

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: February 15, 2006

TIME: 1:30 p.m.

PLACE: Room 412

MEMBERS: Chairman Stevenson, Vice Chairman Wood, Representatives Field(23), Bell, Barraclough, Denney, Barrett, Moyle, Eskridge, Raybould, Roberts, Bedke, Andrus, Shepherd(8), Brackett, Sayler, Jaquet, Mitchell

ABSENT/ Rep. Bedke

EXCUSED:

GUESTS: George Bacon, Operations Chief South, Idaho Department of Lands (IDL); Mike Murphy, Head, Navigable Waters Program, IDL

See sign-in sheet for other guests.

CALL TO ORDER: Chairman Stevenson called the meeting to order at 1:35 p.m. The secretary took a silent role call.

MINUTES: A motion was made by Rep. Sayler to approve the minutes of January 7 and January 9, 2006 as written. The motion passed by voice vote.

January 7, 2006
January 9, 2006

H641: Rep. Tom Loertscher, District 31, sponsor, has asked that H641 not be heard in Committee today.

H524: George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H524 relating to the Lake Protection Act (LPA). Currently the LPA does not provide a permitting process for owners of encroachments built prior to 1974 who did not meet the deadline established in Section 58-1312. H524 makes an allowance for owners of unmodified navigational or nonnavigational encroachments constructed on or before December 31, 1974. Substantive documentation that the encroachment was constructed on or before that date must be made in order to receive an encroachment permit without the requirement of application or publication fees.

QUESTIONS/COMMENTS: Rep. Moyle asked if the IDL's permitting process included private lakes. Mr. Bacon said IDL's jurisdiction is defined in a different Code section; but that private or navigable lakes under IDL jurisdiction are better defined in another bill today.

Rep. Roberts asked if a dock, pier, or improvement could be maintained

Rep. Eskridge asked why IDL wouldn't have jurisdiction over the ground at the bottom of Bureau projects as it does over the ground at the bottom of Corp projects. Mr. Bacon said the test for jurisdiction is whether the body of water is navigable at the time of statehood. Any body of water created since then is not under IDL jurisdiction.

Rep. Moyle asked if IDL would have jurisdiction over the Payette River but not over drainage district #2 in Meridian, ID. Mr. Bacon said that is correct. However, IDL does not have jurisdiction over all reaches of the Payette River. The test for jurisdiction requires that a body of water was navigable at the time of statehood.

Rep. Roberts said the situation is more complicated than it first appears, because there is a natural high water mark and, in some cases, an artificial high water mark where structures have been built for water storage. He asked who has jurisdiction over the land difference between the historic high water mark and the artificial high water mark. Mr. Murphy said IDL regulates the encroachment. IDL only negotiates leases to the "ordinary" high water mark, as opposed to the artificial high water mark. He said each site is different. Court systems establish the ordinary high water mark at any given site.

Rep. Barraclough asked if "navigable" is still defined as occurring where a log 6 inches in diameter and 6 foot long will float. Mr. Bacon said that is the test for public access. There are two tests: one for public access and a federal test for ownership.

Rep. Mitchell said it seems the dock owner is more fairly treated under the provisions of H524. Mr. Bacon said yes.

VOTE H524:

The motion to send H524 to the floor with a DO PASS recommendation passed by voice vote. Rep. Wood voted NO for the record. Rep. Stevenson will carry H524 on the floor.

H525:

George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented H525, legislation amending Idaho Code Section 58-1302 to modify the definition of "line of navigability" by changing not only the language, but also the concept employed for determination. The line of navigability is now determined by the concept of "customary type of water craft." H525 allows for several more relevant criteria to be used when determining the line of navigability, including: the line established by the waterward extent of existing and legally permitted encroachments, and the water depth and lake bed characteristics. The new concept is to be applied when no line of navigability has been established on the body of water in question.

QUESTIONS/COMMENTS: Rep. Wood asked for a definition of "waterward." Mr. Bacon said it is the direction you're looking towards the water.

**MOTION/VOTE
H525:**

A motion was made by Rep. Roberts to send H525 to the floor with a DO PASS recommendation. The motion passed by voice vote. Rep. Roberts will carry H525 on the floor.

H526:

George Bacon, Operations Chief South, Idaho Department of Lands

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: March 10, 2006

TIME: 1:30 p.m.

PLACE: Room 433

MEMBERS: Chairman Schroeder, Senators Cameron, Burtenshaw, Williams, Brandt, Little, Langhorst

**ABSENT/
EXCUSED:** Vice Chairman Pearce, Senator Stennett

**CALL TO
ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.

MINUTES: **Senator Brandt** moved to approve the minutes from March 6. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**.

Senator Burtenshaw moved to approve the minutes from March 3. **Senator Brandt** seconded the motion. The motion carried by a **voice vote**.

APPOINTMENT: **Senator Brandt** moved to approve the appointment of **Douglas Hancey**, whose hearing was held on March 8, **to the Park and Recreation Board**. **Senator Burtenshaw** seconded the motion. The motion carried by a **voice vote**. **Senator Hill** will sponsor the appointment on the floor.

H 524 **George Bacon, Operations Chief, Idaho Department of Lands (IDL)**, presented **H 524**, regarding **Encroachments, navigational permits**. He introduced **Mike Murphy, Program Manager, Navigable Waters Program**, who was present to answer questions. The Lake Protections Act, passed in 1974, set out regulations for property owners with encroachments on navigable lakes. People who already had encroachments, such as docks, at that time were allowed a free permit. Over the years during regulatory enforcement, individuals who had not obtained their free permit prior to the Act were still allowed to as long as they could prove that the encroachments existed prior to the Act. More than twenty years later, many properties have changed hands. This bill would allow a free permit for any encroachment which has not changed its footprint since 1974 as long as there is proof, such as photographs, to back it up. Permits are a one-time payment only, if the encroachment has not changed.

Senator Langhorst asked about the procedure and cost for adding an encroachment after 1974. **George Bacon** said there is a \$50 permitting fee to be paid prior to construction, and the encroachments must conform to guidelines on size and length.

MOTION: **Senator Little** moved **H 524** to the floor with a **do pass** recommendation. **Senator Brandt** seconded the motion. The motion carried by a **voice**