

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 09, 2015

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Cameron, Siddoway, Brackett, Heider, Nuxoll, Stennett and Lacey

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 Bair** called the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

WELCOME: **Chairman Bair** welcomed Senator Roy Lacey to the Committee. He is filling the vacancy left by Senator Buckner-Webb who was promoted to Assistant Minority Leader. Senator Lacey had previously served on this Committee in past years.

GUBERNATORIAL APPOINTMENT: **Senator Nuxoll** moved to send the gubernatorial appointment of Marc Brinkmeyer to the Lake Pend Oreille Basin Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Keough will be the floor sponsor.

H 31 **Ms. Sharon Kiefer**, Deputy Director, Idaho Department of Fish and Game (IDFG), said this bill is a technical cleanup to correct a legal deficiency identified by the Idaho Court of Appeals, Docket No. 41365, and to also amend a reimbursable penalty.

This bill amends Idaho Code § 36-1404, which prescribes a schedule of reimbursable penalties for animals that are illegally killed, possessed, or wasted. There are essentially tiers of reimbursable penalties as can be seen on page 1 of the bill. There is an enhanced reimbursable penalty for certain game animals that are defined in Section 36-202(h) as a trophy.

The criteria deals with the Boone and Crockett antler score for mule deer, white-tailed deer or elk. For moose, mountain goat, bighorn sheep, and caribou, the trophy determination is based on the sex of the animal. These are the only animals with a trophy definition for which an enhanced reimbursable penalty may be applied.

The revision on page 1, lines 30-35 simplifies the determination of when the reimbursable penalty is higher to make it explicit that this applies when there is illegal killing, illegal possession, or illegal waste of a trophy big game animal per the statutory definition of trophy. There is no revision to the actual reimbursable penalty for trophy animals.

There is revision to the reimbursable penalty for Chinook salmon and wild steelhead. When the penalty on line 24 was adopted, IDFG did not enjoy the current, robust and widespread fisheries that Idaho has today for hatchery Chinook salmon that are adipose fin-clipped, but many unclipped salmon are also legally caught and released. Further, it was not contemplated at the time that IDFG would have a fishery on other types of anadromous salmon, such as this year's Coho salmon season.

It is the same story for steelhead; IDFG enjoys strong consumptive fisheries for ad-clipped hatchery steelhead, but unclipped steelhead are also routinely caught and released. IDFG wanted to emphasize anadromous to ensure that land-locked Chinook salmon, such as fall chinook, that they stock into lakes would not be caught up in this penalty. IDFG felt putting anadromous salmon and steelhead into the same category with bull trout was more reflective of the circumstance that these species are widespread with relative high encounter rates in catch and release fisheries, unlike sturgeon which are long-lived, more rarely encountered and are less abundant in Idaho, and much more geographically restricted in Idaho than anadromous salmon and steelhead.

Ms. Kiefer said that on behalf of the Fish and Game Commission and IDFG, she requests a do pass vote.

MOTION: **Senator Cameron** moved that **H 31** be sent to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. Senator Lacey will be the floor sponsor.

H 123 **Senator Rice** said **H 123** will allow the Oil and Gas Conservation Commission (Commission) to be exempted from the contested case provisions of the Administrative Procedures Act, and will allow the Commission to adopt administrative procedures that were in place prior to July 1, 1993, governing the oil and gas program. This change will align the Commission with the current practice of the Idaho Land Board, which provides for administrative rules that are better suited to the practices and operations of the oil and gas program.

Chairman Bair asked Senator Rice to explain contested case. **Senator Rice** said that a contested case is where you give notice, have various procedural hurdles to go through, and then a record is developed. It is a longer process because you have to give out certain notices, wait a certain time period, then there are filings and you have to wait for responsive things, then wait until you get a hearing. It is treated as if it were litigation, in essence, where you have this back and forth until you ultimately get to a hearing and then you establish this long record on every matter. There are some things the Commission does that really shouldn't use that process.

Senator Rice said it allows the Commission to divide those things by rule, and they still have the certainty and clarity of process. Some things don't require as much time as others do.

Senator Stennett inquired as to who makes the decision for the procedure. **Senator Rice** replied that it gets designated by rule. There are some things, by rule, that would be decided by the director, but there would still be the appeal ability. The intent of the Department is to draft rules to divide that up so that they will have clarity.

TESTIMONY: **Mr. John Pieserich**, Alta Mesa, said they support this bill. He also wanted to make it clear that every decision that comes from the Commission is subject to the Administrative Procedures Act.

MOTION: **Senator Heider** moved that **H 123** be sent to the floor with a **do pass** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. Senator Rice will be the floor sponsor.

H 166

Senator Cameron introduced **H 166**. He stated that Mr. Randy Brown, Southwest Irrigation District, brought this issue to Representative Wood. This bill is to level the playing field between the groundwater districts and irrigation districts. When the groundwater districts' statutes were put in place a number of years ago, they were allowed to secure long-term financing. That provision has not been in code for traditional irrigation districts. Southwest Irrigation District has both groundwater and surface water. **Senator Cameron** said as they have gone through the process of calls being issued, and mitigation being prepared, the groundwater districts were able to finance some of that mitigation, but Southwest Irrigation could not participate because they did not have such a tool available to them.

Senator Cameron said this bill levels the playing field and allows for irrigation districts to have that same authority and ability to be able to use long-term debt financing. In any event, if there is an additional call, they can equally participate in mitigating those calls.

TESTIMONY:

Mr. Clive Strong, Deputy Attorney General for the Office of the Idaho Attorney General, said he was here to provide technical testimony in support of the bill. This bill was intended as a housekeeping bill. Currently, the groundwater districts have the authority through a judicial confirmation process to acquire debt. Under the irrigation districts' statutes, presently, the only way they can incur debt is by going through an election process. The election process requires the irrigation district to publish a notice 4 times in a publication of general circulation and requires that publication to occur more than 15 days before the vote. The complication, under the Consolidated Election Law, Idaho Code § 43-401, is that irrigation districts are subject to the election date limitations and can only have elections on one of four days throughout the year.

Mr. Strong said what has happened with the irrigation districts as they have moved forward in the conjunctive management issue is the relationship between surface water and groundwater users. Groundwater users, generally, have been junior users and have been in a position to go forward and provide mitigation to the senior surface water users. They have been able to go forward through this judicial confirmation process. The irrigation districts have not been able to do that because they are subject to the election law requirement that requires them to go through a full vote and to have the election on a particular date.

Mr. Strong said the difference between the groundwater districts and the irrigation districts is that the groundwater districts have an alternative process that allows the board of directors, by a two-thirds vote, to incur debt for the purposes of entering into mitigation plans. Ten percent of the voters can then request an election. Under the judicial confirmation process, the resolution is submitted to the court, the court provides notice through publication and through personal notice to every member of the district of the intent of the district to go forward with judicial confirmation of the resolution, and if that is affirmed by the court, then that allows the groundwater districts to incur debt.

The intent of this legislation is to allow the irrigation districts to participate as a partner with the groundwater districts in moving forward with mitigation plans through the judicial confirmation process. When asked if there was opposition to this legislation, **Mr. Strong** replied there was no opposition.

TESTIMONY:

Mr. Randy Brown, Chairman of the Board, Southwest Irrigation District, said they represent about 100,000 acres in the Burley and Twin Falls area. He thanked Mr. Strong for explaining the bill and Senator Cameron for bringing the bill forth.

Mr. Brown said they have not been able to incur debt in a timely fashion or to be able to take care of calls that have been made by the director or mitigation requirements. They were not able to be part of the purchase of the springs or the Blue Lakes \$33 million purchase. As the chairman of the board, **Mr. Brown** said they need the ability to go out and adequately finance mitigation requirements in a timely fashion. He stated that he would appreciate a yes vote on this bill.

TESTIMONY: **Mr. Lynn Tominaga** testified that the Idaho Food Producers are in support of **H 166**.

MOTION: **Senator Siddoway** moved that **H 166** be sent to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Cameron will be the floor sponsor.

H 58 **Mr. Barry Burnell**, Department of Environmental Quality (DEQ), presented **H 58**. The purpose of this legislation is to recognize and approve a revision to the Idaho Water Quality Standards (WQS) that addresses Outstanding Resource Waters (ORW). The revision deletes the ORW section from the mixing zone policy within the WQS. DEQ initiated negotiated rulemaking on February 28, 2014 to update the mixing zone policy within the WQS. The policy was adopted in 1991 and contained language that was outdated and no longer relevant. Through the negotiated rulemaking process a proposed rule was developed. It was then presented to the Board of Environmental Quality and adopted as a pending rule on November 19, 2014.

The mixing zone pending rule proposes the deletion of a section of the policy dealing with ORW. To make this rule change effective and consistent with Idaho Code § 39-3623, this bill amends Idaho Code § 39-3623 to provide for specific legislative approval of the amendment of IDAPA Section 58.01.02.060, Mixing Zones for ORW in the Idaho WQS. This legislation also corrects technical errors identified in the statute relating to IDAPA section references.

WRITTEN TESTIMONY: Written testimony was received from Jack Lyman, Executive Vice President of the Idaho Mining Association (IMA). He wanted to express that the IMA supports **H 58**. They initially had concerns with the mixing zone rules addressed in the bill, but they worked with DEQ to develop the language in the bill that alleviates those concerns (see attachment 1).

MOTION: **Senator Brackett** moved that **H 58** be sent to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. Senator Siddoway will be the floor sponsor.

HCR 7 **Representative Erpelding** presented **HCR 7**. This concurrent resolution invites the biannual Outdoor Retailer Show, a convention for retailers and representatives from the outdoor industry, to Idaho. The Outdoor Retailer's currently contracted location expires in 2016, and Idaho's rich heritage of outdoor recreation, hunting, fishing, outfitting and guiding presents an economic opportunity for the outdoor industry and the state of Idaho.

Chairman Bair asked if the event is currently in Salt Lake City, Utah. **Representative Erpelding** said that was correct and it is up for bid.

MOTION: **Vice Chairman Vick** moved that **HCR 7** be sent to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. Senator Stennett will be the floor sponsor.

ADJOURNED: With no further business to come before the Committee, **Chairman Bair** adjourned the meeting at 2:55 p.m.

Senator Bair
Chair

Juanita Budell
Secretary