

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 12, 2024

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Burtenshaw, Vice Chairman Adams, Senators Guthrie, Den Hartog, Harris, Okuniewicz, Schroeder, Semmelroth, and Taylor

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 Resources and Environment Committee (Committee) to order at 1:30 p.m.

S 1279 **NAVIGATIONAL ENCROACHMENTS - Amends existing law to define a phrase.** **Senator Herndon** explained this legislation added a clarifying definition to Idaho Code § 58-1312 concerning the 1974 Lake Protection Act. The definition of the phrase "has not been modified" was added to state that the overall footprint of the encroachment on the lake bed had not changed in dimension, orientation, height, or location. This allowed owners to repair and maintain encroachments on the lake bed that existed prior to 1974 without having to obtain a new permit and pay for the permitting and application process. His opinion was that this was the intention of the legislature when this section of code was amended in 2006. He reviewed with the Committee his handout of the House Resources and Conservation and Senate Resources and Environment Committee meeting minutes that discussed the 2006 amendment. (Attachment 1) He also reviewed the results of a recent court case where the Idaho Department of Lands (IDL) used a dictionary definition for the term modified, resulting in the court finding that a homeowner modified his pre-Lake Protection Act structure. (Attachment 1)

DISCUSSION: **Senator Schroeder** shared his appreciation for Senator Herndon's thoroughness in drafting and researching this legislation and expressed his support for **S 1279**. **Senator Herndon** agreed that this was an example of how important it was for the legislature to include clear definitions when composing legislation. **Senator Semmelroth** asked if this proposed legislation had already been enacted when the court decided the case example, if it would have changed the outcome. **Senator Herndon** replied that this was unknown. He added that IDL believed this legislation would not have changed that particular outcome, because the location of the encroachment changed. **Chairman Burtenshaw** asked for more description on changes in height, such as when the encroachment footprint did not change, but someone built a house on their dock. **Senator Herndon** explained that this legislation stated the height of the encroachment could not be expanded.

TESTIMONY: **Eric Wilson**, Resource Protection and Assistance Bureau Chief, IDL, did not offer an opinion on **S 1279**, but offered some items to consider related to how proposed changes might be contrary to how nonconforming uses had been handled in the past, and how this might impact neighbors. His opinion was that the number of encroachments dating before the 1974 Lake Protection Act was small.

DISCUSSION: **Chairman Burtenshaw** asked how many people had documentation of their dock from 50 years ago. **Mr. Wilson** responded that IDL had seen family photos and other similar evidence be used to establish that a dock existed before 1974. **Chairman Burtenshaw** asked if he did not have photos from 50 years ago, what he could use for documentation. **Mr. Wilson** replied that there had to be some substantive documentation, which could be family photos, other written records, county records, or aerial photography.

Senator Herndon stated that in his experience as a general contractor in Bonner County, he worked on encroachments that predated the 1974 Lake Protection Act and he believed many of these could be maintained to last for many generations. He believed the fundamental issue addressed by **S 1279** was one of fairness and creating consistency with the legislature's intention when it enacted the Lake Protection Act in 1974, and when it amended the Lake Protection Act in cooperation with IDL in 2006.

MOTION: **Senator Harris** moved to send **S 1279** to the floor with a **do pass** recommendation. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

RS 31145, RS 31315C2, RS 31168, RS 31250, RS 31232, RS 31295C1, RS 31235, RS 31239C1 **Senator Den Hartog** moved that **RS 31145 Joint Memorial, Columbia-Snake River System, RS 31315C2 Relating to Grazing Leases, RS 31168 Relating to Irrigation Districts, Idaho Code § 43-712, RS 31250 Relating to Irrigation Districts, Idaho Code § 43-109, RS 31232 Relating to Rights-Of-Way, RS 31295C1 Relating to Fish and Game, RS 31235 Concurrent Resolution, Clean and Safe Nuclear, and RS 31239C1 Relating to Water**, be sent to print. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 1:54 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary