

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Monday, February 25, 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, Toone, Mason

**ABSENT/
EXCUSED:** Representative(s) Vander Woude, Rubel

GUESTS: Forrest Goodrum, Ada County Fish and Game League; Garret Visser, Idaho Wildlife Federation; Greg Wooten, Scott Reinecker, and Paul Kline, Idaho Department of Fish and Game; Jeff Barney, self; Mike Somerville, Idaho Association of Soil Conservation Districts; Teri Murrison and Crystal Rosen, Idaho Soil and Water Conservation Commission; Becca Aceto, Idaho Wildlife Federation

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

H 189: **Rep. Scott**, District 1, stated this bill would clarify **36-1303, Idaho Code** which has not been updated since 1976. The intent is to preserve the presumption of privacy for all citizens by clarifying before any search or inspection is conducted under the provisions of this section, a warrant must be obtained, or consent must be given. She stated the main change is the language in the new section (3), which outlines how and when searches shall be conducted. Rep. Scott explained there are three ways a Fish and Game Officer can search and inspect a person's property. The first is with consent, the second is with a warrant, and the third is when the officer has reasonable suspicion that leads to probable cause based on the totality of the circumstances.

MOTION: **Rep. Moon** made a motion to send **H 189** to the floor with a **DO PASS** recommendation.

In response to concerns regarding probable cause for when a Fish and Game officer pulls an individual over in a vehicle, and what has to transpire for the officer to conduct a warrantless search, **Rep. Scott** replied probable cause is an officer's reasonable suspicion that a crime has been committed, which leads them to believe a warrantless search will result in evidence of a crime being discovered.

Greg Wooten, Chief of Enforcement, Idaho Department of Fish and Game, stated this bill would amend elements of Idaho Code creating a standard for investigating wildlife crimes different from the standard for investigating and enforcing other crimes in Idaho, making wildlife crime enforcement more difficult. He explained **H 189** would prohibit at least one existing court recognized grounds for warrantless searches, specifically the ability to search movable vehicles such as automobiles, boats, and trailers when there is probable cause for a search. Mr. Wooten continued by stating the outcome of this bill would make wildlife law enforcement less effective and set up different warrant requirements for officers to search movable vehicles related to enforcing wildlife violations versus searches related to enforcement of other crimes in Idaho.

Mr. Wooten provided an example by stating if an officer has probable cause a person has unlawfully taken a deer, and the deer is in the trunk of the vehicle, the officer typically asks for consent to search the vehicle, and failing to receive consent, has probable cause to proceed with a constitutional search and seizure without a warrant because of the mobility of the vehicle. Once the evidence is seized, the officer provides the individual with an evidence receipt and a citation. **H 189** proposes to remove the court recognized allowance for warrantless searches of mobile conveyances with probable cause.

Mr. Wooten stated the Fish and Game Commission previously reviewed a similar bill, **H 110**, and did not support it for the same reasons he just explained. He stated the Commission has not reviewed **H 189**, but as discussed, this bill also creates unequal standards for searches for wildlife enforcement versus enforcement of other crimes in Idaho.

Forrest Goodrum, Ada County Fish and Game League, stated they are **in opposition** to **H 189** because they don't believe this statute is broken, therefore it does not need to be fixed. He stated there have been over two centuries of case law and the 4th Amendment protects against unreasonable searches and seizures.

Garret Visser, Idaho Wildlife Federation, stated they are **in opposition** to **H 189** because this bill only seeks to eliminate the ability for officers to address wildlife crimes.

Jeff Barney, representing himself, spoke **in opposition** to **H 189** because it would set unequal laws between wildlife laws and other laws. He also stated the changes in this bill would make poaching easier to get away with.

Michael Gibson, Trout Unlimited, stated they are **in opposition** to **H 189** because this bill would make it more difficult for wildlife officers to enforce wildlife violations.

Rep. Scott provided closing remarks to include that most testimony heard today is false. She stated **H 189** will not promote poachers nor make Fish and Game officers' jobs harder. She explained the Fish and Game is not doing anything illegal and they do have the authority to search with consent, with a warrant, and with reasonable suspicion leading to probable cause. The new language being proposed in this bill will correct the current language to clarify vehicles, boats, trailers, etc are not an exception from having to obtain a warrant.

VOTE ON THE MOTION:

Chairman Gibbs stated there is a motion before the committee to send **H 189** to the floor with a **DO PASS** recommendation.

Rep. Erpelding asked **Mr. Wooten** if the Fish and Game's Attorney General had reviewed this bill. Mr. Wooten replied he has reviewed the bill and agreed a warrant would become necessary even with probable cause. Rep. Erpelding stated a little word-smithing could make this bill better but without that, it is taking away the officer's right to search a mobile vehicle based on probable cause, which makes their jobs really hard.

SUBSTITUTE MOTION:

Rep. Erpelding made a substitute motion to **HOLD H 189** in committee.

ROLL CALL VOTE ON THE SUBSTITUTE MOTION:

Rep. Boyle requested a roll call vote on the substitute motion to **HOLD H 189** in committee. **Motion failed by a vote of 4 AYE, 12 NAY, 2 Absent/Excused.** **Voting in favor** of the motion: **Reps. Kauffman, Erpelding, Mason, and Toone.** **Voting in opposition** to the motion: **Chairman Gibbs and Reps. Gestrin, Moyle, Shepherd, Wood, Boyle, Mendive, Blanksma, Addis, Lickley, Moon, and Raybould.** **Reps. Vander Woude and Rubel** were Absent/Excused.

VOTE ON THE ORIGINAL MOTION:

Chairman Gibbs called for a vote on the original motion to send **H 189** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Kauffman, Erpelding, Mason, and Toone** requested to be recorded as voting **NAY. Rep. Scott** will sponsor the bill on the floor.

Teri Murrison, Administrator, Idaho Soil and Water Conservation Commission, stated the Commission is a small but effective agency with a modest spending authority of dedicated funds and grants funding. Their core functions include providing financial and technical assistance to conservation districts, providing incentive-based and other conservation programs, and educating people on voluntary conservation. They also serve Idaho's 50 conservation districts, providing financial and technical assistance. Ms. Murrison stated just under 30% of all lands in Idaho are privately owned. Conservation the Idaho Way voluntarily implements projects improving water quality, restores streams, rivers, forests, range, and croplands all while contributing to healthy soils and helps Idaho satisfy environmental laws and regulations.

Ms. Murrison stated one of their big accomplishments this past year is the launch of a new online conservation project website which tells the Idaho conservation story. Previous to this website they had to rely on spreadsheets containing project records going back to 1985 without any good method to present the information to partners, decision makers, and the public. She stated now with the Conservation the Idaho Way Project Tracker (Tracker), their technical assistance projects as well as old databases with projects will all be available in Tracker. They are training the Districts to enter projects and also inviting a number of state and federal agencies to use Tracker as well. At this time there are already 3,300 projects loaded into Tracker.

Mike Somerville, Secretary, Idaho Association of Soil Conservation Districts, stated their mission is to represent Idaho's conservation districts as the primary entity to coordinate voluntary, locally led efforts to sustain and enhance Idaho's natural resources through a non-regulatory approach to conservation. Idaho has 50 conservation districts that work directly with landowners, as well as working together to address soil and water problems that extend beyond the boundaries of their individual districts, to conserve and promote healthy soils, water, forests, and wildlife in Idaho.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:57pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary