

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 06, 2024

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Cook, Senators Lakey, Guthrie, Ricks, Foreman, Hartgen, Lenney, and Ward-Engelking

ABSENT/ EXCUSED: Senator Ruchti

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 Cook** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

S 1245 **PESTICIDES - Adds to existing law to allow certain labels to satisfy any requirements for a warning regarding health or safety or any other provision or doctrine of state law.** **Senator Harris** explained this legislation amended Idaho Code, Title 22, Chapter 34 and Idaho Code, Title 48, Chapter 6 regarding pesticides and the Idaho Consumer Protection Act. Pesticide labeling was regulated by State and federal laws under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This legislation clarified that existing regulations of pesticide labels be sufficient to satisfy any requirements for a warning regarding health or safety of these products. **Senator Harris** indicated there was no impact to the General Fund because this legislation dealt specifically with pesticide labels and product liability. He stated he wanted to turn his time over to James Curry from Bayer.

TESTIMONY: **James Curry**, Deputy Director, State and Local Government Affairs, Bayer, testified in support of the bill. He reported on the history of Bayer in Idaho where phosphate had been mined since 1952. He explained phosphate was converted into elemental phosphorus, with the majority of the chemical used for the production of glyphosate and was the active ingredient in Roundup. He reported that for many years, Roundup and its active ingredient, glyphosate, were the subject of litigation and significant media attention. Roundup was a critical tool for farmers and agriculture. He explained the bill said for the purposes of a health and safety warning, the existing regulatory process in place under FIFRA was sufficient to satisfy any requirement for a warning label. He noted farmers needed to be assured of the continued availability of these important tools.

Mr. Curry noted legislative certainty was needed even though states had every right to build on the Federal Government's baseline regulations, they should not have the ability to directly contradict the scientific findings and ignore the rigorous review processes already in place. The science and the law were clear. When used according to label specifications, glyphosate was safe for use. He stated the legal challenges caused significant legal costs and created many uncertainties. He noted resources dedicated to litigation costs could otherwise be invested in research and development, which would allow Bayer to bring new and more innovative tools to farmers. He stated the industry needed help from the Legislature to ensure its ability to mine,

manufacture, and deliver essential tools to farmers in Idaho and around the globe.

DISCUSSION: **Senator Lakey** and **Mr. Curry** discussed the Environmental Protection Act's (EPA) rigorous requirements and the 8-to-12-year process requirement for approval. They talked about how warning labels were reviewed on a regular basis. The EPA reassured consumers Roundup was safe and not a carcinogen because of the ongoing studies.

TESTIMONY: The following testified in support of the bill: **Kodee Youree**, Snake River Sugarbeet Growers Association and Amalgamated Sugar Company; and **Douglas Jones**, retired farmer, Executive Director for Growers for Biotechnology, and a licensed applicator. The overall theme was pesticides had improved over the years because of stringent safety standards. It was essential farmers had access to pesticides as long as they were used responsibly and according to directions. Many plants, such as sugar beets, were 95 percent Roundup tolerant.

The following testified in opposition to the bill: Shannon Ansley, representing herself and William Hager, veterinarian. The overall theme was that Roundup was toxic and caused cancer.

DISCUSSION: **Senator Ricks** queried what if an applicator did not follow the directions on the label and something happened. Did this legislation provide immunity? **Mr. Jones** remarked the applicator was not protected if they did not follow instructions and it was a violation of State and federal law. In answer to a question from **Senator Ricks**, **Mr. Jones** stated the only product that he could recall that was taken off the market because of potential harm was Dichlorodiphenyltrichloroethane (DDT).

TESTIMONY: **Daniel Hinkle**, Idaho Trial Lawyers Association, stated he was there to answer questions about the potential impact of this legislation and the broader context.

DISCUSSION: **Senator Ward-Engelking** queried if this bill passed, would lawsuits be allowed to proceed if there was a problem other than the labeling. **Mr. Hinkle** stated the application of pesticides allowed lawsuits. This bill replaced Idaho's requirement to warn people about pesticides. It would take away the farmer's ability or an applicator's ability to hold the company accountable for that harm whether it was under a failure to warn theory or a design defect. He explained all of it was predicated on the warning label. **Senator Ward-Engelking** asked if there was evidence that a pesticide caused Parkinson's disease, would that be put on the label. **Mr. Hinkle** remarked some countries, such as China, failed to provide the EPA with risks of pesticide use. The EPA process was not the same as Idaho State law. Idaho law required a warning of potential harm. The company's duty under federal law was not to mislabel the product.

