

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 241

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO WATER; AMENDING SECTION 42-108B, IDAHO CODE, TO REVISE PROVISIONS RELATING TO ACTION BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES RELATING TO CERTAIN PROPOSED LEASES OF WATER; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-108B, Idaho Code, be, and the same is hereby amended to read as follows:

42-108B. LEASING OF WATER UNDER ESTABLISHED RIGHTS -- NOTICE -- APPEAL. Any person, entitled to the use of water whether represented by a license issued by the department of water resources, or by decree of the court, who shall desire to lease the water pursuant to section 42-108A, Idaho Code, shall make application to the department of water resources. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be leased. Upon receipt of said application, an application filing fee of thirty dollars (\$30.00) and a publication fee of fifty dollars (\$50.00), it shall be the duty of the director of the department of water resources to examine same and if otherwise proper, to cause notice of the proposed leasing of water and setting forth the hearing date at which protests will be heard, to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such a paper, otherwise in a newspaper of general circulation within the county. Such notice shall advise that anyone who desires to protest the proposed leasing of water and who has a superior right to use the water and who may suffer pecuniary loss shall file notice of protest with the department within five (5) days of the last date of publication. The hearing date set by the director of the department of water resources shall be held not sooner than ten (10) nor later than fifteen (15) days after the last date of publication. Upon receipt of any protest, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed lease.

The director of the department of water resources shall examine all of the evidence and available information and ~~shall approve, in whole or in part, or upon conditions, provided no other water rights senior or junior to the water to be leased are injured thereby~~ may reject and refuse approval for, or may partially approve for less quantity of water, or may approve upon conditions any proposed lease of water where the proposed use is such that it will reduce the quantity of water available under other existing water rights, the water supply involved is insufficient for the purpose for which it is sought, the lease would cause the use of water to be enlarged

1 beyond that authorized under the water right to be leased, the lease would
2 be contrary to any local rental pool procedure as authorized under section
3 42-1765, Idaho Code, the lease will conflict with the local public interest
4 as defined in section 42-202B, Idaho Code, or the lease will adversely affect
5 the local economy of the watershed or local area within which the source of
6 water for the proposed use originates, in the case where the place of use is
7 outside of the watershed or local area where the source of water originates.

8 A copy of the approved application for leasing of water shall be returned to
9 the applicant, and he shall be authorized upon receipt thereof to lease the
10 water pursuant to section 42-108A, Idaho Code. In the event the director of
11 the department of water resources determines that a proposed change shall
12 not be approved as provided in this section, he shall deny same and forward
13 a notice of such action to the applicant by certified mail, which decision
14 shall be subject to review pursuant to section 42-1701A, Idaho Code.

15 All fees received by the department of water resources under the provi-
16 sions of this section shall be submitted to the state treasurer for deposit
17 in the water administration fund.

18 SECTION 2. An emergency existing therefor, which emergency is hereby
19 declared to exist, this act shall be in full force and effect on and after its
20 passage and approval.