

Appendix B: House Bill 557

Open Burning of Crop Residue State Implementation Plan (SIP) Revision

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Open Burning of Crop Residue State Implementation Plan (SIP) Revision

HOUSE BILL NO. 557 - Crop residue burning

HOUSE BILL NO. 557

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Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

This sentence is marked with bold and underline to show added text.

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strikethrough and italic,
indicating text to be
removed.*~~

Bill Status

H0557.....by STATE AFFAIRS
CROP BURNING - Adds to, amends and repeals existing law relating to crop
burning to provide for the open burning of crop residue; to provide that
certain information relating to open burning of crop residue shall not be
exempt from disclosure.

02/25 House intro - 1st rdg - to printing

02/26 Rpt prt - to Env

02/29 Rpt out - rec d/p - to 2nd rdg

Rls susp - PASSED - 66-0-4

AYES -- Anderson, Andrus, Barrett, Bayer, Bedke, Bell, Bilbao, Block,
Bock, Boe, Bolz, Bowers, Brackett, Bradford, Chadderdon, Chavez,
Chew, Clark, Collins, Crane, Durst, Eskridge, Hagedorn, Hart,
Harwood, Henbest, Henderson, Jaquet, Killen, King, Kren, Labrador,
LeFavour, Loertscher, Luker, Marriott, Mathews, McGeachin, Mortimer,
Moyle, Nielsen, Nonini, Pasley-Stuart, Patrick, Pence, Raybould,
Ringo, Roberts, Ruchti, Rusche, Sayler, Schaefer, Shepherd(08),
Shirley, Shively, Smith(24), Smith(30)(Stanek), Snodgrass, Stevenson,
Thayn, Thomas, Trail, Vander Woude, Wood(27), Wood(35), Mr. Speaker

NAYS -- None

Absent and excused -- Black, Lake, Shepherd(02), Wills

Floor Sponsor - Roberts

Title apvd - to Senate

02/29 Senate intro - 1st rdg - to Health/Wel

03/06 Rpt out - rec d/p - to 2nd rdg

Rls susp - PASSED - 34-0-1

AYES -- Andreason, Bair, Bastian, Bilyeu, Broadsword, Burkett,
Cameron, Coiner, Corder, Darrington, Fulcher, Gannon, Geddes, Goedde,
Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, Langhorst, Little,
Lodge, Malepeai(Sagness), McGee, McKague, McKenzie, Pearce,

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Richardson, Schroeder, Siddoway, Stegner, Stennett, Work

NAYS -- None

Absent and excused -- Davis

Floor Sponsor - Bair

Title apvd - to House

03/06 To enrol - Rpt enrol - Sp signed - Pres signed
To Governor

03/07 Governor signed
Session Law Chapter 71
Effective: 03/07/08

Bill Text

|||| LEGISLATURE OF THE STATE OF IDAHO ||||
Fifty-ninth Legislature Second Regular Session - 2008

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 557

BY STATE AFFAIRS COMMITTEE

1 AN ACT
2 RELATING TO CROP BURNING; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE
3 ADDITION OF A NEW SECTION 39-114, IDAHO CODE, TO PROVIDE FOR THE OPEN
4 BURNING OF CROP RESIDUE; AMENDING SECTION 9-340D, IDAHO CODE, TO PROVIDE
5 THAT CERTAIN INFORMATION RELATING TO OPEN BURNING OF CROP RESIDUE SHALL
6 NOT BE EXEMPT FROM DISCLOSURE AND TO MAKE TECHNICAL CORRECTIONS; TO PRO-
7 VIDE THAT THE DEPARTMENT OF AGRICULTURE SHALL TRANSFER CERTAIN MONEYS TO
8 THE STATE TREASURER; REPEALING CHAPTER 48, TITLE 22, IDAHO CODE, RELATING
9 TO SMOKE MANAGEMENT AND CROP RESIDUE DISPOSAL; AMENDING SECTION 39-6717,
10 IDAHO CODE, TO REVISE A CODE REFERENCE; AND DECLARING AN EMERGENCY.

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of a **NEW SECTION**, to be known and des-
14 ignated as Section 39-114, Idaho Code, and to read as follows:

15 39-114. OPEN BURNING OF CROP RESIDUE. (1) The open burning of crop resi-
16 due to develop physiological conditions conducive to increase crop yields, or
17 to control diseases, insects, pests or weed infestations shall be an allowable
18 form of open burning, such that it is expressly authorized as referenced in
19 section 52-108, Idaho Code, so long as the open burning is conducted in accor-
20 dance with the provisions of this section and the rules promulgated pursuant
21 to this chapter.

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22 (2) Crop residue means any vegetative material remaining in the field
23 after harvest or vegetative material produced on designated conservation
24 reserve program (CRP) lands.

25 (3) The open burning of crop residue shall be conducted in the field
26 where it was generated. A burn may not take place without preapproval from the
27 department. The department shall not approve a burn if it determines that
28 ambient air quality levels:

29 (a) Are exceeding, or are expected to exceed, seventy-five percent (75%)
30 of the level of any national ambient air quality standard on any day, and
31 these levels are projected to continue or recur over at least the next
32 twenty-four (24) hours; or

33 (b) Have reached, or are forecasted to reach and persist at, eighty per-
34 cent (80%) of the one (1) hour action criteria for particulate matter pur-
35 suant to section 556 of IDAPA 58.01.01, rules for the control of air pol-
36 lution in Idaho.

37 The department shall make available to the public, prior to the burn, informa-
38 tion regarding the date of the burn, location, acreage and crop type to be
39 burned. If the agricultural community desires to burn more than twenty thou-
40 sand (20,000) acres annually of bluegrass within the state, that does not
41 include Indian or tribal lands within the reservation boundaries as recognized
42 by the federal clean air act, then, prior to approving the burning of the
43 additional acres, the department shall complete an air quality review analysis

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1 to determine that the ambient air quality levels in this section will be met.

2 (4) A fee in an amount of two dollars (\$2.00) per acre to be burned shall
3 be paid to the department prior to burning. The department shall remit all
4 fees quarterly to the state treasurer, who shall deposit the moneys in the
5 general fund.

6 SECTION 2. That Section 9-340D, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION
9 RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are
10 exempt from disclosure:

11 (1) Trade secrets including those contained in response to public agency
12 or independent public body corporate and politic requests for proposal,
13 requests for clarification, requests for information and similar requests.
14 "Trade secrets" as used in this section means information, including a for-
15 mula, pattern, compilation, program, computer program, device, method, tech-
16 nique, process, or unpublished or in progress research that:

17 (a) Derives independent economic value, actual or potential, from not
18 being generally known to, and not being readily ascertainable by proper
19 means by other persons who can obtain economic value from its disclosure
20 or use; and

21 (b) Is the subject of efforts that are reasonable under the circumstances
22 to maintain its secrecy.

23 (2) Production records, housing production, rental and financing records,
24 sale or purchase records, catch records, mortgage portfolio loan documents, or
25 similar business records of a private concern or enterprise required by law to

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26 be submitted to or inspected by a public agency or submitted to or otherwise
27 obtained by an independent public body corporate and politic. Nothing in this
28 subsection shall limit the use which can be made of such information for regu-
29 latory purposes or its admissibility in any enforcement proceeding.

30 (3) Records relating to the appraisal of real property, timber or mineral
31 rights prior to its acquisition, sale or lease by a public agency or indepen-
32 dent public body corporate and politic.

33 (4) Any estimate prepared by a public agency or independent public body
34 corporate and politic that details the cost of a public project until such
35 time as disclosed or bids are opened, or upon award of the contract for con-
36 struction of the public project.

37 (5) Examination, operating or condition reports and all documents relat-
38 ing thereto, prepared by or supplied to any public agency or independent pub-
39 lic body corporate and politic responsible for the regulation or supervision
40 of financial institutions including, but not limited to, banks, savings and
41 loan associations, regulated lenders, business and industrial development cor-
42 porations, credit unions, and insurance companies, or for the regulation or
43 supervision of the issuance of securities.

44 (6) Records gathered by a local agency or the Idaho department of com-
45 merce, as described in chapter 47, title 67, Idaho Code, for the specific pur-
46 pose of assisting a person to locate, maintain, invest in, or expand business
47 operations in the state of Idaho.

48 (7) Shipping and marketing records of commodity commissions used to eval-
49 uate marketing and advertising strategies and the names and addresses of grow-
50 ers and shippers maintained by commodity commissions.

51 (8) Financial statements and business information and reports submitted
52 by a legal entity to a port district organized under title 70, Idaho Code, in
53 connection with a business agreement, or with a development proposal or with a

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1 financing application for any industrial, manufacturing, or other business
2 activity within a port district.

3 (9) Names and addresses of seed companies, seed crop growers, seed crop
4 consignees, locations of seed crop fields, variety name and acreage by vari-
5 ety. Upon the request of the owner of the proprietary variety, this informa-
6 tion shall be released to the owner. Provided however, that if a seed crop has
7 been identified as diseased or has been otherwise identified by the Idaho
8 department of agriculture, other state departments of agriculture, or the
9 United States department of agriculture to represent a threat to that particu-
10 lar seed or commercial crop industry or to individual growers, information as
11 to test results, location, acreage involved and disease symptoms of that par-
12 ticular seed crop, for that growing season, shall be available for public
13 inspection and copying. This exemption shall not supersede the provisions of
14 section 22-436, Idaho Code, nor shall this exemption apply to information
15 regarding specific property locations subject to an open burning of crop resi-
16 due pursuant to section 39-114, Idaho Code, names of persons responsible for
17 the open burn, acreage and crop type to be burned, and time frames for
18 burning.

