

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Tuesday, January 25, 2022

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Lickley, Representatives Moyle, Wood, Boyle, Vander Woude, Gestrin, Mendive, Kauffman, Blanksma, Addis, Moon, Manwaring, Okuniewicz, Yamamoto, Rubel, Mathias, Burns

**ABSENT/
EXCUSED:** Representative(s) Blanksma

GUESTS: The sign-in sheet will be retained in the committee secretary's office; following the end of the session the sign-in sheet will be filed with the minutes in the Legislative Library.

Chairman Gibbs called the meeting to order at 1:30pm.

Chairman Gibbs announced this committee will allow for remote testimony moving forward and will utilize the testimony timer if the number of testifiers warrants limiting individual times. He also indicated, depending on the number of testifiers, overall public testimony may be limited due to time constraints of the committee, so not everyone may be called upon to testify. Chairman Gibbs stated beginning Monday, January 31, 2022, everyone wanting to testify, either remotely or in person, must sign up online. There will no longer be sign-up sheets in the committee room.

MOTION: **Rep. Mathias** made a motion to approve the minutes of the January 19, 2022 meeting. **Motion carried by voice vote.**

RS 29200: **David Claiborne**, Sawtooth Law Offices, representing Idaho Dairymen's Association, stated this proposed legislation will make a fund available to support investments in environmental projects on Confined Animal Feeding Operations (CAFOs) to improve livestock byproduct, waste, nutrient and water management, and its land application and storage systems. He explained, currently CAFOs are not eligible for these projects because they do not directly discharge into water bodies. This legislation would provide a direct funding source for environmental and water quality improvement projects awarded and facilitated through the Department of Environmental Quality (DEQ).

MOTION: **Rep. Lickley** made a motion to introduce **RS 29200**. **Motion carried by voice vote.**

RS 29041C1: **Brian Patton**, Executive Officer, Idaho Department of Water Resources, explained this proposed legislation is in response to a Legislative Services Office audit, which identified a discrepancy with language in **Idaho Code 42-1756(5)**. He explained, this Code governs the security interest requirements of loans made by the Water Resource Board from its Revolving Development Account, and the Board's actual practices of securing loans. While the existing language applies to securing loans to non-governmental borrowers, such as canal companies, it does not match the processes that govern incurring and securing debt by public entities such as irrigation districts, ground water districts, flood control districts, or drainage districts. Mr. Patton stated **RS 29041C1** specifies the Board may enter into loan security arrangements appropriate to the lender and all borrowers that come to the Board for a loan.

MOTION: **Rep. Wood** made a motion to introduce **RS 29041C1**. **Motion carried by voice vote.**

RS 29069C1: **Scott Phillips**, Policy and Communications Chief, Idaho Department of Lands, explained when unwanted recreational uses impact the Department's ability to generate revenue from activities on endowment lands like timber production and grazing, they need a statutory tool to address the negative impacts. He stated this proposed legislation will establish infraction-level charges for violating restrictions on the use of endowment lands, as long as the public is given appropriate notice of the restrictions. Currently, those who damage endowment lands face misdemeanor or felony charges, creating a permanent criminal record. This legislation would create a citation with a \$250 fine for the first offense.

MOTION: **Rep. Lickley** made a motion to introduce **RS 29069C1**. **Motion carried by voice vote.**

Chairman Gibbs turned the gavel over to **Vice Chair Lickley**.

DOCKET NO. 20-0000-2100: **Dustin Miller**, Director, Idaho Department of Lands, stated this omnibus pending rule docket as written was before the committee during the 2021 Session. He indicated no changes were made from what the committee reviewed and approved last Session.

MOTION: **Rep. Kauffman** made a motion to approve **Docket No. 20-0000-2100**. **Motion carried by voice vote.**

DOCKET NO. 20-0000-2100F: **Dustin Miller**, Director, Idaho Department of Lands, stated this omnibus pending fee rule docket as written was before the committee during the 2021 Session. He indicated no changes were made from what the committee reviewed and approved last Session.

MOTION: **Rep. Rubel** made a motion to approve **Docket No. 20-0000-2100F**. **Motion carried by voice vote.**

DOCKET NO. 20-0309-2101: **Scott Phillips**, Policy and Communications Chief, Idaho Department of Lands, stated the Department manages the beds of navigable lakes and rivers for the benefit of the public. Funding for the management of navigable waterways comes from fees and rent charged by the Department for that use. He explained, this pending fee rule includes a reduction in regulatory burden by reducing the total word count and the number of restrictive words. Additionally, the following substantive changes were made: 1) the current \$300 application fee, established in 1993, was increased to \$500, which will cover the Department's cost of reviewing and issuing these easements; 2) appraisals, if needed, would now be paid for by the applicant and will not be performed by qualified Department staff; and 3) the Director's approval authority is raised from \$10,000 to \$25,000, to correspond with the same approval authority for easements and endowment lands. Mr. Phillips indicated these rule changes would only impact new easement applications; existing easements would not be affected.

In response to a committee question regarding the increase to the application fee, **Mr. Phillips** stated the Department conducted an analysis of the staff labor costs to process easements and determined the expense to be \$478.82, with close to half of that being spent for legal counsel staff time.

MOTION: **Rep. Gibbs** made a motion to approve **Docket No. 20-0309-2101**. **Motion carried by voice vote.**

DOCKET NO. 20-0601-2101: **Archie Gray**, Forestry Assistant Bureau Chief, Idaho Department of Lands, stated this pending fee rule docket will adopt the new Idaho Cubic Log Scaling Manual. He explained, the new cubic manual is an alternative to the current Scriber (Idaho Log Scaling Manual) and is not meant to be a replacement, but rather to establish a standard uniform set of rules for cubic scale in the event someone chooses to use cubic scale in the future. Mr. Gray indicated no fee amounts were changed in this rulemaking and there are no new fees.

MOTION: **Rep. Yamamoto** made a motion to approve **Docket No. 20-0601-2101. Motion carried by voice vote.**

DOCKET NO. 20-0201-2101: **Archie Gray**, Forestry Assistant Bureau Chief, Idaho Department of Lands, stated this pending fee rule docket, Rules Pertaining to the Idaho Forest Practices Act, addresses minimum standards to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, water resources, wildlife, and aquatic habitat. He noted the most significant change in this docket is the change to the streamside retention rule, otherwise known as the Shade Rule.

Mr. Gray provided background on the Shade Rule, noting in 2013 the Department began the rule promulgation process to implement changes to stream protection rules. The Shade Rule was derived from years of work to develop science-based requirements for retention of shade, in the form of trees, adjacent to Class I streams to protect water temperature and quality.

In 2014, the Department committed to study the rule's effectiveness and implementation, and where appropriate, revise the rule to address lessons learned. The Department, in coordination with DEQ and the University of Idaho, embarked on a multi-year study to compare the modeled and measured (actual) changes in shade when applying the Shade Rule across different forest types. In January 2020, the study was published.

Mr. Gray explained, the goal was to limit shade loss to no more than 10% based on the simulated modeling. The study demonstrated shade loss was significantly less than 10% when the Shade Rule was properly applied. **Mr. Gray** commented, the Department moved forward to simplify the Shade Rule to make it more easily understood, with the objective of providing management options to landowners while still affording appropriate protections to stream shade and large woody debris recruitment.

Mr. Gray noted, there was also a need to update the rule specific to the use of ground-based logging equipment on steep slopes because the technology used in the logging industry had changed. Additionally, he indicated, road construction rules are being updated to improve water quality protections at stream crossings.

During discussion, committee members noted there are several stakeholders on record concerned with the proposed changes to the Shade Rule and potential litigation that could result from those changes, suggesting the Department should reconsider implementing the changes. **Mr. Gray** remarked, the Department does not believe the changes will result in litigation, rather the changes to the Shade Rule make it easier to follow and create no more jeopardy than the rule as previously written.

In response to committee concerns over shade loss, **Mr. Gray** explained, the Department implemented an effectiveness study in the field, with the goal of not exceeding 10% shade loss, and the data revealed the impact on shade was well below the 10% criteria. He added, the new requirements remain close to the same for the number of trees to be retained, but will take away the confusion of multiple zones, and will give the landowner more options on how to distribute trees. He noted, trees remain more dense closest to streams because they are more important to be left in place. In response to concerns regarding if the new rules will keep water temperatures cool enough, **Mr. Gray** stated it is very difficult to measure water temperatures due to tremendous fluctuations, for example, from snow melt and time of year, that is why shade will be used as a surrogate to water temperature.

MOTION: **Rep. Addis** made a motion to approve **Docket No. 20-0201-2101.**

SUBSTITUTE MOTION:

Rep. Rubel made a substitute motion to reject **Docket No. 20-0201-2101** and spoke to her motion. She expressed concern with the feedback she has received from those who understand the issue and is not reassured fish populations will be protected. She believes this will end up being litigated or the federal government will step in and create more restrictive rules.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Rep. Boyle requested a roll call vote on the substitute motion to reject **Docket No. 20-0201-2101**. **Substitute motion failed on a vote of 3 AYE, 12 NAY, and 3 Absent/Excused.** **Voting in favor** of the motion: **Reps. Rubel, Mathias, and Burns.** **Voting in opposition** to the motion: **Reps. Gibbs, Lickley, Moyle, Boyle, Vander Woude, Mendive, Kauffman, Addis, Moon, Manwaring, Okuniewicz, and Yamamoto.** **Reps. Wood, Gestrin, and Blanksma were absent/excused.**

ROLL CALL VOTE ON ORIGINAL MOTION:

Rep. Rubel requested a roll call vote on the original motion to approve **Docket No. 20-0201-2101**. **Original motion carried by a vote of 13 AYE, 2 NAY, and 3 absent/excused.** **Voting in favor** of the motion: **Reps. Gibbs, Lickley, Moyle, Boyle, Vander Woude, Mendive, Kauffman, Addis, Moon, Manwaring, Okuniewicz, Yamamoto, and Burns.** **Voting in opposition** to the motion: **Reps. Rubel and Mathias.** **Reps. Wood, Gestrin, and Blanksma were absent/excused.**

Vice Chair Lickley turned the gavel over to **Chairman Gibbs.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:36pm.

Representative Lickley
Chair

Tracey McDonnell
Secretary