group reviewing the bean laws to clarify any ambiguities. The group is working to articulate the rules better to avoid any farmers inadvertently breaking them. She said the working group also makes sure the Idaho industry keeps pace with the changing technology.

**Cover Crops. Kevin Osborne**, IEOSA, described cover crop as a crop grown for the protection and enrichment of the soil. He discussed the benefits of cover crop to farmlands. (See Attachment 4.) In addition, he said cover crops help in carbon sequestration. He named several of the cover crops grown in Idaho. He also mentioned that some of the cover crops have two or three purposes: cover crop, food for human consumption, and food for animal consumption.

**Mr. Osborne** presented an Idaho cover crop periodic table. He specified the table serves as a guide for farmers on planting cover crops in their farmlands. He also discussed rules being adopted in Idaho. (See Attachment 5.)

**DISCUSSION:**

**Senator Bayer** asked Mr. Osborne to elaborate on sun hemp. **Mr. Osborne** clarified that sun hemp is the name of a species and is not related to hemp crop. He stated that the use of sun hemp as cover crop is not recommended due to its seasonal ability.

Due to limited time left in the meeting, **Mr. Batt** said he will send the complete copy of the presentation to the Committee members, and they could contact him with any questions or verifications. (See Attachment 6.)

**ADJOURNED:**

There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 9:33 a.m.

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Senator Burtenshaw  
Chair

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Rellie Wisdom  
Secretary