

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Thursday, March 03, 2016

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Rice, Senators Patrick, Souza, Lee, Den Hartog, Harris, Ward-Engelking and Burgoyne

ABSENT/ EXCUSED: Vice Chairman Bayer

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

MINUTES APPROVAL: **Senator Harris** moved to approve the Minutes of February 18, 2016. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

HCR 32 **Commemorating the Pulse Crops.** **Representative Troy** stated 2016 is recognized as the International Year of the Pulses. Pulse crops are lentils, beans, peas and chickpeas they are a vital source of plant- based proteins and amino acids for people around the globe. These products should be eaten as part of a healthy diet to address obesity, as well as to prevent and help manage chronic diseases such as diabetes, coronary conditions and cancer.

The Idaho Pea and Lentil Commission (IPLC) manages the funds collected from the assessment on 200,000 acres per year of this pulse crop of dry peas, lentils and chickpeas. The IPLC allocates funding for research, domestic and international marketing, government affairs and education. In addition to IPLC, the United States Dry Pea and Lentil Council is also headquartered in Moscow, Idaho, with many of the same functions as the IPLC. Moscow, Idaho, is known as the Pea and Lentil Capital of the World.

MOTION: **Senator Patrick** moved to send **HCR 32** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

H 456 **Relating to Grapes and Wine.** **Roger Batt**, representing Idaho Grape and Wine Producers Commission (IGWPC), stated this legislation contains a section of statute relating to the IGWPC granting the authority to IGWC to levy a tax on grapes that are produced in Idaho along with grapes that are purchased from out-of-state producers for the production of wine. This legislation has three components: 1) It removes statutory language that is inconsistent with the IGWPC's Administrative Rules, which were adopted by the Idaho Legislature in 2010. IGWPC set tax structures in the rule that are inconsistent with the way the tax is levied in the language on lines 17 through 19 of the bill. IGWPC is striking this language out of the legislation to be compliant with the rules. 2) Minor corrections have been made to the legislation to make it easier to read. 3) The legislation would allow IGWPC the authority to set the tax on grape juice purchased in Idaho for the production of wine in Idaho. The IGWPC currently has the authority to tax out-of-state grape juice for the production of wine in Idaho but not grape juice purchased in State for the production of wine in Idaho (see attachment 1).

Senator Souza asked if any of the wine growers have chosen to opt out of paying the levy tax. **Mr. Batt** said there have been wine growers who have opted out of paying the levy tax, but it is a very low percentage. Four years ago, two producers opted out.

MOTION:

Senator Burgoyne moved to send **H 456** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

H 499

Relating to Food. Representative Kauffman stated that the Food Safety and Modernization Act (FSMA) was signed into law in January 2011. It requires the Food and Drug Administration (FDA) to increase foreign and imported inspections to protect public health. At the same time it requires a minimum inspection frequency on domestic and production processing facilities. To implement this action, the agency has indicated that they must shift additional responsibilities for some of the domestic inspection to the states in order to cover all the aspects of the FSMA. State governments have two main agencies with authority over safety and inspection; they are the Idaho Department of Health and Welfare (IDHW) and the Idaho State Department of Agriculture (ISDA). Food safety activities have fallen under the jurisdiction of IDHW in the absence of other government oversight. In practice the IDHW has been the main authority over retail food safety. There are other areas of government oversight with respect to wholesale-type food activities of production and processing. In Idaho the food processing inspection is allocated in several ways; dairy is inspected by ISDA, non-dairy processors are inspected by FDA and IDHW has been the backup authority for food safety with respect to food processors of all types.

About a year ago Director Gould of ISDA brought together a broad group of agriculture interests to serve on a Food Safety Committee (FSC) to provide her with feedback on the implementation process in Idaho, which covers production, processing, animal feed and transportation. Those in the arena of food production and processing are more comfortable working with ISDA. This bill sets Idaho on a path to have backup authority for non-retail activities shift to ISDA. As Idaho implements FSMA rules, having the expertise centralized at the ISDA makes sense to those who work in agriculture.

Elizabeth Criner, Lobbyist representing the Northwest Food Processors Association, said **H 499** implements two aspects specifically: 1) It establishes the ISDA as the overarching authority for implementation of FSMA in Idaho for non-retail activities and 2) establishes a process to move forward in the future for the adoption of rulemaking process with IDHW to ensure that no aspect of food safety falls through the cracks. The FSMA will increase food inspections in processing and production. This will give Idaho a chance to have a level of expertise for a network of inspectors in the future. **Ms. Criner** explained that the FSC, that Director Gould convened, decided that Idaho was not ready to proceed forward with the rulemaking process to put FSMA in place. There are many unknowns with respect to the FSMA implementation and they want to see how Washington and Oregon will proceed in adopting this act. Washington and Oregon have very robust food safety programs at their respective departments of agriculture. Both have been leaders in working with industry in food safety for a number of years. Idaho chooses to see how the process will unfold with costs and number of inspectors to make sure that Idaho will be moving in the right direction with implementation.

Senator Souza asked if IDHW will have supervisory capacity over all aspects of FSMA. **Patrick Guzzle**, Food Protection Program Manager, IDHW, Division of Public Health, stated there is not a yes or no answer to this question. Current statute reads that IDHW does have regulatory jurisdiction over all aspect of food within Idaho. Idaho is one of only two states that has specific language in the statute that says, "if a food firm is subject to federal inspection it is not subject to local or state inspection."

Because of the language, **Mr. Guzzle** works closely with each of the health districts throughout the State; the health districts are separate and autonomous agencies. IDHW's Food Protection Program works very closely with health districts in the inspection of food processing firms. The information that is provided to IDHW is sent to the FDA so it can determine whether the firm is subject to federal inspection. If the firm is subject to federal inspection, the health districts are then no longer associated with inspecting that firm. If the FDA determines a firm is not subject to federal inspection, then the health districts license and inspect at a food processing firm. **Senator Souza** asked if a processing firm falls under the FDA inspection jurisdiction, does that mean Idaho has no ability to inspect the facility? **Mr. Guzzle** explained that currently if FDA notifies IDHW that a firm is subject to federal inspection, the health district will not license and inspect the firm unless there is a public health investigation. **Ms. Criner** stated what they are envisioning in the legislation is that the ISDA would have the primary role of inspections.

Senator Burgoyne stated the language conveys that there may be a transference of certain authority from the IDHW or health districts to ISDA concerning non-retail activities on line 14, page 1 of the bill. **Ms. Criner** replied that production agriculture, food processing and processing for animal feed are examples of non-retail activity. Idaho is in the early stages of the implementation of the FSMA; the FDA has a memorandum of understanding with IDHW to carry out inspections on 75 processors in the State. **Senator Burgoyne** asked for clarification on non-retail activities that are performed by either IDHW or health districts. Are their some non-retail activities that are not subject to federal regulation? **Ms. Criner** responded no, not in the processor world. In the production world this will be a new area of having the potential of field inspections dealing with implementation of the produce safety segment. All of the processors are covered under the FDA. **Senator Burgoyne** said what gets picked up under the FSMA to qualify the language of non-retail activities. **Ms. Criner** answered the additional activity would be the produce safety rule. **Senator Burgoyne** concluded that there are some things, based on the language in the bill, which IDHW and health districts perform that would come under the jurisdiction of ISDA. **Ms. Criner** replied in the affirmative, but said those activities are under a memorandum of understanding between FDA and IDHW. The inspections are contracted with IDHW because the FDA does not have enough inspectors to do every inspection. In the future, if they choose the process that is established in a section below in the legislation then it will fall under the ISDA. In that process it would envision additional inspections occurring across the State; if they increase the number of inspections they would prefer to have a centralized force of inspectors for a global marketplace. Idaho has standards far above what FSMA requires the processors to meet because of this marketplace.

Senator Burgoyne asked if the Legislature decides to seek primacy and have the State carry out FSMA in Idaho, then these activities will be carried out by the ISDA. **Ms. Criner** answered in the affirmative and added ultimately the responsibility of the FSMA falls back on the FDA. If the State was not doing what it needed to do, the FDA would be the fall-back. **Senator Burgoyne** asked if the IDHW or the health districts are currently doing most of the work, why would the State want to transfer that work from IDHW to ISDA. **Ms. Criner** replied that IDHW and the health districts are actually doing a very small number of inspections. **Senator Burgoyne** then asked for a breakdown of the percentages of all of the inspections that are being done by the State. **Mr. Guzzle** said that there are non-retail firms that are currently inspected and licensed by the health districts. He did not know the exact number but estimated that there were approximately 10,000 food establishments in the State; about 95 percent are retail firms. The health districts are licensing and inspecting 200 firms that are non-retail.

Chairman Rice clarified that there are multiple silos under FSMA: retail activity that is regulated by IDHW; non-retail activity that is not covered by FSMA and not regulated by the FDA; processors that the FDA regulates but contracts with IDHW for inspection; and other firms that the FDA inspects and regulates. **Mr. Guzzle** explained the retail activities are restaurants, grocery stores and cottage foods. Non-retail firms sell food on a third-party basis either by wholesale transactions or to other parties that are not direct to the consumer. Those firms are subject to federal inspection, which means their finished products or their raw materials are crossing state lines or they are not subject to federal inspections. The health districts are currently licensing and inspecting those firms that are not subject to federal inspection. In addition, IDHW contracts with FDA to conduct 75 inspections per year of firms that are subject to federal inspection. **Ms. Criner** said having a single entity that you go to when you are operating multiple facilities in a state dealing with different health districts (where there is an autonomous relationship between the district and the department) creates a gray area. IDHW thinks it is important for the integrity of the industry that if there are going to be more inspections done at the state level that it is done by a central entity such as ISDA that would have a statewide network and a level of expertise.

Ms. Criner emphasized the reason for FSMA is to ensure the integrity of our food. If the integrity of food safety deteriorates, the industry would not survive in the U.S., let alone globally. The protection of food producer's reputation is protected not by promotion but by producing the best quality, safest food in the world. This is the primary concern for having the best inspector in the food firms to ensure that safety.

Chairman Rice clarified that FSMA is connecting up the food from the field all the way through the processing to the completion of transportation. FSMA's approach is to keep the field through the processor together. **Ms. Criner** stated that is correct.

Benjamin Kelly, representing Food Producers of Idaho, said that the Food Producers are in support of **H 499**.

MOTION:

Senator Lee moved to send **H 499** to the floor with a **do pass** recommendation. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

Senator Burgoyne said health districts were purposely created to take account of Idaho's regional diversity and have led to inconsistencies in many health programs. How this legislation is implemented if primacy occurs in ISDA becomes extremely important that there is no mixing of production or promotion oriented incentive with food safety inspections. **Ms. Criner** replied that ISDA has a responsibility for public food safety under FSMA is **H 499**. is passed. how this legislation is implemented if primacy occurs in the ISDA becomes extremely important so that there is no mixing of production or promotion oriented incentives with food safety inspections.

Representative Kauffman indicated that FSMA came about because the U.S. is trying to move from having a reactive food safety program to having a preemptive one. The producers and processors believe that this process will be handled best under ISDA.

Senator Lee stated that this is a policy decision that offers Idaho the opportunity of a thoughtful approach in the implementation of FSMA. To put the inspections back in IDHW when the producers have strong relationships with the regulators that are already coming into their facilities does not make sense. This is an opportunity for an Idaho solution to what many producers see as a federal intrusion. She acknowledged the efforts of IDHW and ISDA for bringing this legislation forward in response to the industries' concerns.

PRESENTATION: Idaho Dairy Products Commission/United Dairymen of Idaho. Bob Naerebout, Executive Director, Idaho Dairymen's Association (IDA), began his presentation pointing out that IDA was formed in 1924 and works to protect Idaho's dairy industries through environmental, legal and legislative leadership. There has been a move in the last decade to establish an environmental research station for livestock in the Magic Valley. IDA has committed \$3 million towards the establishment of the research center.

Mr. Bob Naerebout then presented past and present census information on the dairy and cow population. Herds of under 200 cows, 131 dairies; 201-500 cows, 94 dairies; 501 to 1,000 cows, 95 dairies; 1,001 to 2,000 cows, 91 dairies; and 2001-plus cows, 91 dairies. The Dairy Industry is basically located in three sections of the State: Eastern Idaho with 111 dairies; the Magic Valley with 296 dairies; and Treasure Valley with 95 dairies. In 1970 there were 8,500 dairies with 144,000 cows; in 2003 there were 774 dairies with 358,213 cows; and in 2016 there are 502 dairies with 566,611 cows. The trend of having fewer dairies but larger operations is a national trend. In 1980 there were 225,000 licensed dairies in the U.S. In 2000 it was down to 70,000 dairies and 2016 the industry is down to 45,000 dairies.

Milk production for 2015 was 14.08 billion pounds. When there is an oversupply of milk in Idaho, the milk is shipped out of the State and will be sold at a distressed price. The industry's goal is to grow the processors' capacity as the milk supply increases (see attachment 2).

Mr. Bob Naerebout introduced **Mr. Rick Naerebout**, who explained the IDA's focus for sustainability in their industry: social, environmental and economic. The dairy industry spends a great deal of time and effort being engaged on immigration and refugee resettlement debates and discussions. At the local level they have been working with the University of Idaho to do a study of the impact of foreign-born labor on rural economies. This study has produced much needed data to help Legislators and the dairy industry understand the positive benefits of those foreign born participants in their communities. In the Magic Valley they receive approximately 300 refugees per year and they are starting to see these individuals become a labor force for the dairy industry. They have dairymen looking to this resettlement program as an opportunity to hire individuals. Dairy jobs are among the best opportunities for higher paying jobs. **Mr. Bob Naerebout** serves on two national immigration boards.

Mr. Rick Naerebout explained that the IDA stepped back and looked at their industry through consumer and society expectations. Nutrient management and water quality are two areas of consumer concern. There were only two nutrient management planners within Idaho outside of ISDA. IDA decided to hire a private nutrient planner this year. Dr. Stephanie Kulesza was hired to be the lead in their nutrient management and water quality initiatives. An unintentional gain that they hadn't anticipated when they hired her was the benefit of having this expertise available to them for their own staff.

Processors must grow along with the dairies because they cannot maintain a healthy milk price if that ratio is not in place. Today they are starting to see their competitive pricing slip because they have more milk supply than processing capacity; another processor will need to come to the State. This translates into an additional 750 pounds of milk per day that they have to find a way to process. There is a tremendous amount of production in the world market; Idaho exports 15 to 20 percent of its total production into the world market. The European Union has lifted its quota program for the first time in 30 years; Holland's increases in 2015 have placed that annual increase equivalent to one month of Idaho's total milk production. The forecast for milk price recovery is sometime in 2017; this means Idaho's average dairy will lose money in 2016.

Senator Patrick asked what the dairy industry does with the excess milk when they do not have the capacity to process it. **Mr. Rick Naerebout** answered that cooperatives will start pushing milk to other processing plants in neighboring states or milk is stair-stepped east across the country to manage the milk supply.

Senator Patrick asked what percent of the price of milk covers the cost of feed? **Mr. Rick Naerebout** replied it is 40 to 50 percent.

Senator Harris said it takes hay, corn and water to feed these cows and make milk. Can the dairy industry maintain its growth in Idaho with the resources we have? **Mr. Rick Naerebout** responded that growth has been slow since 2009. Up to that point growth was about 2 percent but competition for feed is becoming an inhibiting factor.

Senator Souza asked what the entry-level wage is for an immigrant worker. **Mr. Bob Naerebout** stated that the immigration/refugee debate is as much a moral issue as it is a workforce development issue for this country. A starting wage on a dairy or in the processing industry is \$12 to \$15 per hour and goes up from there. **Senator Burgoyne** asked how he sees immigrant labor supply impacting dairy and other industries. **Mr. Bob Naerebout** answered that the dairy industry jobs are entry-level positions and then the employee would advance from there. The dairy industry does not have a visa program available to them to acquire workers; so for their industry the future will be a lack of labor.

ADJOURNED: There being no further business, **Chairman Rice** adjourned the meeting at 9:18 a.m.

Senator Rice
Chair

Carol Deis
Secretary