

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 23, 2023

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Burtenshaw, Vice Chairman Adams, Senators Guthrie, Den Hartog, Harris, Okuniewicz, Schroeder, Semmelroth, and Taylor

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 Burtenshaw** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

RS 29953C1 **Relating to Boating. Susan Buxton**, Director of the Idaho Department of Parks and Recreation (IDPR), explained **RS 29953C1** migrated all IDAPA Protection Against Invasive Species rules currently in 26.01.34 into existing statute Title 67 Chapter 70, which is the Idaho Safe Boating Act. This legislation also allowed IDPR to sell a two-year vessel certificate of number and two year protection against invasive species stickers.

MOTION: **Senator Harris** moved that **RS 29953C1** be sent to print. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Burtenshaw then passed the gavel to Vice Chairman Adams.

DOCKET NO. 20-0214-2201: **Rules for Selling Forest Products on State-Owned Endowment Lands (ZBR Chapter Rewrite) - Proposed Rule. Jeremy Shawver**, Lands Section Manager for Timber Sales and Contract Administration with the Idaho Department of Lands (IDL), testified regarding rules changes to **Docket No. 20-0214-2201**. This Docket concerned minimum requirements for timber sale auctions, initial deposits and bonding, stumpage and interest payments, and timber sale cancellation and termination. IDL entered negotiated rulemaking for this Docket with the goal of simplifying and streamlining the rules for increased clarity and ease of use. Negotiated rulemaking included representatives from PotlatchDeltic, Idaho Forest Group, Stimson Lumber Company, Sun Mountain Lumber, Stella Jones, Clearwater Paper, and Woodgrain. There were no changes to the rule text that changed the context of **Docket No. 20-0214-2201**. IDL removed redundant language within the rule and verbiage from the rule text that was covered by the Department's policy and procedure.

MOTION: **Senator Schroeder** moved to approve **Docket No. 20-0214-2201**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
20-0317-2201:**

Rules Governing Leases on State-Owned Navigatable Waterways (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. **Mick Thomas**, Division Administrator of Minerals, Navigable Waters, and Oil and Gas, IDL, testified regarding rules changes to **Docket No. 20-0317-2201**. He referred the Committee to the 2023 Pending Fee Rules Review book starting on page eight (Attachment 1). He explained IDL managed the beds of navigable lakes and rivers for the benefit of the public. Funding for the management of navigable waterways comes from fees and rent collected by IDL for the use of these lands. No general fund dollars were used to manage these public lands. At the end of fiscal year 2022, approximately 10,700 permits, 153 leases, and 130 easements were active in this program. He stated this Docket established a process to authorize leases for specific uses of state-owned navigable waterways, including marinas, community docks, non-navigational encroachments, and oversized private docks. Changes reduced the total word count and the number of restrictive words, and included the following substantive changes:

- The \$150 application fee in place since 2008 was increased to \$425 to cover the cost of reviewing and issuing these easements.
- Assignment fee was raised from \$150 to \$200.
- Late payment policy was updated, and payment extensions were eliminated.
- Appraisals, if needed, would be paid for by the applicant and not by IDL staff.

DISCUSSION:

Senator Harris asked for the reason for the significant increase in the application fee from \$150 to \$425. **Mr. Thomas** responded the \$425 was determined by a cost analysis of the actual cost to IDL to review and issue these leases. **Senator Guthrie** also expressed concerns about the significant increase in the application fee and asked how often this fee has to be paid. **Mr. Thomas** responded this fee did not apply to current lease owners, but will apply to new ones, and it was assessed every ten years, assuming that the lease was every ten years. He added that IDL did not receive any discussion or push back on this cost increase during rulemaking. In response to a question from Senator Guthrie, **Mr. Thomas** stated their mailing list included current lessees and interested parties who signed up to receive it. **Senator Okuniewicz** asked how many \$425 transactions were recorded in a year. **Mr. Thomas** estimated one year revenue to be roughly \$8000, but he would get back to Senator Okuniewicz with more information. In response to a questions from Vice Chairman Adams, **Mr. Thomas** stated the revenue for this program was generated by permits and lease revenue. He added that although this specific program had been operating in a deficit, the entire program was not.

Senator Guthrie asked about the additional language of non-refundable. **Eric Wilson**, Resource Protection Assistance Bureau Chief, IDL, explained that IDL's standard was to not refund fees, but since the lease was only obtained after the encroachment permit was issued, he could not think of any time that IDL denied a lease.

MOTION:

Senator Schroeder moved to approve **Docket No. 20-0317-2201**. **Chairman Burtenshaw** seconded the motion.

DISCUSSION: **Senator Den Hartog** stated that although the Committee was struggling with the rise in the permit application fee, she understood this was a fee that was paid only once every ten years and was established to cover the department's costs. She understood how the costs to the state have increased, and appreciated a program that was operating without the benefit of general funds. **Senator Schroeder** stated this fee required the person who wished to obtain this permit to pay the related costs, which were often underestimated for newly created programs, and he supported the fee increase. **Vice Chairman Adams** expressed concern that this program had been operating in the positive since 2008 without this fee increase, so he would vote no, which he would like recorded.

VOICE VOTE: The motion carried by **voice vote**. **Senator Okuniewicz** requested that he be recorded as voting nay.

PASSED THE GAVEL: Vice Chairman Adams passed the gavel back to Chairman Burtenshaw.

AGENCY UPDATE: **Idaho Department of Environmental Quality. Jess Byrne**, Director, Idaho Department of Environmental Quality (IDEQ), presented a department overview and update (Attachment 2). This included a review of United States government versus State of Idaho responsibilities, an explanation of incorporation by reference, a review of wastewater and drinking water infrastructure funding, including distribution of American Rescue Plan Act (ARPA) funds, and recent federal actions likely to affect Idaho.

DISCUSSION: In response a question from Vice Chairman Adams, **Mr. Byrne** stated that federal updates to incorporations by reference do not automatically make Idaho subject to those rules. He explained the federal government will update their rules and then give the state a certain amount of time to update theirs. When incorporations by reference change, IDEQ will provide a summary of changes to the Committee. **Vice Chairman Adams** asked if removing the inspection maintenance program in Idaho would have an effect on meeting air quality standards in the Treasure Valley. **Mr. Byrne** did not anticipate that it would.

Senator Guthrie shared some concern about the problems, including the raised cost of projects due to supply and supply chain issues and the condensed time frame, created by the availability of so much ARPA funding so fast. **Mr. Byrne** stated IDEQ's environmental standards cannot be less stringent than the federal government, but how they operate their program can be different, and the Environmental Protection Agency (EPA) regularly audits their programs. He added that if IDEQ does not take an action or the EPA does not agree with the action they took, the EPA can take their own action, but this is rare.

In response to questions from Senator Taylor, **Mr. Byrne** stated \$4.3 million dollars was allocated for the Triumph Mine cleanup this year, and they had already accomplished quite a bit of the specific plan in place for that money. This included drilling water quality monitoring wells and collecting enough data to create a long term remedy for this site. In response to a question from Senator Okuniewicz, **Mr. Byrne** stated federal agencies typically provided a date, which can be two or three years out, to give states time to incorporate by reference, because they recognized there was a process.

**DOCKET NO.
58-0105-2201:**

Rules and Standards for Hazardous Waste - Proposed Rule. Michael McCurdy, Waste Management and Remediation Division Administrator, IDEQ, referred the Committee to the rule text provided on page 87 of the 2023 Pending Rules Review Book, and to an Overview of Incorporation by Reference for the DEQ Hazardous Waste Program (Attachment 3). He explained this rulemaking included the adoption by reference of final federal regulations regarding hazardous waste through July 1, 2022. This was to ensure that the state rules remained consistent with the federal regulations. This rule incorporated changes to Canadian import-export recovery and disposal code numbers and descriptions. These changes ensured that disposal codes listed in import and export documentation were consistent for shipments of hazardous waste between the United States and Canada. The only other change updated the web page reference for the Electronic Code of Federal Regulations. **Mr. McCurdy** stated the proposed rule was neither broader in scope nor more stringent than the federal regulations and did not regulate an activity that was not regulated by the federal government.

MOTION:

Senator Okuniewicz moved to approve **Docket No. 58-0105-2201**. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
58-0117-2201:**

Recycled Water Rules (ZBR Chapter Rewrite) - Proposed Rule. Dr. Mary Anne Nelson, Surface and Wastewater Division Administrator, IDEQ, referred the Committee to the 2023 Pending Rule Book starting on Page 88, and to the Pending Rule in Strikeout/Underline Format (Attachment 4). She explained this Docket established the procedures and requirements for the issuance and maintenance of permits for water reuse facilities, also referred to in the rules as "reuse permits". Changes to this Docket included:

- Redundant or unnecessary sections were removed, such as sections 002 on written interpretations; 003 regarding incorporation by reference; 005 on confidentiality of records; 006 on office hours; and 930 on violations.
- Occurrences of the word 'shall' were replaced with 'must' if the rule spoke to something a regulated entity needed to do, and to 'will' if it pertained to an action that the agency would take.
- Definitions that already occur in statute or were not used within the body of the rule were removed, a subsection on other applicable rules of the agency was removed, and repeated elements were combined into a single section specific to that element.
- Section 100.01 was revised to include clarity regarding exempting digestate if it was applied according to an approved nutrient management plan.
- The requirement for a facility to have a draft recycled water permit prior to starting construction was removed from Section 300.01.
- The requirement for applicants to attend a pre-application conference with the agency was added to Section 300.02.
- Redundant language regarding removal of a notification of proposed schedule for permit processing was removed from Section 400.02.
- Section 609 adds language regarding general reuse permits to include provisions for IDEQ to issue general reuse permits, which will be used for specific but common uses of recycled water that need less oversight due to the nature and or the volume of the recycled water being applied.

Dr. Nelson stated rulemaking meetings were attended by representatives of the Idaho Conservation League, Idaho Dairy Men's Association, several municipalities, including Boise, Moscow, Post Falls, Caldwell, and Meridian, as well as several consulting engineering companies. Public comments were

received from Idaho Dairy Men's Association, Association of Idaho Cities, and IDEXX Laboratories, a provider of diagnostic and software products and services.

DISCUSSION: **Senator Okuniewicz** asked how these rules were enforced and what were the penalties. **Dr. Nelson** replied the agency had the right to levy fines and penalties for violations of environmental permits based on Idaho statutes. **Senator Taylor** drew attention to a typo in Section 300 where 'shall' was removed and incorrectly replaced with 'may'.

TESTIMONY: **Mary Alice Taylor** representing the Association of Idaho Cities, and **Jonathan Oppenheimer** representing the Idaho Conservation League, testified in favor of changes to this Docket.

Senator Schroeder stated he had a conflict of interest pursuant to Senate Rule 39(H) but intended to vote.

MOTION: **Senator Harris** moved to approve **Docket No. 58-0117-2201**. **Senator Semmelroth** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business as this time, **Chairman Burtenshaw** adjourned the meeting at 2:50 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary