

MINUTES  
**HOUSE RESOURCES & CONSERVATION COMMITTEE**

**DATE:** Thursday, March 21, 2024

**TIME:** 1:30 pm or upon adjournment

**PLACE:** Room EW40

**MEMBERS:** Chairman Mendive, Vice Chairman Shepherd, Representatives Boyle, Vander Woude, Blanksma, Manwaring, Yamamoto, Raybould, Durrant, Hill, Mickelsen, Nelsen, Pickett, Raymond, Tanner, Burns, Necochea, Galaviz

**ABSENT/  
EXCUSED:** Representative(s) Hill

**GUESTS:** The sign-in sheet will be retained in the committee secretary's office; following the end of session the sign-in sheet will be filed with the minutes in the Legislative Library.

**Chairman Mendive** called the meeting to order at 2:22 p.m.

**MOTION:** **Rep. Galaviz** made a motion to approve the February 27, 2024, February 29, 2024, March 7, 2024 and March 11, 2024 committee meeting minutes as submitted.  
**Motion carried by voice vote.**

**S 1292:** **Rep. Blanksma**, District 8, presented **S 1292** saying it allows the Idaho Dept. of Lands to hire independent legal counsel in certain instances instead of consulting the Idaho Attorney General (AG). Presently the Idaho Attorney General has disproportional influence on the Land Board in serving as a board member and acting as legal counsel. It is believed the AG has a constitutional responsibility to provide legal counsel to the Land Board however the Constitution only states the AG shall be a member of the Land Board, it does not stipulate the AG shall provide legal counsel. Case law exists supporting the idea that any additional responsibilities would have to be assigned by the State Legislature, and this bill aims to address that and change it.

**MOTION:** **Rep. Raybould** made a motion to send **S 1292** to the floor with a **DO PASS** recommendation.

**Raul Labrador**, Idaho Attorney General (AG), spoke **in opposition** to **S 1292** saying this legislation attempts to solve a problem that does not exist. He explained there has been a perception that the Land Board and the Idaho Dept. of Lands are two separate entities, but the reality is they are not. He spoke about the pre-constitution origin of the Land Board and the history of its development. Originally the State Governor was the president of the Land Board and the AG was the secretary. As secretary, the duty of the AG was to write the deeds and do all the legal work for the Land Board. Eventually, with 4 millions acres involved, there was too much work so the AG made a request to the Legislature to create a department to issue the deeds. This led to the creation of the Idaho Dept. of Lands, which was created to be an instrumentality of the Land Board. The Land Board is the head and the Dept. of Lands is the arm thus the Land Board and the Dept. of Lands are the same entity, and as one entity there is no actual conflict. In the writings of the State Constitution, it appears the drafters intended the AG to act as legal counsel on every board in which he serves.

Committee members had several questions regarding the advantages and disadvantages of being both a member of the Land Board and their legal counsel including the financial advantages to the state, and what would happen if there is a disagreement between these offices. AG **Raul Labrador** explained the structure of his office and how all the attorneys on staff ultimately report to him. He elaborated on how the Land Board is structured, the other Boards he serves on, and he reemphasized how the Land Board and the Dept. of Lands are one entity, repeating more than once how the conflict is only a perceived one. He defined a conflict of interest as having a personal investment in a matter under consideration, thus preventing a clean decision. The attorneys in the AG's Office work in cooperation with the Dept. of Lands for drafting contracts, filing law suits, and implementing the orders of the Land Board.

In closing **Rep. Blanksma** said there is case law that supports the fact that territorial duties did not necessarily transfer over when the State Constitution was written. The Constitution names all the members of the Land Board but it does not say the AG will also act as legal counsel. The duty was assigned through statute back in the 1980's by legislative authority and that is what this bill changes in allowing the Dept. of Lands to hire independent legal counsel.

**SUBSTITUTE MOTION:**

**Rep. Tanner** made a substitute motion to **HOLD S 1292** in committee.

Committee members spoke **in support** of the substitute motion saying the line of thinking could lead to the loss of the AG's legal counsel on all the agency boards he serves on. The Land Board is unique in that all its members are constitutional officers making it one of the few existing boards where voters have direct impact by way of election. Concerns about adding another independent legal counsel FTP were voiced, and the potential of a law suite involving the AG and the independent legal counsel involving untold expenses.

Committee members spoke **in opposition** of the substitute motion saying it is broadly believed that the Legislature has no control over the Land Board, or the Dept. of Lands. Being established by the Constitution the perception is they are their own independent entity and the Legislature can not influence their activities.

**Rep. Tanner**, speaking to his motion explained the Land Board is a unique entity and it is tied to the Dept. of Lands, the Attorney General is correct in saying they are one entity. This legislation attempts to separate them but it does not actually fix the problem, and it increases the potential for conflict between the AG and the Dept. of Lands. Disagreements can currently be addressed through other members of the Board, where this legislation creates more divisions instead of synergy, and the potential cost implications are huge.

Attorney General **Raul Labrador** was recalled to the podium to answer some committee questions about who represents the citizens etc. He responded that he believes it is his duty to represent the citizens and not the state agencies. His duties on the Land Board are from the common law, that's why there is not anything about his duties in the Constitution. This legislation gives the director the ability to hire attorneys if he disagrees with the AG's legal counsel, when the director is the only unelected official serving the Land Board.

**Rep. Raybould**, speaking **in support of the original motion** and addressing the implication that the legislation gives too much power to the director, the director of the Dept. of Lands reports to the Land Board, who hires that individual, and the director can be fired by the same Board for failing to follow their direction. Adding, along with another committee member the agency director also answers to this legislative committee.

**Rep. Manwaring** spoke in support of the original motion saying whenever the Attorney General serves in the capacity of a board member the agency director should have the option to seek independent legal counsel. The combination of board member plus legal counsel is both a perceived, and actual conflict, and it is the Legislature's responsibility to correct these types of things when identified.

**ROLL CALL  
VOTE:**

Roll call vote requested. **Substitute motion failed by a vote of 4 AYES, 13 NAYES, 1 Absent/Excused. Voting in favor** of the motion: **Rep. Mendive, Shepherd, Boyle, Tanner. Voting in opposition** to the motion: **Rep. Vander Woude, Blanksma, Manwaring, Yamamoto, Raybould, Durrant, Mickelsen, Nelsen, Pickett, Raymond, Burns, Necochea, Galaviz. Rep. Hill absent/excused.**

**VOTE ON  
ORIGINAL  
MOTION:**

**Original motion carried by voice vote. Rep. Blanksma** to sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee the meeting adjourned at 3:27 p.m.

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Representative Mendive  
Chair

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Andrea Blades  
Secretary