

IN THE SENATE

SENATE BILL NO. 1223

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO GROUND WATER DISTRICTS; AMENDING SECTION 42-5259, IDAHO CODE, TO  
2 REVISE PROVISIONS REGARDING THE PARTICIPATION OF NONMEMBERS IN GROUND  
3 WATER DISTRICTS FOR MITIGATION PURPOSES, TO REMOVE A PROVISION REGARD-  
4 ING INTERPRETATION OF SPECIFIED LAW, TO REMOVE PROVISIONS REGARDING  
5 NONMEMBERS DEEMED PARTICIPANTS IN DISTRICTS IF SO PROVIDED BY LAW AND TO  
6 REMOVE PROVISIONS REGARDING THE COLLECTION OF A PROPORTIONAL SHARE OF  
7 COSTS.  
8

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

10 SECTION 1. That Section 42-5259, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 42-5259. PARTICIPATION BY NONMEMBER IN DISTRICT SOLELY FOR MITIGATION  
13 PURPOSES. ~~(1)~~ Upon written request from a any ground water user who is not a  
14 member of a district, ~~and regardless of whether such user is an irrigator,~~  
15 a district board of directors ~~shall~~ may enter a contract with such nonmem-  
16 ber pursuant to which the nonmember shall be allowed to participate fully in,  
17 and obtain all benefits of, any mitigation plan, purpose or activity the dis-  
18 trict currently has in force or is developing, pursuant to terms and condi-  
19 tions acceptable to both parties, provided that:

20 (a~~1~~) The board finds that the plan is likely to be effective in mitigat-  
21 ing the effects of such nonmember's ground water use, and that including the  
22 nonmember within the mitigation plan's coverage will not impair the plan's  
23 effectiveness as to district members;

24 (b~~2~~) If the district's mitigation plan has been approved by the direc-  
25 tor, the board shall evaluate the contract request in accordance with any  
26 conditions of the district's mitigation plan which address equitable par-  
27 ticipation by ground water users who do not initially participate in such  
28 mitigation plan;

29 (c~~3~~) Before the contract may be effective, the board may collect from  
30 the nonmember a payment adequate to compensate the district for the nonmem-  
31 ber's proportional share of the costs the district already has incurred in  
32 developing and implementing the mitigation plan;

33 (d~~4~~) The board may include in the contract a provision requiring the  
34 nonmember to pay a reasonable surcharge, either annually or on some other ba-  
35 sis, to reimburse the district for such nonmember's proportional share of  
36 those past or future costs of operating the district attributable to formu-  
37 lating or implementing the mitigation plan or plans in which the nonmember is  
38 participating;

39 (e~~5~~) The board may require the nonmember to provide security to assure  
40 the payment of all assessments and charges related to the contract.

1       ~~(f) Nothing in this section shall be interpreted to limit the dis-~~  
2       ~~trict's ability to enter into a contract with nonmembers pursuant to~~  
3       ~~terms and conditions acceptable to both parties.~~

4       ~~(2) If the legislature has provided by law that the holders of certain~~  
5       ~~ground water rights not otherwise covered by a mitigation plan approved by~~  
6       ~~the director of the department of water resources shall be deemed nonmember~~  
7       ~~participants in the district solely for mitigation purposes, then the dis-~~  
8       ~~trict may collect a proportional share of the costs incurred under the miti-~~  
9       ~~gation plan from the nonmember participants, as follows:~~

10       ~~(a) The board may collect from each nonmember participant a payment~~  
11       ~~adequate to compensate the district for the nonmember's proportional~~  
12       ~~share of the past itemized costs the district has incurred in developing~~  
13       ~~and implementing the mitigation plan;~~

14       ~~(b) The board may require the nonmember to pay a reasonable surcharge,~~  
15       ~~either annually or on some other basis, to reimburse the district~~  
16       ~~for the nonmember's proportional share of those past or future item-~~  
17       ~~ized costs of operating the district attributable to formulating or~~  
18       ~~implementing the mitigation plan or plans in which the nonmember is par-~~  
19       ~~ticipating;~~

20       ~~(c) The board may require that the nonmember pay the amounts owed under~~  
21       ~~this section before coverage under the mitigation plan is effective,~~  
22       ~~provided the board has notified the nonmember by mail of the amount owed~~  
23       ~~at least forty-two (42) days prior to the due date;~~

24       ~~(d) As an alternative to immediate payment of the amount owed, the board~~  
25       ~~may accept security from the nonmember to assure that payment of all~~  
26       ~~costs and charges owed by the nonmember under this section shall be paid~~  
27       ~~by a fixed later date;~~

28       ~~(e) Nothing in this section shall be interpreted to limit the dis-~~  
29       ~~trict's ability to enter into a contract with nonmembers pursuant to~~  
30       ~~terms and conditions acceptable to both parties;~~

31       ~~(f) The board shall have the right to collect any costs and charges due~~  
32       ~~and unpaid under this section by civil action brought in the name of the~~  
33       ~~district in any court of competent jurisdiction. In addition to the~~  
34       ~~amount found due, together with interest and costs, the district also~~  
35       ~~may recover such sum as the court may adjudge reasonable as attorney's~~  
36       ~~fees in said action.~~