19 (10) Information obtained from books, records and accounts required in
20 chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed com-
21 mission and pertaining to the individual production records of oilseed grow-

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22 ers.

23 (11) Records of any risk retention or self-insurance program prepared in
24 anticipation of litigation or for analysis of or settlement of potential or
25 actual money damage claims against a public entity and its employees or
26 against the industrial special indemnity fund except as otherwise discoverable
27 under the Idaho or federal rules of civil procedure. These records shall
28 include, but are not limited to, claims evaluations, investigatory records,
29 computerized reports of losses, case reserves, internal documents and corre-
30 spondence relating thereto. At the time any claim is concluded, only statisti-
31 cal data and actual amounts paid in settlement shall be deemed a public record
32 unless otherwise ordered to be sealed by a court of competent jurisdiction.
33 Provided however, nothing in this subsection is intended to limit the attorney
34 client privilege or attorney work product privilege otherwise available to any
35 public agency or independent public body corporate and politic.

36 (12) Records of laboratory test results provided by or retained by the
37 Idaho food quality assurance laboratory. Nothing in this subsection shall
38 limit the use which can be made, or availability of such information if used,
39 for regulatory purposes or its admissibility in any enforcement proceeding.

40 (13) Reports required to be filed under chapter 13, title 62, Idaho Code,
41 identifying electrical or natural or manufactured gas consumption data for an
42 individual customer or account.

43 (14) Voluntarily prepared environmental audits, and voluntary disclosures
44 of information submitted on or before December 31, 1997, to an environmental
45 agency as defined in section 9-803, Idaho Code, which are claimed to be confi-
46 dential business information.

47 (15) Computer programs developed or purchased by or for any public agency
48 or independent public body corporate and politic for its own use. As used in
49 this subsection, "computer program" means a series of instructions or state-
50 ments which permit the functioning of a computer system in a manner designed
51 to provide storage, retrieval and manipulation of data from the computer sys-
52 tem, and any associated documentation and source material that explain how to
53 operate the computer program. Computer program does not include:

54 (a) The original data including, but not limited to, numbers, text,
55 voice, graphics and images;

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1 (b) Analysis, compilation and other manipulated forms of the original
2 data produced by use of the program; or

3 (c) The mathematical or statistical formulas that would be used if the
4 manipulated forms of the original data were to be produced manually.

5 (16) Active investigative records and trademark usage audits of the Idaho
6 potato commission specifically relating to the enforcement of chapter 12,
7 title 22, Idaho Code, until the commencement of formal proceedings as provided
8 by rules of the commission; purchase and sales information submitted to the
9 Idaho potato commission during a trademark usage audit, and investigation or
10 enforcement proceedings. Inactive investigatory records shall be disclosed
11 unless the disclosure would violate the standards set forth in subsections
12 (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection
13 shall limit the use which can be made, or availability of such information if
14 used, for regulatory purposes or its admissibility in any enforcement proceed-
15 ing.

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16 (17) All records copied or obtained by the director of the department of
17 agriculture or his designee as a result of an inspection pursuant to section
18 25-3806, Idaho Code, except:

19 (a) Records otherwise deemed to be public records not exempt from disclo-
20 sure pursuant to this chapter; and

21 (b) Inspection reports, determinations of compliance or noncompliance and
22 all other records created by the director or his designee pursuant to sec-
23 tion 25-3806, Idaho Code.

24 (18) All data and information collected by the division of animal indus-
25 tries or the state brand board pursuant to the provisions of section 25-207B,
26 Idaho Code, or rules promulgated thereunder.

27 (19) Records disclosed to a county official by the state tax commission
28 pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.

29 (20) Records, data, information and materials collected, developed, gener-
30 ated, ascertained or discovered during the course of academic research at pub-
31 lic institutions of higher education if the disclosure of such could reason-
32 ably affect the conduct or outcome of the research, or the ability of the pub-
33 lic institution of higher education to patent or copyright the research or
34 protect intellectual property.

35 (21) Records, data, information and materials collected or utilized during
36 the course of academic research at public institutions of higher education
37 provided by any person or entity other than the public institution of higher
38 education or a public agency.

39 (22) The exemptions from disclosure provided in subsections (20) and (21)
40 of this section shall apply only until the academic research is publicly
41 released, copyrighted or patented, or until the academic research is completed
42 or terminated. At such time, the records, data, information, and materials
43 shall be subject to public disclosure unless: (a) another exemption in this
44 chapter applies; (b) such information was provided to the institution subject
45 to a written agreement of confidentiality; or (c) public disclosure would pose
46 a danger to persons or property.

47 (23) The exemptions from disclosure provided in subsections (20) and (21)
48 of this section do not include basic information about a particular research
49 project that is otherwise subject to public disclosure, such as the nature of
50 the academic research, the name of the researcher, and the amount and source
51 of the funding provided for the project.

52 (24) Records of a county assessor containing information showing the
53 income and expenses of a taxpayer, which information was provided to the
54 assessor by the taxpayer to permit the assessor to determine the value of
55 property of the taxpayer.

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1 (25) Results of laboratory tests which have no known adverse impacts to
2 human health conducted by the Idaho state department of agriculture animal
3 health laboratory, related to diagnosis of animal diseases of individual ani-
4 mals or herds, on samples submitted by veterinarians or animal owners unless:

5 (a) The laboratory test results indicate the presence of a state or fed-
6 erally reportable or regulated disease in animals;

7 (b) The release of the test results is required by state or federal law;
8 or

9 (c) The test result is identified as representing a threat to animal or

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10 human health or to the livestock industry by the Idaho state department of
11 agriculture or the United States department of agriculture. Nothing in
12 this subsection shall limit the use which can be made, or availability of
13 such information if used, for regulatory purposes or its admissibility in
14 any enforcement proceeding, or the duty of any person to report contagious
15 or infectious diseases as required by state or federal law.

16 (256) Results of laboratory tests conducted by the Idaho state department
17 of agriculture seed laboratory on samples submitted by seed producers or seed
18 companies. Nothing in this subsection shall limit the use which can be made,
19 or availability of such information pursuant to the provisions of subsections
20 (9) and (10) of section 22-418, Idaho Code.

21 (257) For policies that are owned by private persons, and not by a public
22 agency of the state of Idaho, records of policies, endorsements, affidavits
23 and any records that discuss policies, endorsements and affidavits that may be
24 required to be filed with or by a surplus line association pursuant to chapter
25 12, title 41, Idaho Code.

26 SECTION 3. Any moneys in the state Agricultural Smoke Management Account
27 referenced in Section 22-4804, Idaho Code, which are unexpended or unencum-
28 bered on June 30, 2008, shall be paid over to the State Treasurer by the
29 Department of Agriculture and deposited in the General Fund.

30 SECTION 4. That Chapter 48, Title 22, Idaho Code, be, and the same is
31 hereby repealed.

32 SECTION 5. That Section 39-6717, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 39-6717. SAVINGS CLAUSE. Nothing in this chapter shall alter or affect
35 the provisions of ~~chapter 48, title 22~~ section 39-114, Idaho Code, on ~~smoke~~
36 ~~management and the open burning of crop residue, disposal.~~

37 SECTION 6. An emergency existing therefor, which emergency is hereby
38 declared to exist, this act shall be in full force and effect on and after its
39 passage and approval.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 18000

This bill repeals the Smoke Management and Crop Residue Disposal Act administered by the Idaho Department of Agriculture and creates a new statute providing the Department of Environmental Quality (DEQ) with the authority to administer the open burning of crop residue. The proposed legislation requires approval from DEQ prior to the burn and prohibits DEQ from granting that approval if it determines that ambient air-quality levels exceed or are projected to exceed seventy-five percent (75%) of the

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level of any national air ambient air quality standard on any burn day or eighty percent (80%) of the one hour action criteria for particulate matter under IDAPA 58.01.557; and it sets a two dollar (\$2.00) per acre fee for burning. The bill also requires DEQ to conduct further air-quality analysis prior to allowing the burning of more than 20,000 acres of bluegrass within the state, which does not include tribal lands within the reservation boundaries as recognized by the federal Clean Air Act. It also revises the public records act to specifically allow the public disclosure of the names(s) of persons responsible for the burning, the location, crop type, acres to be burned and times of burning.

FISCAL NOTE

The enactment of this legislation will have one-time initial start up expenses of \$186,700 as well as ongoing program costs estimated to be \$419,700 for a total impact of \$606,377 to the General Fund for FY 2009. In addition to funding, the Department of Environmental Quality has indicated this program will require two additional full time positions and several seasonal positions.

To offset initial program costs, the Department of Agricultural will transfer \$209,000 to the General Fund from the current field burning program. This transfer will reduce the total General Fund impact in FY 2009 to \$397,377. This free fund balance is the result of previous years fees paid to the state by landowners for field burning.

All future receipts remitted to the state for field burning under this bill shall be transferred to the General Fund to help with the ongoing program costs.

Contact: Representative Ken Roberts; Representative Paul Shepherd
Phone (208) 332-1000

STATEMENT OF PURPOSE/FISCAL NOTE

H 557

Reprint

Reprint

Reprint

Reprint