Senator Ward-Engelking asked for clarification that this bill prohibited lawsuits. **Mr. Hinkle** stated that was his understanding. He noted the court would no longer have the right to hold the manufacturer accountable for any harm. He stated this legislation was about appropriately warning farmers and applicators of the potential risk.

In response to a question posed by **Senator Ricks**, **Mr. Hinkle** cited Syngenta, a company owned by China, that failed to warn Idaho farmers of the risk of Parkinson's disease from using paraquat. He remarked they had known this for decades.

TESTIMONY: **Elizabeth Criner**, Far West Agribusiness Association (FWAA), testified in support of the bill. She stated this bill clarified existing federal requirements about the safety of products. Labels were there for use and warning and applicators needed to comply with the law.

Lance Giles, Idaho Trial Lawyers Association, asked the Committee to hold this bill. He stated an improved label was not sufficient. The duty to warn was only an action. He remarked the bill said a chemical manufacturer satisfied its duty to warn users if the EPA and FIFRA had approved the warning label. If someone and their family became sick due to the product, a cause action in Idaho to hold the manufacturer responsible was not allowed. A duty to warn was basically the only action that could be pursued. This bill was not only about Roundup. It was for the nearly 145 pesticides, fungicides, and rodenticides sold in the U.S., including paraquat. He explained a rebuttable presumption assumed that the duty to warn was met, unless the plaintiff could prove by a clear and convincing evidence standard that the chemical manufacturer failed to warn.

DISCUSSION: **Senator Ward-Engelking** questioned that if the public was to find out at a later date that a chemical caused cancer and the manufacturer withheld this from the company, could the public sue. **Mr. Giles** stated no.

TESTIMONY: The following testified in support of the bill: **Larry Hollifield**, representing himself and a member of the Idaho Grain Producers Association Executive Board, stated farmers needed access to pesticides for crop control. He stated pesticide labels were sufficient.

The following testified in opposition to the bill: **Christina Stucker-Gassi**, Northwest Center for Alternatives to Pesticides, stated the EPA was broken. Paraquat was made in China and labeled in the U.S. **Jonathan Oppenheimer**, Government Relations Director, Idaho Conservation League, remarked this bill gave sweeping immunity to manufacturers. He noted he was worried about the impact pesticides had on health, with increased links to cancer. He asked the bill be held in Committee.

DISCUSSION: **Senator Foreman** remarked there were already EPA labels, a court system, and the products were already in use. He queried what harm was it to leave things the way they were. **Mr. Oppenheimer** stated there was a system that allowed for claims if these products caused a problem.

TESTIMONY: **Julie Page**, representing herself, testified in opposition to the bill. She stated many users could be impacted. She noted this bill gave sweeping immunity and protected one of the largest companies that had the ability to hire lawyers to protect itself. She stated this legislation was not necessary. Idahoans should be able to sue.

DISCUSSION: **Senator Harris** reported a cancer study was conducted by the National Institutes of Health in 2018 on 54,000 pesticides over a 20-year period. There was no evidence of pesticides causing cancer. This legislation did not preclude lawsuits being filed. Rather, it removed the failure to warn claims as justification because under these laws of the State of Idaho, the pesticide label, more recent human health assessment, and the FIFRA for the classification by the EPA satisfied all warnings for health and safety. He stated if the applicator followed the label, the farmers still had to follow a worker protection standard. Pesticides should be made here with U.S. regulations. If not, warning labels and the pesticides made in China or some other place in the world without regulations, would harm U.S. citizens.

Senator Ward-Engelking stated she knew how careful farmers were with

pesticides. She commented this bill removed the ability to sue and if it was found out at a later time that a certain pesticide was not good, the public could not sue. She asked to have the bill held in Committee. **Senator Harris** commented that if a company hid something that was not on the label, they could be sued.

Mr. Curry stated health and safety warnings were very specific on the label, but not on the performance of the product or the manufacturer or anything else about how the product might perform or cause harm. There was a provision if the product was harmful that could be required to be put on the label. There were still a number of remedies available, but not under the failure to warn.

MOTION:

Senator Foreman moved to hold **S 1245** in Committee. **Senator Ward-Engelking** seconded the motion.

SUBSTITUTE MOTION:

Senator Guthrie moved to send **S 1245** to the floor with a **do pass** recommendation. **Senator Hartgen** seconded the motion.

DISCUSSION:

Senator Lenney stated that he had been studying this issue. He noted we were told to trust science. He noted he was skeptical when there were contradictory studies and he wondered what to believe. He stated the future was being sacrificed for the present. He queried if everyone was okay with trading crops for cancer. He remarked he thought big pharma was being protected. He stated he would vote nay on the substitute motion.

Senator Lakey stated he supported the substitute motion. He agreed this legislation did not cover misuse of the product. He noted if someone did not follow the label, they could be held accountable. He remarked the EPA was thorough and overprotective with an eight-to-ten-year process. He thought that was adequate for the manufacturer.

Senator Ward-Engelking stated she wanted information from other attorneys. She noted she wanted to be supportive, but would vote nay on the substitute motion. She reserved the right to change her vote on the floor of the Senate.

Senator Ricks stated he supported the substitute motion. He supported agriculture and it was important to maintain products for farmers. He expressed a concern about current situations with runaway awards on the amount of damages given. He was concerned about keeping a door open down the road to protect people if there were unforeseen consequences.

Senator Foreman stated he saw common ground. He wanted farmers to have what made them productive and efficient. He was concerned about the bill as it gave pre-approval to EPA actions. He asked what if Idaho farmers did not believe what was on the label. He stated it troubled him to preclude that a citizen not sue. He wanted to see a better bill.

Senator Hartgen remarked she lived in an agricultural area. Pesticides were the only thing that kept crops going. She supported the substitute motion.

Senator Guthrie noted the system was flawed by the large awards from juries. The importance could not be dismissed. There was no farmer that would electively apply these chemicals unless necessary. There was a need to have a healthy crop and good production per acre.

ROLL CALL VOTE: **Chairman Cook** called for a roll call vote. **Senators Lakey, Guthrie, Ricks, Hartgen,** and **Chairman Cook** voted aye. **Senators Foreman, Lenney,** and **Ward-Engelking** voted nay. **Senator Ruchti** was absent and excused. The motion carried.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of January 25, 2024. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Ricks** moved to approve the Minutes of January 30, 2024. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

RS 30843 **Relating to the Public Employee Retirement System (PERSI) of Idaho.** **Senator Schroeder** explained this legislation amended the definition of "employee" for the purposes of the Public Employee Retirement System (PERSI) enrollment to exclude seasonal employees of soil and water conservation districts in positions that did not exceed eight consecutive months in a calendar year if the employer certified in writing that the position was seasonal or casual and affected by weather. This definition already applied to seasonal golf course, park, or other positions in cities, counties, irrigation districts, cemetery districts, and mosquito abatement districts. **Senator Schroeder** stated this legislation had no fiscal impact on the General Fund and there was a significant cost savings to soil and water conservation districts.

MOTION: **Senator Lakey** moved to send **RS 30843** to print. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Senator Ricks**, in the essence of time, asked to make a motion to introduce and print the rest of the RS's on the agenda. There were no objections.

MOTION: **Senator Ricks** moved to send **RS 30930 Relating to Hospital and Nursing Care Liens, RS 30943 Relating to Payday Loan Procedures,** and **RS 31102 Relating to Homeowner's Associations** to print. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. **Senator Lenney** voted nay.

DISCUSSION: **Senator Lakey** stated that since he was on the Committee, he would yield his Gubernatorial Reappointment hearing to someone else.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Steven Bailey of Boise, Idaho, as Director of the Department of Administration, to serve a term commencing September 6, 2023 and serving at the pleasure of the Governor. Mr. Bailey** highlighted his background. He remarked he felt his private industry experience helped him with his appointment. He was proud of his accomplishments during the pandemic. He was working on many things as Director.

DISCUSSION: **Chairman Cook** queried what were the duties of the Director of the Department of Administration (DOA). **Mr. Bailey** stated he was responsible for purchasing, risk and group insurance, public works, and fiscal and human resources support.

Chairman Cook stated the vote would take place at the next meeting.

NOTE: Due to the lack of time, **Chairman Cook** asked Gubernatorial Appointees, Claire Sharp and Jenelle White if they could come back to the next meeting. They both agreed.

ADJOURNED: There being no further business at this time, **Chairman Cook** adjourned the meeting at 2:57 p.m.

Senator Cook
Chair

Linda Kambeitz
Secretary