

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 23, 2017

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Siddoway, Brackett, Heider, Bayer, Johnson, Stennett, and Jordan

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) meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of January 16, 2017. **Vice Chairman Vick** seconded the motion. The motion passed by **voice vote**.

Senator Jordan moved to approve the Minutes of January 18, 2017. **Senator Heider** seconded the motion. The motion passed by **voice vote**.

RS 24896C1 Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game (IDFG), presented **RS 24896C1**. **Ms. Kiefer** stated that this legislation provides provisions specifically to black bear and grizzly bear and to clarify and support management of an anticipated Yellowstone grizzly bear population. This is consistent with the State of Idaho's 2002 Management Plan which was approved by the Idaho Legislature. Last week, some rules were presented and this RS is a companion piece of legislation.

Ms. Kiefer emphasized that this RS does not open any hunting season for Yellowstone grizzly bear or delist Yellowstone grizzly bear. This is one component of the bill.

Ms. Kiefer stated that another component of the bill removes obsolete references requiring nonresident disabled American veteran hunters to hunt in association with a qualified organization in order to receive a reduced fee license. This requirement was statutorily deleted in 2014 and now IDFG is rectifying the oversight.

The bill also revises taxidermist and furbuyer license requirements to include reporting of certain grizzly bear parts or skins and raw wolf skins. **Ms. Kiefer** said that in addition, this bill provides an extended timeframe for reporting control of depredating wolves when no permit is required. Once again, IDFG is trying to catch statute up to management of wolves now that Idaho is out of the federal five-year oversight period of wolf management.

Ms. Kiefer indicated that this legislation does not have a fiscal impact to the General Fund or to the fish and game dedicated fund.

Chairman Bair ask for clarification of the stricken language on page 10 relating to the nonresident disabled American veterans. **Ms. Kiefer** replied that the demand exceeded the qualified organizations' capacity for service. Legislation was brought forward to turn it into a regular nonresident disabled American veterans reduced fee license if they showed the same disability criteria that IDFG requires from a resident, which is a 40 percent or greater service-connected disability.

Senator Stennett inquired as to what has been done since the 2002 Management Plan and the accompanying HCR. **Ms. Kiefer** said that the Legislature has not taken up that plan, but is still acting consistently with that plan, as adopted. **Senator Stennett** said a study was done by Wyoming, Idaho, Montana, and Washington and it recognized five population groups of bears. She asked if there has been an increase in population. **Ms. Kiefer** said that she has information for the entire Yellowstone ecosystem, not just individual areas, but she assured Senator Stennett that current population status is such that Idaho and the bordering states believe that the population does meet all the requirements for delisting.

Senator Stennett said this plan did give the Legislature guidance and to make sure they were educating the public, as well as something quantifiable for grizzly bear conservation needs. The mortality rate for grizzly bears is over 43 percent and is human caused. **Ms. Kiefer** said IDFG can demonstrate that they have been working on education and outreach and offered to send the link of the website to Senator Stennett. She also added that IDFG has a grizzly bear trailer, a very robust outreach program, a grizzly bear biologist, and IDFG participates in a variety of grizzly bear committees, including the Yellowstone ecosystem Study Design Plan. IDFG have also been carrying out conservation actions to contribute to knowledge of grizzly bears, as well as elements that view conservation of grizzly bears.

Senator Johnson inquired if IDFG has a disabled hunting license for the disabled American veterans where different classes are awarded. **Ms. Kiefer** replied that IDFG have a disabled license that has a different context and structure than the disabled American veterans license. There is a license and four tags that have reduced fees to qualified disabled residents. Non-residents do not pay the same reduced fee as residents.

Senator Bayer asked about the hunter reporting time with regards to the 72 hours for wolves and 24 hours for grizzly bears. **Ms. Kiefer** said those hours are specific to hunter reporting. The depredation control reporting period for grizzly bears is 72 hours; however, there is a provision of extra time when access to the site is remote.

Senator Jordan inquired about the timetables for the issues that have been discussed. **Ms. Kiefer** said that the state law takes effect July 1. If grizzly bear delisting has not occurred and there is not a final rule by that point, then essentially, the grizzly bear references just sit in state code. The other references, relative to the disabled American veterans, take effect July 1.

MOTION:

Senator Heider moved to print **RS 24896C1**. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. **Senators Stennett and Jordan** asked to be recorded as voting nay.

RS 24823

Chairman Bair welcomed Mr. Michael McCurdy, Waste Management and Remediation Division Administrator, Department of Environmental Quality (DEQ), who will present **RS 24823**.

Mr. McCurdy said the 2016 Legislature passed S 1244 to allow DEQ to collect fees for underground storage tanks. Fees are not to exceed \$100 per tank per year and any fee balance in excess of \$35,000 on December 31 will be applied to reduce the following year's fees. This legislation will establish a dedicated fund for underground storage tank fees to provide for better accountability and transparency. With a dedicated fund, the Legislature and State Controller will be able to view all revenues and expenditures from the Statewide Accounting and Reporting System (STARS), and DEQ will be able to complete an accurate fee expenditure report. In addition, a dedicated fund will earn interest which may increase the fund's balance and decrease fees in subsequent years.

Mr. McCurdy stated that Idaho has about 3,375 underground storage tanks at 1,180 facilities. These tanks hold petroleum products, mainly gasoline and diesel fuel. DEQ inspects the operation and maintenance activities of these tanks to make sure they don't leak and cause harm to people or the environment.

Senator Brackett asked why the fund was not established and included in S 1244. **Mr. McCurdy** replied that it was an oversight on the part of DEQ. **Senator Brackett** asked why wasn't part of the transfer fee used instead of charging the taxpayers a new fee. **Mr. McCurdy** said he didn't have that information and could not respond to the Senator's question at this time, but would get back to him with that information.

MOTION: **Senator Brackett** moved to print **RS 24823**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**

PASSED THE GAVEL: Chairman Bair passed the gavel to Vice Chairman Vick.

DOCKET NO. 58-0107-1601 **Rules Regulating Underground Storage Tank Systems.** **Mr. McCurdy** said that funding granted to Idaho by the Environmental Protection Agency (EPA) has been decreasing over the years and the language in the Underground Storage Tank Act was modified to allow DEQ to collect fees from owners of underground storage tanks.

This docket addresses the fee collection and the new federal underground storage tank regulations that must be incorporated into Idaho's rules to maintain state program approval or primacy where DEQ implements the program instead of EPA. To address these issues, DEQ held negotiated rulemaking sessions on April 28 and May 26, 2016 and it was published in the Idaho Administrative Bulletin August 3, 2016. DEQ received no public comments. The DEQ board adopted the pending rule on October 13, 2016. The proposals must be adopted if Idaho wants to retain primacy.

MOTION: **Chairman Bair** moved to approve **Docket No. 58-0107-1601**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0103-1501 **Individual/Subsurface Sewage Disposal Rules.** **Mr. Barry Burnell**, Water Quality Division Administrator, DEQ, said this rulemaking was undertaken in response to requests made to DEQ by individual property owners to create an effective and useful means of approving and overseeing service providers for complex alternative septic systems, and a request to DEQ to abandon the Operation and Maintenance Entity system approach that is used to provide routine maintenance, monitoring and repair of these complex septic systems. Property owners complained of poor service, trespass, and lack of customer service by the Operation and Maintenance Entity.

DEQ vetted these requests with the Technical Guidance Committee for Subsurface Sewage Disposal. That committee is composed of three staff members of the local health districts, a licensed professional engineer, and a licensed Complex Septic System installer. The Technical Guidance Committee recommended to DEQ to undertake a negotiated rulemaking to develop a Service Provider Certification for the purpose of having approved qualified service technicians. These service technicians would be able to contract with property owners to provide routine service, repair, and monitoring of complex alternative treatment systems. The pending rule sets up the structure to administer a service provider model for providing this service.

These complex alternative treatment systems are also known as Aerobic Treatment Units (ATUs) or Extended Treatment Package Systems (ETPS). There are about 2,000 of these installed in the State of Idaho at the present time. These complex systems are not the septic tank and drainfield that is typical for subsurface sewage disposal. The improved wastewater allows for the drainfield from these systems to be placed in areas where ground water is close to the land surface.

Mr. Burnell stated that DEQ conducted four meetings with the Technical Guidance Committee in early 2015. A draft rule was posted and published in the Administrative Bulletin, October 9, 2015 and negotiated rulemaking meetings were held on October 22, 2015 in Boise, with participation from Coeur d' Alene and Idaho Falls. Modifications were made to the rule based on the rulemaking discussions. A second draft rule was published for comments on October 22, 2015. The rule was posted in the December 3, 2015 Administrative Bulletin and comments were received from six people. Some changes were made to the rule as a result of the comments.

Costs will shift from the property owner paying dues to an Operation and Maintenance Entity to paying their selected service provider for annual maintenance, repair, and monitoring. **Mr. Burnell** said that costs are expected to be similar or slightly lower. Dues are between \$200 to \$300. The service provider model is preferred by owners of these complex alternative systems.

Mr. Burnell said the standards included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

Senator Stennett inquired as to what the function is for the Operations and Maintenance Entity. **Mr. Burnell** said that it was designed to act as a homeowners association and to work out deals with service providers.

Senator Stennett also asked about training for the service providers. **Mr. Burnell** said at the present time there are over 600 installers and about 300 of those are licensed complex installers. Currently, there are 14 Operations and Maintenance Entities in the state, with 12 service providers. The complex installers, who provide service to the systems they are installing, will get their certificates. Section 009 of the rules requires complex system manufacturers to train a reasonable number of service providers and it restricts manufacturers from limiting service providers from receiving training from other manufacturers.

Senator Bayer asked if there were any more expenses involved in providing additional training for the service providers. **Mr. Burnell** said it is to the manufacturers advantage to provide the necessary training.

Senator Johnson said that he has a problem with the design approval requirement. If a manufacturer of one of these complex systems does not agree to provide training outside of their service representatives, there might be a liability issue. He asked if the Director of DEQ may disapprove of that design? **Mr. Burnell** said the agency's role is to look at the information that is presented to them and approval is dependent on a number of things. Basis for disapproval is if the product is not functioning as it should.

Vice Chairman Vick inquired if these systems were used just for individual homes or for multi-home developments. **Mr. Burnell** replied that these systems are for individuals, and go up to 1,500 gallons per day in size. Anything over that size goes to a different type.

Senator Siddoway asked if these rules are more restrictive than what is required by the federal government and why we need more rules. **Mr. Burnell** said that what the property owners presently have was not working. These systems are very complex and need to be placed where there is shallow ground water and the maintenance needs to be done by professional people. The service has been poor, there were burglaries, as well as trespassing violations, by the people who serviced the systems.

Vice Chairman Vick asked what the precedent is by having licensing by rule and not by legislation. **Mr. Burnell** said the elements in this rule is the licensing of the permittees and the education is in line with other licensing. **Mr. Burnell** said that he didn't know the exact code reference. DEQ relies on EPA and it was done in 1972.

**PASSED THE
GAVEL:**

Vice Chairman Vick said that he will hold the motion until the next meeting as time has expired for the meeting. He then passed the gavel to Chairman Bair.

ADJOURNED:

There being no further business at this time, **Chairman Bair** adjourned the meeting at 3:00 p.m.

Senator Bair
Chair

Juanita Budell
Secretary