

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 19, 2024

TIME: 1:30 P.M.

PLACE: Room WW55

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

ABSENT/ EXCUSED: Senator Den Hartog

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 1:31 p.m.

INTRODUCTION: **Introduction of Page Ashley Richardson. Chairman Burtenshaw** introduced Senate page, Ashley Richardson. **Ms. Richardson** told the Committee about herself and some of her plans for the future.

S 1338 **IRRIGATION DISTRICTS - Amends existing law to provide for the modification of boundaries of divisions in irrigation districts. Paul Arrington**, Director, Idaho Water Users Association (IWUA), provided some background on how irrigation districts were formed, how irrigation district board members were selected, and the difficulties with finding qualified individuals to serve on irrigation district boards. He explained the issue was that Idaho Code did not provide a process to modify irrigation district divisions. This legislation outlined a process to amend the divisions within an irrigation district, including:

- An irrigation district must approve, by a two-thirds vote, a resolution requesting modification to the divisions.
- The irrigation board must then submit a petition, explaining the reasons they desire modification, to the County Commissioners.
- The modified divisions must continue to be "of as nearly equal size as possible."
- The County Commissioners would then hold a hearing on the petition and then issue an order on the request.

DISCUSSION: **Senator Okuniewicz** asked if each person on the board had one vote. **Mr. Arrington** responded the default was one person, one vote in an irrigation district, although statutes had been passed that allowed districts to change to voting based on acreage. **Senator Okuniewicz** asked why the reason for not being able to fill a seat was not specific. **Mr. Arrington** responded that although the inability to fill a seat might be the reason 95 percent of the time, he did not want to foreclose the opportunity if a different reason presented itself. **Chairman Burtenshaw** asked what "equal size" meant. **Mr. Arrington** responded this meant equal geographic area.

MOTION: **Senator Schroeder** moved to send **S 1338** to the floor with a **do pass** recommendation. **Senator Adams** seconded the motion. The motion carried by **voice vote**.

RIGHTS-OF-WAY - Amends, repeals, and adds to existing law regarding irrigation and drainage rights-of-way. Mr. Arrington spoke about the pressures to alter and encroach upon Idaho irrigation water delivery and drainage systems due to population growth and growing urban areas. He spoke about conflicts over the easements that were essential for ditch access, operation, maintenance, and repair. He explained these conflicts were exacerbated by provisions of Idaho ditch easement law in Idaho Code § 42-11 and 42-12, which included out of date and repetitive language, and failed to reconcile provisions as they were amended or interpreted by the Idaho Supreme Court.

He explained that **S 1339** was drafted by Idaho's most experienced irrigation system managers and water lawyers through IWUA's Legislative Committee, with input from the Association of Idaho Cities and utility operators that frequently modify or encroach on ditch easements. He summarized this legislation, which updated the ditch easement statutes in Idaho Code § 42-11 and 42-12 to consolidate, conform, clarify, and repeal provisions based on Idaho Supreme Court decisions and contemporary experience. He reviewed the conflicts in Idaho Code regarding self-help provisions. He referred the Committee to his outline of changes handout. (Attachment #1) Some highlights were:

- To improve clarity and consistency, laterals and drains were added to provisions in Idaho Code § 42-11, and the right-of-way notice provisions of Idaho Code § 42-1102(3) were updated to be consistent with case law.
- Ditch operation, maintenance duties, and liabilities were consolidated into Idaho Code § 42-1201, allowing repeal of Idaho Code § 42-1202, 1203, and 1204.
- The remedial provisions of Idaho Code § 42-1207, and Idaho Code §§ 42-1102(5) and 42-1209, were conformed based on court decision *Pioneer v. Caldwell*, and to address the discrepancy found in *Hood v. Poorman*. These provided:
 - If a ditch was moved or piped, or the ditch easement was encroached upon without written permission and the action unreasonably or materially interfered with the use and enjoyment of the right-of-way, then:
 - The person that caused or permitted the encroachment or alteration must remedy the interference "within a reasonable time" after the ditch owner's request, or immediately in the event of reduced water flow, property damage, safety risk, or other emergency.
 - The ditch owner could undertake "self-help" to remedy the interference if the person causing or permitting the encroachment or alteration failed to timely perform the requested remedial actions or if there was reduced water flow, property damage, safety risk, or other emergency.
 - The ditch owner could not perform any work on a municipal or public utility line.
- Idaho Code § 18-4308 was updated to remove any unnecessary repetition of Idaho Code 42-1207.

DISCUSSION:

Senator Semmelroth asked if there were any limits or definitions on self-help efforts or activities in this legislation. **Mr. Arrington** responded that these were defined in 42-1102(5)(b).

TESTIMONY: **Paul Poorman** testified against **S 1339**. He told the Committee about his personal experience being sued by a neighbor with a ditch that ran through his property. He supported the revisions that consolidated overlapping sections. He disagreed with revised wording in Idaho Code § 42-1102, that added rights to a landowner who desired to move water across a neighbor's property and suggested revised wording. He disagreed with revisions to Idaho Code § 42-1207(5)(b) and suggested language requiring the placement of a ditch into pipe to be designed by an Idaho-registered, licensed professional engineer.

DISCUSSION: **Senator Guthrie** asked for clarification on what Mr. Poorman meant when he talked about drain water that came from somewhere else, like a neighbor's field, and then ran onto his property or water that exceeded the banks of a canal and ran onto his property. **Mr. Poorman** responded that was not a factor in his lawsuit, but his concern was the original code referenced live water, new verbiage discussed drain water. His interpretation of drain water was that it was live water that went across a field, irrigated the field, and was excess that had to go somewhere. **Senator Guthrie** asked if an easement was 20 or 25 feet wide and a pipe blew out and damaged outside the easement, would they be liable. **Mr. Poorman** responded that his understanding was if excess water damaged property, then that was the result of negligence, and his opinion was they would be liable.

Mr. Arrington spoke to some issues raised in earlier discussion. He spoke about the language relating to meeting standards for public works construction and burying pipes. He explained that language related to drain structures spoke to the structure used to direct and focus that drainage. He believed we have a duty to maintain our water delivery system, to get water delivered safely and efficiently, and to not injure the surrounding land.

Senator Guthrie asked who would be liable if a child got caught in a canal, went down through a pipe, and was injured or drowned. **Mr. Arrington** responded that they worked to make sure that people who lived and recreated in and around these facilities understood their dangers, but liability would depend on the circumstances of the particular case.

MOTION: **Senator Semmelroth** moved to send **S 1339** to the floor with a **do pass** recommendation. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 2:10 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary