

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, February 06, 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 1:32 p.m.  
**Chairman Burtenshaw** stated he intended to mix up the agenda.

**MINUTES APPROVAL:** **Vice Chairman Adams** moved to approve the Minutes of January 16, 2023. **Senator Semmelroth** seconded the motion. The motion carried by **voice vote**.  
**Senator Den Hartog** moved to approve the Minutes of January 18, 2023. **Senator Harris** seconded the motion. The motion carried by **voice vote**.  
**Chairman Burtenshaw** announced that approval for the Minutes of January 23, 2023 was moved to a future meeting.

**RS 30068:** **Relating to Endowment Land. Senator Harris** explained this legislation amends Idaho Code to add new section 58-156, which would address closures and restrictions on State endowment land. The purpose of this legislation was to protect State land from being abused and misused. This legislation stated that the State Board of Land Commissioners would provide notice to the public of any restrictions, closures, prohibitions, and regulations on State endowment land. It outlined posting requirements, fines, and restitution requirements.

**DISCUSSION:** **Senator Semmelroth** asked if this legislation was created in response to an increasing problem. **Senator Harris** stated this issue has been discussed for a while, and a similar bill was brought last year that had some issues, but they were seeing an increase with the increased population state of Idaho and the increased use of State lands. **Senator Guthrie** requested that when Senator Harris returned with this legislation, that he provide some examples on where we would exercise the right to close off public lands.

**MOTION:** **Senator Guthrie** moved that **RS 30068** be sent to print. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

**S 1017** **BOATING - Amends existing law to revise provisions regarding certificates of number and invasive species stickers, to provide for certain fees, and to provide for the assessment of certain penalties.** **Susan Buxton**, Director, Idaho Department of Parks and Recreation (IDPR) explained **S 1017** migrated all IDAPA Protection Against Invasive Species rules currently in 26.01.34 into existing statute Title 67 Chapter 70, which was the Idaho Safe Boating Act. Rules would be migrated to statute verbatim, other than the addition of an allowance for IDPR to sell two-year vessel certificate of number and two year protection against invasive species stickers.

**DISCUSSION:** **Senator Adams** asked for clarification on language on the first page that was crossed out. **Ms. Buxton** responded that these were requirements regarding forwarding copies which were now done electronically.

**MOTION:** **Senator Schroeder** moved to send **S 1017** to the floor with a **do pass** recommendation. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

**S 1021** **PRIEST LAKE - Amends existing law to prohibit certain outlet control structures.** **Senator Herndon** explained S 1021 clarifies that the existing Priest Lake outlet control structure was under the sole and exclusive supervision and control of the Idaho Water Resource Board (IWRB). It also required approval of the Idaho State Legislature and the Governor before any additional outlet control structure from Priest Lake could be constructed. He provided a history of Idaho statutes related to Priest Lake and the Priest Lake Outlet Dam, and of actions taken related to creating a cold water bypass system from Priest Lake to Lower Priest River, which was proposed to address summer water temperatures in the river and improve trout habitat.

**DISCUSSION:** In response to a question from Senator Den Hartog, **Senator Herndon** stated prior approval of the Idaho State Legislature and the Governor would be in the form of a statutory change. **Senator Semmelroth** asked what types of conversations and input Senator Herndon received at the local level. **Senator Herndon** stated he had attended meetings at Priest Lake that included stakeholders who shared their opinions on this issue, and he had received emails and phone calls from Priest Lake and Priest River landowners. He added that all agreed there needed to be a process where everybody had their voices heard. **Senator Semmelroth** asked if this legislation was redundant, as the Legislature and the Governor already had the ability to approve or disapprove a project like the siphon, and any state funding would require legislative approval. **Senator Herndon** responded that their concern was Idaho Fish and Game, the Kalispell tribe, and others believed they had mechanisms whereby they could proceed with the development and funding of the siphon project without involving the legislature, and these groups had already spent money on research for this project. **Senator Taylor** asked if this issue would be better addressed at the local level. **Senator Herndon** responded that Idaho statute declared that Priest Lake was an asset of all of the people of Idaho. In response to another question from Senator Taylor, **Senator Herndon** agreed that the Lower Priest River, that would be affected by the siphon, was an asset to all Idahoans, as long as it was publicly accessible.

**Senator Schroeder** asked how many cubic feet per second (CFS) discharge was necessary to achieve a certain extreme temperature reduction. **Senator Herndon** responded that he did not have that number with him, but someone testifying later might. In response to questions from Senator Guthrie, **Senator Herndon** clarified that IWRB had supervision and control of the existing outlet control structure, but the concern was which entity might control any new structure not specifically outlined in statute. In response to questions from Senator Taylor, **Senator Herndon** explained the statute only spoke to maintaining a certain lake level, not about maintaining CFS discharge. **Senator Taylor** then stated studies he read concluded, a siphon would not affect the lake level, and asked if a siphon helped the lower river with cooler water, would that not be a beneficial use of Idaho water for both lake property owners and anglers down river. **Senator Herndon** responded the siphon project would require a significant financial investment and would cause a significant disruption to the outlet bay, and there was no proof, only a theoretical model, that it would lower water temperatures and achieve the objective of improving trout habitat.

**Senator Okuniewicz** asked if this legislation might be in conflict with local and special laws or with the separation of powers. **Senator Herndon** replied regarding the separation of powers, the legislative process would be required to make any change to statute to permit additional outlet control structures. He added, regarding local and special laws, all dams in Idaho were legislatively authorized either at the federal level or in this case, at the state level, so this was an asset owned by the State of Idaho.

**TESTIMONY:**

**Jonathan Oppenheimer**, Idaho Conservation League, **Kyle Maki**, Idaho Wildlife Federation, **Brian Hooker**, Selkirk Conservation Alliance, **Jonathan Quinn-Hurst**, and **Michael Gibson**, Trout Unlimited, all spoke in opposition to **S 1021**. The common themes were this legislation was redundant, it was government overreach, it was premature, and it did not represent the constituents down river from the Priest Lake Outlet Dam or address concerns about trout habitat in the Priest River. Some noted there was a collaborative coming together to try to solve the water temperature issues in the Priest River and this legislation might impair efforts to get stakeholders to work together.

**Norm Semanko**, an attorney with Parsons, Bailey and Latimer, and representing the Committee to Stop the Priest Lake Siphon, spoke in favor of this legislation. He stated six years ago, this legislature approved legislation requiring that before fish could be reintroduced or introduced into Idaho waters, this action required legislative approval. This was signed into law in 2017. He added, this legislation did not eliminate the ability to collaborate, but helped focus the collaboration with the understanding that any action must be approved by the legislature. He stated it was important that the legislature have the ability to approve or disapprove a structure that could impact water deliveries and water administration, which was why the Idaho Water Users Association (IWUA) supported this legislation.

**DISCUSSION:**

In response to a question from Senator Okuniewicz, **Mr. Semanko** agreed this type of legislation would not fall under any of the enumerated items under Article 3, Section 19 of the Idaho Constitution which would make this legislation unconstitutional under local and special laws. **Senator Okuniewicz** then asked if this legislation would be in conflict with Article 2 of the Idaho Constitution, which related to the separation of powers. **Mr. Semanko** responded he did not believe that it did. He elaborated that when Idaho became a state, all of the navigable waters, as that term was defined under federal law, became property of the State and that included Priest Lake. He also wanted to communicate that IWUA Legislative Committee support came with the caveat that they did not understand this legislation to interfere in any way with IWRB's authority to improve the existing outlet dam, but only new structures. **Senator Taylor** asked if the siphon would require a water right. **Mr. Semanko** responded, yes, if you were going to divert water from one water body and use it for any purpose, let alone put it in another water body, it required a water right. **Senator Adams** asked how long the discussion had been going about putting a siphon or something like it into the Priest River. **Mr. Semanko** responded his best guess was around ten years. In response to another question from Senator Adams, **Mr. Semanko** stated he could not estimate if this legislation would have any effect on the time it would take to find a resolution and take some action on the Priest River summer water temperatures and trout habitat issue.

**Senator Herndon** concluded by stating if there was a collaborative that determined a solution to improve Priest Lake and the Priest River, he would be the first person to carry that legislation, but if the Committee sent **S 1021** to the floor with a do pass recommendation, it would not prevent anything that the collaborative was doing.

**Senator Den Hartog** commented that she received a lot of emails from those in the northern part of the State that were potentially impacted by this and they have been read and received. **Senator Semmelroth** shared that she had concerns about the heavy handed use of government for this legislation and for that reason, she would respectfully vote no on this legislation.

**MOTION:** **Senator Harris** moved to send **S 1021** to the floor with a do pass recommendation. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**. **Senator Adams**, **Senator Semmelroth**, and **Senator Taylor** requested that they be recorded as voting nay.

**ADJOURNED:** There being no further business as this time, **Chairman Burtenshaw** adjourned the meeting at 3:05 p.m.

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Senator Burtenshaw  
Chair

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Shelly Johnson  
Secretary