

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Tuesday, January 15, 2019

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Gestrin, Representatives Moyle, Shepherd, Wood, Boyle, Vander Woude, Mendive, Kauffman, Blanksma, Addis, Lickley, Moon, Raybould, Erpelding, Rubel, Mason, Toone

**ABSENT/
EXCUSED:** None

GUESTS: Anna Canning and David White, Idaho Department of Parks and Recreation; Sharon Kiefer, Idaho Department of Fish and Game; Grant Simonds, Idaho Outfitters and Guides Association; Joan Callahan, Idaho Outfitters and Guides Licensing Board; John Watts, Boulder Creek and Scotlyn Creek Outfitters; Jay Shaw, Administrative Rules; Douglas Jones, Jones and Associates

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

Chairman Gibbs welcomed everyone to the committee and had everyone introduce themselves including the committee Page and Secretary. He also advised the committee the Administrative Rules would be done by the whole committee led by **Vice Chairman Gestrin**.

Chairman Gibbs announced that **Reps. Kauffman and Toone** will be the committee's proofreaders this Legislative Session and thanked them.

Eric Milstead, Director, Legislative Services Office, provided an update on the one change this year in the Rules process. He stated if a committee votes to reject a rule, **Ryan Bush**, Legislative Services Office, will draft a Concurrent Resolution rejecting that rule and then personally deliver it to the chairman, making himself available to answer any questions the chairman might have on next steps.

Dennis Stevenson, Rules Coordinator, Department of Administration, gave a brief presentation about the Administrative Rules process. He described the results of adopting or rejecting Pending, Pending Fee, and Temporary Rules and the effective dates.

DOCKET NO. 26-0120-1701: **Anna Canning**, Management Services Administrator, Idaho Department of Parks and Recreation, stated this pending rule is to clear up a loophole regarding when they can assess a surcharge for parking violations. The proposed language will state "in addition to paying the proper fee—one must also display proof of having paid." Negotiated rule making was conducted and three public meetings were held. No comments were received. Ms. Canning stated there is no expected fiscal impact as this proposed rule clarifies the current Department enforcement practice.

MOTION: **Rep. Erpelding** made a motion to approve **Docket No. 26-0120-1701. Motion carried by voice vote.**

**DOCKET NO.
26-0123-1701:**

David White, North Region Manager, Idaho Department of Parks and Recreation, stated the Department is authorized to manage the production of commercial filming within state parks. The current rule was last updated in 1993, and is now too restrictive to accommodate the changing needs of their visitors and has become difficult for park managers to consistently administer. The original intent of the rule was to address the need to manage commercial filming occurring within state parks, but with most people using high quality hand-held recording devices, the creation of commercial quality images is no longer just in the hands of professionals. He stated social media has created many outlets for the general public to display still and video images, both for profit and non-profit platforms, and the Department believes there is value in this free promotion of state parks. This proposed rule will better define commercial filming and exempt filming to improve management of commercial filming, which may potentially impact park resources, the visitor experience, or create a significant revenue opportunity. Filming for news purposes is considered exempt from permitting requirements.

In response to a question regarding where nonprofit organizations fall under this rule, **Mr. White** responded they are exempt because they are not generating revenue due to their nonprofit status.

In response to questions regarding the permitting process, **Mr. White** explained the \$100 fee is an application fee for the permit and they have no plans to raise that amount. He stated each permit issued is unique to the permittee's needs, for example where in the park they want to film, how much time is needed to film and how often they need to be in the park. If the request is from a commercial entity, then they negotiate a fair rate of return based on anticipated revenue generated from that film and the impacts of filming in the park.

Ryan Davidson, representing self, spoke **in support** of this proposed rule.

MOTION:

Rep. Addis made a motion to approve **Docket No. 26-0123-1701. Motion carried by voice vote. Reps. Boyle and Moon** requested to be recorded as voting **NAY**.

**DOCKET NO.
26-0110-1701:**

David White, North Region Manager, Idaho Department of Parks and Recreation, stated the Department has the authority to issue temporary permits to utility companies that need to install and maintain their power and/or water lines that serve directly or indirectly the Department. These temporary permits are also issued to individuals or businesses needing to cross park property with a roadway, for example, the Ashton-Tetonia Trail. Mr. White stated typically an easement would be used, however, the Department is unable to transfer ownership via an easement due to state law and the Federal Land and Water Conservation Fund rules. As a result of those limitations, in 1993, the current rule was established authorizing the Department to issue temporary permits to meet those needs. Mr. White stated this proposed rule will increase the administrative fees to better reflect the true costs associated with issuing temporary permits. Additionally, this proposed rule will allow the Department to collect a reasonable return based on the properties actual value as opposed to the current flat rate fee. The current administration fee is \$100 for issuance or modification and \$25 for assignment or renewal. They are proposing to raise both of these fees to \$300 each. The permit rate would change from the current \$50 per acre to a percentage of the fair market value per acre with a \$300 minimum. These fee changes are in line with the fees associated with the Department's other property management program (encroachment fees).

In response to a question regarding the Department having to follow federal Land and Water Conservation Fund rules, **Mr. White** replied approximately 90% of state parks have had those funds invested in them over the years through their grant program. Once the state accepted those funds, these lands must remain in state ownership for recreational activities, forever. If any land is given away, then they fall into what is called a reversion, where they are required to purchase like property of like value to replace those lands given away, and then the new property would fall under those same rules.

In response to questions regarding fees, **Mr. White** stated the increase in fees will better cover the costs associated with staff time. He further explained that although some permits take less time to process than others, the \$300 per permit administrative cost balances out overall. The decision to raise the administrative fee to \$300 is an attempt to standardize the administrative fees within the Department. He stated approximately six years ago they did a cost analysis of staff time to process permits in their encroachment property management program, and based on that analysis, came up with \$300 as an average cost.

MOTION: **Rep. Moon** made a motion to reject **Docket No. 26-0110-1701**.

Rep. Erpelding stated the Department struggles having adequate resources to cover staff time working on complex issues, so he does not believe this is an unreasonable fee.

SUBSTITUTE MOTION: **Rep. Erpelding** made a substitute motion to approve **Docket No. 26-0110-1701**.

ROLL CALL VOTE: **Rep. Boyle** requested a roll call vote on **Docket No. 26-0110-1701**.

Rep. Wood stated he believes whenever possible government should be able to function on fees, so the fees need to be high enough to actually pay for the work being done for which the fees are being collected. He doesn't believe this fee is out of line.

Rep. Erpelding doesn't believe his business is in conflict with this rule but will declare Rule 38.

ROLL CALL VOTE ON SUBSTITUTE MOTION: Roll call vote on the substitute motion to approve **Docket No. 26-0110-1701** failed by a vote of 8 AYE and 10 NAY. Voting in favor of the motion: **Reps. Wood, Kauffman, Lickley, Erpelding, Rubel, Mason, Toone, and Chairman Gibbs**. Voting in opposition to the motion: **Reps. Gestrin, Moyle, Shepherd, Boyle, Vander Woude, Mendive, Blanksma, Addis, Moon, and Raybould**.

ROLL CALL VOTE ON ORIGINAL MOTION: Roll call vote on the original motion to reject **Docket No. 26-0110-1701** carried by a vote of 10 AYE and 8 NAY. Voting in favor of the motion: **Reps. Gestrin, Moyle, Shepherd, Boyle, Vander Woude, Mendive, Blanksma, Addis, Moon, and Raybould**. Voting in opposition to the motion: **Reps. Wood, Kauffman, Lickley, Erpelding, Rubel, Mason, Toone, and Chairman Gibbs**.

**DOCKET NO.
25-0101-1802:**

Lori Thomason, Executive Director, Idaho Outfitters and Guides Licensing Board, stated this temporary rule deals with specific types of deer and elk hunting tags and how those tags are designated to outfitters for their clients. She explained by law the Idaho Fish and Game Commission has the authority to limit the number of deer and elk tags available for a zone, unit, or game management area. When the Commission limits tags available, they divide out a portion of those tags for hunters using licensed outfitters. These tags specified for the use of outfitted hunters are referred to as allocated tags. This temporary rule deals only with those allocated tags and are only for capped zones or controlled hunts. Once the Commission allocates the outfitted tags, Idaho Code directs the Idaho Outfitters and Guides Licensing Board to designate those allocated tags among the outfitters. The allocated tags are designated based on a calculation of an outfitter's historic use of the same type of tags. This temporary rule sets forth the Board's process for designating those tags within capped zones and controlled hunts. The Board's goal is to designate these limited tags equitably among outfitters and in a manner to maximize the use of these tags by the public.

Ms. Thomason further stated the process to designate tags was developed by the Board in cooperation with the Idaho Outfitters and Guides Association and licensees. When further clarification regarding the calculations became necessary, the Board realized it was time to make changes and formalize the process, with the participation and input of licensees and interested parties. In the meantime, the Board adopted a temporary rule to ensure it could designate allocated tags for the following year. When the Board initiated negotiated rulemaking, it became clear there was not agreement among the industry regarding how certain aspects of the process should be handled. Ms. Thomason stated during the negotiated rulemaking process, the Board was notified that the Outfitters and Guides Association was developing legislation to make changes to the Fish and Game and the Boards' statutes which govern the allocation process. These proposed changes could significantly impact the scope and need for the current rulemaking, therefore, the Board would like this temporary rule extended so they may continue to designate tags in the immediate short term, while any statutory changes are being made.

Chairman Gibbs and Rep. Erpelding both declared Rule 38.

Roger Hales, Legal Counsel, Idaho Outfitters and Guides Licensing Board, stated the Board would like to see this temporary rule extended in order for the new legislation to be finished by the Association this Legislative Session. This new legislation would make significant changes to the overall approach in the current law for both Fish and Game statutes and Outfitters and Guides Licensing Board statutes. If the legislation passes this Session, they can begin to work on new Rules, but if it doesn't pass, the Board wants to ensure there is something in place to regulate allocated tags.

In response to questions from the committee regarding the Board's ability to continue to designate allocated tags if this temporary rule was rejected, **Mr. Hales** stated they have been relying on this temporary rule since last March and would be able to continue to do so up until the Legislative Session ended, when this temporary rule would expire. If necessary, they could issue another temporary rule to carry them until the next Legislative Session.

Grant Simonds, Government Affairs Liaison, Idaho Outfitters and Guides Association, stated he has been involved in deer and elk tag allocation matters for a long time. He provided a background to the committee on the process developed for allocation of deer and elk tags. He also stated the Association didn't have the language for this temporary rule from the Board until late last month. Since that time, they reviewed the language and provisions and have many concerns with the temporary rule. The legislation the Association has been working on since June will dramatically simplify the system. The Association believes this temporary rule is not ready for prime time and requests the committee hold it.

John Watts, Veritas, representing Boulder Creek and Scotlyn Creek Outfitters, stated his clients are **in opposition** to this rule but appreciate the process being undertaken.

Darl Allred, Sawtooth Wilderness Outfitters, stated he is **in opposition** to this proposed temporary rule. He explained his concerns, one of which is the Outfitters and Guides Licensing Board's recalculation methods. He believes their current method leads to a reduction in allocated tags to many outfitters, which significantly harms their business. He is also concerned the approval of this temporary rule will circumvent the negotiated rulemaking process, therefore eliminating the opportunity for public input and input from the industry, which is unfair to the small Idaho businesses the Board regulates.

- MOTION:** **Rep. Moyle** made a motion to reject **Docket No. 25-0101-1802**.
- SUBSTITUTE MOTION:** **Rep. Erpelding** made a substitute motion to hold **Docket No. 25-0101-1802** for time certain, February 27, 2019.
- ROLL CALL VOTE ON SUBSTITUTE MOTION:** **Rep. Blanksma** requested a roll call vote on the substitute motion for **Docket No. 25-0101-1802**. Roll call vote on the substitute motion to hold **Docket No. 25-0101-1802** for time certain, February 27, 2019 **failed by a vote of 5 AYE, 11 NAY, 2 Absent/Excused. Voting in favor** of the motion: **Reps. Erpelding, Rubel, Mason, Toone, and Chairman Gibbs. Voting in opposition** to the motion: **Reps. Gestrin, Moyle, Shepherd, Boyle, Mendive, Kauffman, Blanksma, Addis, Lickley, Moon, Raybould. Reps. Wood and Vander Woude were Absent/Excused.**
- VOTE ON ORIGINAL MOTION:** Original motion to reject **Docket No. 25-0101-1802** **carried by voice vote.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:47pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary