

first gave an overview of the seven pieces of IDL legislation before the Committee today: six have to do with the Lake Protection Act; one with timber sales on state-owned land.

Mr. Bacon presented RS15336C1, legislation relating to navigational and nonnavigational encroachments, and amending section 58-1312 Idaho Code to provide requirements for the permitting of existing navigational or nonnavigational encroachments. He said the original statute gave free permits to landowners who filed by the end of 1974. RS15336C1 allows landowners who have some proof that an encroachment existed prior to 1974 to still be grandfathered without a fee. It will facilitate IDL management, and reduce the number of incidents where the department is asked to mediate encroachment issues.

QUESTIONS/DISCUSSION: Rep. Wood asked for clarification as to what constitutes modification (line 18). Mr. Bacon said the intent was modification of the footprint of the encroachment, which meant size and shape. It is assumed that landowners will maintain and repair improvements.

MOTION RS15336C1: A motion was made by Rep. Roberts to recommend RS15336C1 to printing.

VOTE RS15336C1: The motion to recommend RS15336C1 to printing passed by voice vote.

RS15337: George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15337 relating to navigational and nonnavigational encroachments. It amends section 58-1302 Idaho Code to revise a definition and make technical corrections. Section 58-1302 determines how far an encroachment can protrude into a lake. It now is determined by the customary size of a boat in a lake; RS15337 allows the line of navigability to be determined by the length of existing legally permitted encroachments.

QUESTIONS/DISCUSSION: Rep. Saylor asked if RS15337 was in any way relevant to the high water mark at Sanders Beach in Coeur d'Alene. Mr. Bacon said Sanders Beach was an unrelated problem.

MOTION RS15337: A motion was made by Rep. Mitchell to recommend RS15337 to printing.

VOTE RS15337: The motion to recommend RS15337 to printing passed by voice vote.

RS15338: George Bacon, Operations Chief South, Idaho Department of Lands (IDL), presented RS15338 relating to navigational and nonnavigational encroachments. It amends section 58-1307 Idaho Code to revise fee and cost provisions for certain permits, and to authorize the Board of Land Commissioners to charge specified applicants the actual costs of processing applications in the event that actual costs exceed the non-refundable fee. Mr. Bacon said applicable fees have not been changed in thirty-two years. He referred to a chart projecting revenues and expenses. (Exhibit 1) With the recommended fee increase, the revenue deficit could be reversed by 2010.

QUESTIONS/DISCUSSION: Rep. Moyle asked what the impact would be to the general fund. Mr. Bacon said none. Currently the fees IDL collects are less than those allocated to administer the program. The program is now a net drain on the general fund. Mr. Bacon said IDL is considering bringing

George Bacon
worked for IDL

What does
modification
mean

or reconstructed without a permit. Mr. Bacon said maintenance is expected to occur, and is not a permitted activity. The IDL permit process applies if the "footprint" is changed—that is, if construction is larger than the original improvement.

Rep. Wood asked for a definition of "navigable." Mike Murphy, Head, Navigable Waters Program, IDL, gave examples of navigable and non-navigable construction by way of providing a definition. Rep. Wood asked for clarification of IDL's authority. Mr. Murphy said IDL has jurisdiction over the beds of lakes and navigable streams in Idaho and, in the case of lakes, where encroachments protrude onto the lake but are not related to moorage.

Rep. Roberts asked if a permit is needed to replace or modify a retaining wall constructed to prevent erosion. Mr. Murphy said if it is maintained or replaced without modification, no permit is needed. Rep. Roberts asked if a permit is required for a retaining wall constructed since February 1, 1975 that has now decomposed to the point where a new wall is needed. Mr. Murphy said assuming there was a permit, a new permit would not be required.

Rep. Eskridge asked if the Corp of Engineers is involved, if the permit is required from IDL or the Corp. Mr. Bacon said if the Corp is involved, the Corp would have permitting jurisdiction.

Rep. Barrett asked what change is actually being made with H524. Mr. Bacon said the crux of the legislation is to allow encroachments that were constructed before the LPA permit deadline to be grandfathered under the LPA.

Rep. Eskridge asked if IDL could require an encroachment constructed prior to 1974 to be removed if it isn't properly permitted. Mr. Bacon said technically yes; but it is unlikely. H524 makes provision to allow a grandfathered permit.

MOTION H524:

A motion was made by Rep. Field to send H524 to the floor with a DO PASS recommendation.

QUESTIONS/COMMENTS: Chairman Stevenson asked if a footbridge across a canal belonging to an irrigation district requires a permit, as canals sometimes are classified as navigable waters. Mr. Bacon said if IDL has jurisdiction over the canal, the permitting process might apply. Rep. Stevenson said wetlands are considered waters of the U.S. and navigable waters statutes apply. Mr. Bacon said that is correct, but IDWR has jurisdiction of the water. IDL has jurisdiction over the beds of lakes and not the waters.

Rep. Roberts asked if IDL jurisdiction occurs within Bureau of Reclamation projects. Mr. Bacon said it does not unless the Bureau gives up their rights to it. There may be a case near Twin Falls where the Bureau will ask IDL to issue permits. Rep. Roberts asked about jurisdiction at specific sites including Lucky Peak, Cascade Reservoir, and American Falls. Mr. Bacon said the IDL permitting process didn't apply to them but would, for example, apply to Payette Lake. IDL has jurisdiction over reservoirs; but Payette Lake is a natural lake.

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.

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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

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Court Affirms IDL'S plain language interpretation -
which is contrary to Statute's original intent
Kaseburg v. State, Bd. of Land Comm'rs, 154 Idaho 570, 578, 300 P.3d 1058, 1066 (2013)

(citations omitted).

IDL also meets the second element because its interpretation that the addition of rocks to the lakebed and log structure sometime in 2006-2007 constitutes a modification is reasonable and not contrary to the express language of the statute. The word "modify" or "modified" in this context means "to make minor changes in" or "to make less extreme." <https://www.merriam-webster.com/dictionary/modify> (last visited October 6, 2023). Under the plain language of the statute, Mr. Wilson modified the log crib. The court finds IDL's interpretation of I.C. § 58-1312 to be reasonable and not contrary to the express language. The court does not find the statute to be ambiguous. Therefore, the court must defer to IDL's interpretation and uphold its findings that Mr. Wilson modified the pre-LPA structure.

The court will not substitute its judgment for IDL on questions of the weight of evidence regarding questions of fact. Neither party is contesting IDL's determination that the structure existed prior to 1974. The question before the court is whether Mr. Wilson modified the structure. The court finds substantial and competent evidence supporting IDL's determination that he did. Idaho Department of Land's decision to deny Mr. Wilson's application is not erroneous under I.C. § 67-5279.

V. ATTORNEY FEES

Mr. Wilson requested attorney fees under I.C. §§ 12-117(1) and 12-117(2) which provide for an award of attorney fees to the prevailing party. Mr. Wilson did not prevail in this matter and therefore is not entitled to attorney fees.

VI. CONCLUSION AND ORDER

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT

MEMORANDUM DECISION AND ORDER AFFIRMING RESPONDENT'S DECISION - 8

ENCL 10/17/23 · Bonner County CV09-23-0254