

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 05, 2024

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 31184C1 **Related to Navigational Encroachments. Senator Herndon** explained this legislation replaced **S 1257**, which was previously heard in this Committee as **RS 30973C1**. **S 1257** added a clarifying definition to Idaho Code § 58-1312 concerning the 1974 Lake Protection Act. The definition of the phrase "has not been modified" was added to state that the overall footprint of the encroachment on the lake bed had not changed in dimension, orientation, height, or location. This allowed owners to repair and maintain encroachments on the lake bed that existed prior to 1974 without having to obtain a new permit and pay for the permitting and application process. Language in Senate Bill 1257 was revised to also allow for overall footprints that decreased, resulting in **RS 31184C1**.

MOTION: **Senator Schroeder** moved that **RS 31184C1** be sent to print. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

S 1243 **GRAZING - Adds to existing law to provide for permits. Senator Harris** explained **S 1243** allowed certain State grazing leaseholders to apply to the Idaho Department of Lands (IDL) to convert their grazing lease into a grazing permit, which allowed leaseholders who were good stewards of the land the ability to renew their grazing rights without having to reapply and rebid. **Norman Semanko**, attorney, Parsons Behle and Latimer, presented to share his opinion on the constitutionality of this legislation. He referred the Committee to their handout titled "Article IX Education and School Lands". (Attachment 1) He spoke about the history of Idaho endowment lands, related case law, the purpose of endowment lands to benefit public schools, and the public auction requirement. His opinion was that **S 1243** built upon the distinction in the Idaho Constitution between the trust lands granted to the State of Idaho upon admission, and those acquired later, for example, through an exchange.

DISCUSSION: In response to several questions from Senator Schroeder and Senator Okuniewicz, **Mr. Semanko** expanded on what might happen to the requirement to benefit public schools after endowment land was exchanged, he provided his interpretation of the Idaho Constitution related to the power of the legislature to prescribe how and when public lands were exchanged, and he addressed the responsibility of the legislature and IDL to make prudent investment decisions with these transactions.

TESTIMONY: **Jonathan Oppenheimer**, Government Relations Director, Idaho Conservation League (ICL), testified against **S 1243**. He noted that lessees were provided opportunities to remove their lands from the exchange, and shared his concern that this legislation violates the constitutional requirement to maximize returns via public bidding.

Cody Chandler from Weiser, Idaho, testified in favor of **S 1243**. He disputed that lessees were provided opportunities to remove their lands from the exchange, he agreed that this legislation was constitutional, and he shared his personal stake in this legislation as a rancher trying to make a living.

DISCUSSION: **Senator Okuniewicz** asked several questions related to legal agreements attached to land leases. **Mr. Chandler** responded that if he held a grazing permit on land that was sold, his permit was canceled and he was to be reimbursed for the loss of his property right. He stated there was no specification within his lease stating he was entitled to retain ownership of his grazing rights when his leased property was sold.

Russ Hendricks, representing the Idaho Farm Bureau Federation, testified in favor of **S 1243**. He stated this legislation recognized preexisting encumbrances on exchanged federal land in a constitutional and narrowly crafted way.

DISCUSSION: **Senator Lakey** emphasized a few points in closing. These included:

- Article IX, Section 8 of the Idaho Constitution clearly provided for two types of land, the land acquired by endowment from Congress and the land that was otherwise acquired
- the land subject to this legislation was not the endowment land and not subject to the auction requirement
- the state has the obligation to manage lands for long term financial benefit and discretion in management was granted to the legislature
- these federal grazing permits had been recognized as a property right, and should be compensable, if taken
- not every property owner was given the opportunity to opt out of an exchange

He shared his belief in the long term benefit to the State in a consistent long term lease, in grazing on state lands, and in contributions by the livestock industry to the economy.

MOTION: **Senator Guthrie** moved to moved to send **S 1243** to the floor with a do pass recommendation. **Vice Chairman Adams** seconded the motion. The motion carried by **voice vote**.

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

DOCKET NO. 20-0301-2301 **Rules Governing Dredge and Placer Mining Operations in Idaho (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule.** **Eric Wilson**, Resource Protection and Assistance Bureau Chief, Idaho Department of Lands (IDL) referred the Committee to the 2024 Resources and Environment Committee Pending Rules Review Book on the Idaho State Legislature website, starting on page 85. He explained IDL administered these rules under the authority of the Idaho Dredge and Placer Mining Protection Act, Idaho Code § 47-13. This rule allowed resource extraction while protecting the lands, streams, and watercourses of the state. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter was scheduled for a comprehensive review in 2023. He provided a summary of the negotiated rulemaking process for this rule. The pending rule included the following substantive changes:

- The annual inspection fees of \$100 for permits on United States Forest Service lands and \$250 for all other permits was raised to \$435 for all permits.
- Late payment policy was updated.
- Surety companies issuing bonds must be listed in the United States Department of the Treasury's Circular 570.
- The 120 day cancellation notification was reduced to 90 days.
- Time Deposit Receipts were recognized as acceptable forms of bonding.

DISCUSSION:

Senator Den Hartog asked how IDL calculated the \$435 cost and if there were any comments regarding this fee increase. **Mr. Wilson** responded that IDL factored in the average driving time to and from each mining site and the average amount of time staff spent at the site, which was a average total time of eight hours. They then factored in an average wage. He stated there were no concerns from their customers about the amount of the inspection fee. **Senator Semmelroth** asked if there were any comments regarding changes to their public notice. **Mr. Wilson** responded that there were no concerns about public notice for this rule. In response to a comment from Senator Guthrie, **Mr. Wilson** stated that IDL's interpretation of statute was that they charge one application fee for all applicants. **Senator Adams** asked for an explanation of the change for scaled cross-sections from length and width to length and height in subsection 04.f on page 112. **Mr. Wilson** explained this length would be the length of the pit, and the height would be the depth.

MOTION:

Chairman Burtenshaw moved to approve **Docket No. 20-0301-2301**. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
20-0303-2301**

Rules Governing Administration of the Reclamation Fund (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. **Eric Wilson**, referred the Committee to the 2024 Resources and Environment Committee Pending Rules Review Book on the Idaho State Legislature website, starting on page 131. He explained IDL administered these rules under the authority of Idaho Code § 47-18. These rules guided administration of Idaho's Reclamation Fund, which provided an alternative form of performance bond or financial assurance as required by Idaho mining regulations. This fund was used by IDL to complete reclamation when an operator was unable to do so. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter was scheduled for a comprehensive review in 2023. He provided a summary of the negotiated rulemaking process for this rule. The only substantive change in the pending rule was an update to the late payment policy.

DISCUSSION:

Senator Adams asked why "and the federal agency" was added to section 020. on page 140, and why operators would need to provide proof of reclamation security beyond what was already provided to IDL. **Mr. Wilson** explained IDL attempted to ensure that an operator was not bonded with multiple entities, but to do that, they had to ensure that the bond provided by the operator was acceptable to both parties.

MOTION:

Senator Harris moved to approve **Docket No. 20-0303-2301**. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
20-0305-2301**

Navigable Waterways Mineral Leasing in Idaho (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. **Eric Wilson**, referred the Committee to the 2024 Resources and Environment Committee Pending Rules Review Book on the Idaho State Legislature website, starting on page 142. He explained IDL managed the beds of navigable lakes and rivers for the benefit of the public. Their funding came from fees and rent charged by IDL for the use of these lands. At the end of Fiscal Year 2023, approximately 10,700 permits, 196 leases, and 147 easements were active in this program. This rule established a consistent process to authorize mineral exploration and extraction on state owned navigable rivers and to collect rents and royalties. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter was scheduled to be repealed and replaced in 2023. The pending rule included the following substantive changes:

- The rule now included all state-owned navigable water bodies rather than just riverbeds.
- The \$50 lease application fee in place since 1991 was increased to \$425.
- The assignment fee was raised from \$50 to \$200 to cover costs.
- Lease application advertising fee was raised from \$45 to \$75.
- Exploration Location Fee was increased from \$250 to \$500.
- Late payment policy was updated.

DISCUSSION:

Senator Okuniewicz asked how the fee for additional acres was calculated in Section 30.01 for minimum annual rental and for an example of how this fee was calculated. **Mr. Wilson** responded that acreage was difficult to calculate for riverbed leases, so they based leases on river miles, not acres. He stated that IDL had difficulty getting recreational suction dredgers to report revenue, so they raised the minimum annual rental. This would attempt to reimburse the public for providing an exclusive right to mineral exploration on the rented riverbed and for any minerals they might remove. **Senator Okuniewicz** asked how IDL could charge a minimum fee in this case, but was required to charge a set fee in the case mentioned earlier in this meeting. **Mr. Wilson** responded that the prior fee was a fee to reimburse a cost, but a rental had a value that was difficult to determine. **Senator Guthrie** asked about the change in definition of riverbed to navigable waters and if that would lead to an increase in revenue. **Mr. Wilson** responded that there was no regulatory framework providing for mineral leases on lakes, so this provided a way to apply for a lease on a lakebed.

TESTIMONY:

Jonathan Oppenheimer testified against **Docket No. 20-0305-2301**. He shared ICL's concern that exploration locations provided exclusive two-year mineral rights for exploration, but did not include opportunities or requirements for public notice.

MOTION:

Senator Den Hartog moved to hold **Docket No. 20-0305-2301** subject to call of the Chair. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NOS.
20-0101-2301,
20-0501-2301**

Vice Chairman Adams stated the remaining Idaho Department of Lands rules would be considered at a future meeting.

**PASSED THE
GAVEL:**

Vice Chairman Adams passed the gavel to Chairman Burtenshaw.

**MINUTES
APPROVAL:**

Senator Adams moved to approve the Minutes of January 22, 2024. **Senator Okuniewicz** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Senator Harris moved to approve the Minutes of January 24, 2024. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL
APPOINTMENT,
REAPPOINTMENT
VOTES:**

Chairman Burtenshaw stated the meeting had run out of time, so the Gubernatorial Reappointment votes for Tammy Overacker, Ray Hinchcliff, and Betty Coppersmith, the Gubernatorial Appointment votes for Margaret Chipman and Marc Haws, and the Gubernatorial Appointment and Reappointment votes for Jennifer Riebe would be considered in a future meeting.

ADJOURNED:

There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 3:01 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary