

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 14, 2018
TIME: 1:00 P.M.
PLACE: Lincoln Auditorium WW02
MEMBERS PRESENT: Chairman Bair, Vice Chairman Siddoway, Senators Brackett, Heider, Vick, 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 meeting of the Senate Resources and Environment Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Vice Chairman Siddoway** moved to approve the Minutes of March 5, 2018. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Chairman Bair welcomed the audience to the meeting and stated he was grateful for the participation in the legislative process. He indicated, due to time restraints, testimony may be limited to three minutes in order for everyone to be heard.

Chairman Bair welcomed Senator Harris who presented **H 658**.

H 658 **Senator Harris** said this bill addresses private property rights. Growing up, his dad instilled in the family that private property was sacred and they were to treat property of others like they treated their own; they expected others to do the same.

Senator Harris stated the statutes do very little to discourage trespassing. The State has increasingly had problems with trespassing, and, in some cases, terrible damage occurred. The purpose of **H 658**, which replaces **H 536**, is to create a better statute and clarify language. Current code states the landowner can either post "No Trespassing" signs or post with orange paint every 660 feet, or place a conspicuous sign where a public road enters the property that says "No Trespassing" for the next three miles, then post another similar sign informing an individual they are leaving private property. The signs must have a map attached.

Idaho Code § 36-1602 says all one needs is a fence of any description sufficient to show the boundaries; in such instances, no posting is required. **H 658** seeks to clarify this confusion by setting clear requirements. Under the proposed bill, landowners would be required to post corner boundaries where the property intersects navigable streams, roads, gates, and right-of-ways. Under this bill, a person must know or have reason to know they are entering private property without permission. The current code has no such requirement.

The bill also raises the fines associated with civil and criminal trespass as a deterrent to trespass. The bill also makes a change in the way fines are apportioned. Ten percent would go to the court; 65 percent would be disbursed to the county sheriff's office where the trespass occurred; and 25 percent would be provided to the Idaho Rangeland Resource Commission to expand educational programs regarding private property rights.

Senator Harris said he would yield to Gary Allen, who helped draft the bill, so Mr. Allen could provide a more technical explanation of the different provisions.

Mr. Allen, Givens Pursley, stated he represents the Idaho Property Rights Coalition. The Coalition has 33 organizations that support this bill. **Mr. Allen** said he is also a property rights lawyer and practices in the area of land use and environmental law. **H 658** has been reviewed by many lawyers and has been reviewed by the Attorney General's Office and the Idaho Prosecuting Attorneys Association.

Mr. Allen said the heart of the issue is trespassing unknowingly. Under current law, it is problematic on many levels, with confusing and inconsistent definitions, matters of law, and penalties. **H 658** resolves constitutional questions; cultivated lands unchanged; "conspicuous" posting; "fishing streams" replaced by "navigable streams"; posting to distinguish public from private fenced lands; and added lands reasonably associated with residence or business to protect urban and rural residences and businesses.

Mr. Allen stated the remedies are more closely tailored to the seriousness of trespass. Trespass has been separated into simple trespass and trespass with damage. Simple civil trespass mirrors common law, with actual damages including a \$500 minimum, plus attorney's fees. Civil trespass with damage permits treble damages.

The simple criminal trespass:

- First conviction is a misdemeanor with a minimum fine of \$500.
- Second conviction is a misdemeanor with a fine of \$1,500.
- Third conviction is a misdemeanor with a fine of \$5,000.

The criminal trespass with damages:

- First conviction is a misdemeanor with a minimum fine of \$1,500.
- Second conviction is a misdemeanor with a minimum fine of \$5,000.
- Third conviction is a felony with a minimum fine of \$15,000.

Mr. Allen explained exclusions to trespassing. Door-to-door salesmen, Girl Scouts, or missionaries may enter properties without considered trespassing, unless the property is posted. Others have a license, such as the person who mows your lawn, a tenant who is renting, and those entering pursuant to an easements for utilities. There are authorities, under the law, to retrieve or to enter someone's property. Law enforcement, for example, executing a warrant; a bail bondsman; and paramedics, firefighters, and other emergency personnel. **Mr. Allen** said he wanted to make it very clear about fire personnel. That term includes municipal firefighters, wildland fire firefighters, and fire protective associations. Under the law, they are exempt from damage claims when making reasonable fire suppression efforts.

Mr. Allen said funding is provided to sheriff departments, through fees and fines, to help with the additional burden of enforcing the law. Permission slips to have access to property are written by the owner and can be revoked by the owner. This places a burden on the Idaho Department of Fish and Game (Fish and Game); however, it is already done by Fish and Game as they have the distribution and access network. **Mr. Allen** said Fish and Game has asked that those permission slips also be put into the sheriffs' offices so they may share the burden.

DISCUSSION: **Senator Jordan** inquired if aircraft flying over property would be guilty of trespass. Mr. Allen stated such actions would not constitute trespass. **Senator Jordan** said she is concerned about areas that are owned by either cities or counties that are timbered and theft may occur as a result of trespassing. **Mr. Allen** replied public property is regulated by that public entity.

Senator Johnson asked about the significance of the phrase "enters or remains" on page 3, line 14. **Mr. Allen** said a person can go into a store, with permission, if it is open, and that is not trespass. But if they are asked to leave the store, then they can be trespassing by remaining on the property.

Senator Stennett said this bill is a massive rewrite of criminal and civil law and law relating to Fish and Game. She inquired as to Mr. Allen's expertise. **Mr. Allen** said he is not a criminal law attorney. He had two occasional property rights cases in criminal law, including a significant one in the last year. He stated he practices property rights litigation on behalf of landowners and citizens.

Senator Brackett inquired about companies fixing power lines. **Mr. Allen** said the privilege for a power company to fix downed power lines is limited. There must be a public emergency.

Senator Harris said, as the bill has been reviewed and discussed, he would respectfully request the Committee send **H 658** to the 14th Order for possible amendment. **Chairman Bair** said the Committee would take that into consideration, after people could testify on **H 658**.

TESTIMONY: **Mike Kane**, Idaho Sheriffs' Association, said it is a privilege to represent law enforcement. **Mr. Kane** said they are in agreement with the sponsors of the bill that it be sent to the amending order and he would like to point out the two most significant issues for law enforcement. **Mr. Kane** stated the police chiefs and sheriffs are together on this and they are the ones that have to enforce this law.

Mr. Kane provided copies of Idaho Code § § 18-7008, 18-7011, and 36-1602. He said these are the current criminal laws on trespass and in every case, there are two ways to commit trespass. One is to cross a no trespass line or cross some barrier indicating trespass or entering land and doing something. **Mr. Kane** said this bill creates a crime for simply entering and remaining without doing damage. **Mr. Kane** said page 7, line 7, shows a person commits criminal trespass when he enters and remains on the property without permission, knowing or with reason to know that his presence is not permitted. **Mr. Kane** stated the "reason to know" phrase is very important in criminal law.

One of the tools law enforcement officers use with trespassers is forbidding them to return to the property within a year. This provision would be repealed. **Mr. Kane** said this bill would take away one of the most important tools for law enforcement.

TESTIMONY: **Fred Birnbaum**, Idaho Freedom Foundation, testified in support of **H 658**. He stated only 30 percent of Idaho is private land and it is vitally important that property rights of those who own private land be protected. **Mr. Birnbaum** said the point of this bill is to establish reasonable and consistent criteria to secure the rights of property owners in the face of dwindling private property.

TESTIMONY: **Brian Brooks**, Idaho Wildlife Federation, said his organization is Idaho's oldest and largest sportsmen organization and represents over 30,000 affiliated members that include hunters, houndsmen, and fly fishermen. **Mr. Brooks** asked that the Committee to not recommend passage of **H 658** because of unintended consequences.

- TESTIMONY:** **Trent Clark**, Director of Public and Government Affairs, Monsanto Company, testified in support of **H 658**. He stated the Monsanto Company employs nearly 1,000 Idahoans in various aspects of agriculture manufacturing and mining. **Mr. Clark** gave four examples of trespass.
1. A daycare operator escorts a few prospective parents into the backyard to show off a safe and enclosed play area only to find a stranger in with the kids.
 2. A horticulturist who markets with a specific holistic natural label finds an intrusive neighbor applying a non-natural product to kill some mutually unwanted vegetation and, in the process, disqualifies the entire crop.
 3. An heir receives a vacant corner lot as part of an estate. As a responsible steward, they fence and post the property until an environmental audit can be completed. Many trespassers then jump the fence to cut the corner. Later, environmental audits find that this site was the site of a former gas station and the hundreds of trespassers have been exposed.
 4. A plant breeder seeking to breed a new purple striped corn variety conducts a test plot to prove that the resulting seeds will carry the desired color trait. A trespasser walks through the plot damaging a dozen plants, just enough to destroy the statistical accuracy of the test plot, and destroying the ability to market that crop that year and doing away with an entire year of that researcher's time.
- Mr. Clark** said the reason he gave the four examples was to show in every case where the intrusion was not malicious. Also, in example 4, the damage was done the first time that person was there, so the second opportunity does not mean anything. **Mr. Clark** concluded his remarks by stating this is civil rights legislation and asked the Committee vote in favor of **H 658**.
- TESTIMONY:** **Rachelle Klein**, resident of Boise and a wife and mom, asked the Committee to not recommend passage of **H 658**. She expressed concern about the penalties for crossing private property and unmarked hunting boundaries
- TESTIMONY:** **Brady Lindley**, a farmer in Gem County, told of the problems he had with trespassers - fences cut, gates left open or broken, and fields torn up by vehicles. He emphasized the importance of a strong private property protection and trespass law and asked for a do pass recommendation.
- TESTIMONY:** **Michael Gibson**, Trout Unlimited, said his organization opposes **H 658**. **Mr. Gibson** said sportsmen have not been involved in this process and they tried to reach out to those writing this bill with suggestions regarding their concerns, but did not hear back. He stated their offer still stands. **Mr. Gibson** said he realizes this is a private property rights issue and the sportsmen have no right to designate what happens on private property. However, most of the members are landowners, so this is something they are concerned with. The bill, as written, would drive a wedge between landowners, hunters, anglers, and recreationists.
- TESTIMONY:** **Dan Walton**, farmer and rancher from Gem County, testified in support of **H 658**. He said his story is very similar to that of Mr. Lindley, who testified earlier. **Mr. Walton** had pheasant hunters who do not ask for permission, but when questioned, said they received permission. He recommended the bill be passed.
- TESTIMONY:** **Jeff Lavey**, Idaho Chiefs of Police Association, said his organization is in opposition to **H 658** as currently written. **Mr. Lavey** said they had several attorneys analyze the bill and they see problems. **Mr. Lavey** asked that the bill not pass or have that it be amended.

TESTIMONY: **Viki Purdy**, a resident of New Meadows, said she would like to make comments on behalf of the Idaho Republican Party and their platform. She stated the Republican Party believes in the Fifth Amendment to the United States Constitution guarantee that no person be deprived of life, liberty, or property without due process of law, nor private property be taken for public use without just compensation. **Ms. Purdy** stated the Republican Party also opposes any federal, state, or local regulation that would diminish the property rights owner to develop his property.

This legislation would bring the fact to the forefront for public awareness. Respect has always been at the heart of any successful land use policy. Ownership and stewardship of land should get some sort of raised awareness by those that want to use the land but not own the land. She asked for the Committee's support of **H 658**.

TESTIMONY: **David Serdar**, Idaho citizen, said he is a chukkar and partridge hunter, carries a GPS with him, and also has maps in his vehicle. He stated there are times when it is not clear where property boundaries are and asked that the bill be amended to include language to help those who try to do the right thing.

TESTIMONY: **Sharon Kiefer**, Deputy Director, Idaho Department of Fish and Game (IDFG), said the Idaho Fish and Game Commission has no policy position on this particular bill. A copy of Ms. Kiefer's full testimony is attached. (Attachment 1).

TESTIMONY: **Kent Roberts** stated he is opposed to **H 658**. He said to unknowingly trespass and be subject to civil trespass is concerning to him.

TESTIMONY: **Richard Durrant**, Idaho citizen and landowner, expressed support for **H 658**. **Mr. Durrant** stated 95 percent of sportsmen obey the laws, but the other five percent are the ones that cause problems. He said he had well panels and pump panels destroyed and tires shot out. Landowners need some ability to have some enforcement to train that five percent that do not recognize the rights of the landowners.

TESTIMONY: **John Evans**, Mayor of Garden City, said most of the points he intended to make were made. He said he would simply ask the Committee to carefully consider the impact on urban areas. There are people living in very close proximity in high-density areas. **Mayor Evans** stated he is concerned that the urbanized areas would get caught up in the resolution of an issue that seems to be most predominantly a rural, large land parcel issue. He asked the Committee to not recommend passage.

TESTIMONY: **David Clairborne**, Idaho Dairymen's Association and the Idaho State ATV Association, President, said both organizations are in support of **H 658**. He stated, with respect to his dairy clients, this is an important piece of legislation. There is an overarching concern for respect of private property rights. The ATV Association is a motorized recreation group that advocates for responsible motorized recreation, which includes respect for private property. The most important concern for the members when they saw the bill was how will it ensure that they will know when they are moving between public and private land. It was important that the points of entry were marked by a sign or by orange paint.

TESTIMONY: **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Professional Land Surveyors, said neither organization has a position on **H 658**. **Mr. Simila** expressed appreciation for those who crafted the bill and offered a trailer bill, **H 621**, to reduce the land surveyors objections to the trespass bill. Land surveyors are the only individuals authorized by Idaho statute to help landowners determine and adjudicate property boundaries. The surveyors did not want to be in a position where they would be accused of civil or criminal trespass for doing their job and doing what the State requires them and authorizes them to do.

TESTIMONY: **Stacey Satterlee**, Executive Director, Idaho Grain Producers Association, representing Food Producers of Idaho. **H 658** brings a tremendous improvement to the current law which is often confusing and does not provide adequate deterrence in the form of penalties. She stated this bill is about private property rights and urged the Committee's support of **H 658**.

TESTIMONY: **Benn Brocksome**, Idaho Sportsmen Alliance, said the Alliance has some serious concerns with the bill. However, they do appreciate the sponsors' willingness to work on some of the changes and to send the bill to the amending order for amendment. **Mr. Brocksome** said they would prefer the Committee hold the bill.

TESTIMONY: **Cory Chappell** stated this bill is too much legislation and what is needed are people to enforce the laws already in place. He asked the Committee to not recommend the passage of **H 658**.

TESTIMONY: **Sandy Blodgett**, retired Captain of the Boise Fire Department and current board member of the Idaho Gem Club, expressed concern with **H 658**. He said he is not sure how it relates to backcountry situations and mining. **Mr. Blodgett** said he has had a firearm drawn on him when he walked on mining property; he was unaware he was trespassing, as there were no markers to identify the boundaries.

TESTIMONY: **Neil Colwell**, Avista Corporation, stated Avista is a gas and electric utility with about 140,000 electric and 100,000 gas customers in northern Idaho. He has also been authorized to speak on behalf of Idaho Power, the Idaho Cooperative Utilities Association, and Rocky Mountain Power to ease the burden on the Committee because they share their comments, which is why they support the legislation. **Mr. Colwell** said they did suggest some changes and the changes were accepted by the sponsors of the bill. If the bill goes to the amending order, **Mr. Colwell** expressed hope that helpful amendments are adopted.

TESTIMONY: **Rick Vissar** stated he comes before the Committee as a sportsman, an attorney, and a rancher. After four hours of debate in the House Agricultural Committee and two further hours of debate on the House floor, that signifies to him that the bill is still unknown. **Mr. Vissar** said he agrees with strengthening trespass laws, even increasing civil fines, to reduce any illegal activity that involves trespassing on private property. **Mr. Vissar** asked the Committee to either hold the bill or send it to the amending order.

WRITTEN TESTIMONY: Businesses that submitted letters of support for **H 658** were as follows:

- Idaho Grain Producers Association, Dwight Little, President;
- Idaho Mint Growers Association, Bob McKellip, President;
- Idaho-Easter Oregon Seed Association, Arron Phillips, President;
- Nezperce Prairie Grass Growers Association, Greg Branson, President;
- Food Producers of Idaho, Inc., Candi Fitch, President
- Idaho Alfalfa & Clover Seed Growers Association, Ryan Svaty, President'
- Idaho Hay and Forage Association, Inc., Will Ricks, President;
- Idaho Honey Industry Association, Brody Tomazin, President;
- Idaho Farm Bureau Federation, Bryan Searle, President;
- Idaho Dairymen's Association, Inc., Rick Naerebout, Chief Executive Officer; and
- Idaho State ATV Association, David P. Claiborne, President.

Individuals that submitted letters of support for **H 658** were as follows:

- Mark Ozburn, Wheat farmer, Soda Springs, Idaho;

- Lucas Spratling, Farmer, Raft River, Idaho; and
- Sid Freeman, Farmer, Canyon County, Idaho.

Written testimony opposing **H 658** were as follows:

- Idaho Sportsmen Alliance and
- Dirk Christison, Boise, Idaho.

Approximately 80 emails were received in opposition to **H 658**.

MOTION: **Senator Siddoway** moved that **H 658** be referred to the **14th Order** for amendment. **Senator Vick** seconded the motion.

DISCUSSION: **Senator Jordan** said this bill is almost like peeling an onion. Every time we identify an issue, we find an unintended consequence that may apply as well. She said the review offered an opportunity to get a group of people together to bring back something that would work better for everyone. She stated no disagreement about bad actors, but there is agreement about good legislation and as the Committee heard many times today, words matter. **Senator Jordan** then offered a substitute motion.

SUBSTITUTE MOTION: **Senator Jordan** moved that **H 658** be held in Committee. **Senator Stennett** seconded the motion.

DISCUSSION: **Senator Bayer** said he appreciates the dialogue and he stated he thinks there are a lot of very important merits in regard to private property rights and trespassing that need to be addressed. He stated he does not subscribe to, nor has he heard anything that suggests anything that would compromise the integrity of the intent of the language.

ROLL CALL VOTE: **Senator Jordan** asked for a roll call vote. **Senators Jordan** and **Stennett** voted **aye**. **Senators Johnson, Bayer, Vick, Heider, Brackett, Vice Chairman Siddoway** and **Chairman Bair** voted **nay**. The substitute motion failed.

Senators Jordan, Stennett, Johnson, Bayer, Vick, Heider, Brackett, Vice Chairman Siddoway and **Chairman Bair** voted **aye**. The original motion passed.

ADJOURNED: There being no further business, **Chairman Bair** adjourned the meeting at 3:20 p.m.

Senator Bair
Chair

Juanita Budell
Secretary