

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 400

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO ALTERATION OF CHANNELS OF STREAMS; AMENDING SECTION 42-3809, IDAHO CODE, TO PROVIDE THAT NO CIVIL OR ADMINISTRATIVE PROCEEDINGS FOR VIOLATION OF SPECIFIED LAW OR VIOLATION OF ANY RULE, PERMIT OR ORDER ISSUED OR PROMULGATED PURSUANT TO SPECIFIED LAW MAY BE BROUGHT MORE THAN TWO YEARS AFTER THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES HAD KNOWLEDGE OR OUGHT REASONABLY TO HAVE HAD KNOWLEDGE OF THE VIOLATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-3809, Idaho Code, be, and the same is hereby amended to read as follows:

42-3809. PENALTY FOR VIOLATION -- ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF. (1) Any person who violates any of the provisions of this chapter, any regulation, rule, order or standard of the board promulgated pursuant to section 42-3803, Idaho Code, or of any order or condition of approval of the director issued pursuant thereto, where a copy of the order has been served upon said person in person or by certified mail and said person fails to comply therewith within the time therein provided, or within ten (10) days of such service if not otherwise provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500); provided further, that each day such violation of an order or condition of approval has taken place shall constitute a separate offense punishable by a fine of not less than one hundred fifty dollars (\$150) for each day until such activity is abated or voluntarily ceased. Any stream channel alteration engaged in by any person without approval having been obtained therefor as prescribed in this act is hereby declared to be a public nuisance and shall be subject to proceedings for immediate abatement.

(2) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. Provided however, that no civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation. The director shall have authority and it shall be his duty to seek a temporary injunction from the appropriate district court to restrain a person from altering a stream channel until approval therefor has been obtained by the person as provided in this act.