

IN THE SENATE

SENATE BILL NO. 1239

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO ENVIRONMENTAL QUALITY; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE,
2 BY THE ADDITION OF A NEW SECTION 39-175D, IDAHO CODE, TO REQUIRE PUBLIC
3 NOTICE AND OPPORTUNITY TO COMMENT ON TENTATIVE DECISIONS BY THE DE-
4 PARTMENT OF ENVIRONMENTAL QUALITY REGARDING IDAHO POLLUTANT DISCHARGE
5 ELIMINATION SYSTEM (IPDES) PERMITS, TO PROVIDE FOR AN ADMINISTRATIVE
6 RECORD, TO PROVIDE THAT CERTAIN PROVISIONS OF LAW SHALL NOT APPLY TO
7 FINAL DECISIONS, TO PROVIDE FOR APPEALS OF CERTAIN FINAL DECISIONS, TO
8 PROHIBIT CERTAIN CONFLICTS OF INTEREST, TO PROVIDE FOR JUDICIAL REVIEW
9 AND TO PROVIDE FOR THE ADOPTION OF RULES; AND AMENDING CHAPTER 1, TITLE
10 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-175E, IDAHO CODE, TO
11 PROVIDE THAT SPECIFIED PROVISIONS OF LAW SHALL APPLY TO THE IPDES PRO-
12 GRAM AND TO PROVIDE FOR THE ENFORCEMENT OF PRETREATMENT STANDARDS.
13

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

15 SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 39-175D, Idaho Code, and to read as follows:

18 39-175D. IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT DECI-
19 SIONS AND APPEAL OF DECISIONS. (1) Prior to making a final decision regarding
20 Idaho pollutant discharge elimination system (IPDES) permits authorized by
21 sections 39-175A through 39-175C, Idaho Code, the department shall provide
22 the public notice and an opportunity to comment on the department's tenta-
23 tive decision. The department shall develop an administrative record that
24 shall, at a minimum, include the tentative decision, all comments received,
25 the department's response to comments and the basis for the department's
26 decision. The decision-making process and the final decision with respect
27 to IPDES permits shall not be subject to the contested case provisions set
28 forth in chapter 52, title 67, Idaho Code.

29 (2) Notwithstanding any other provision of law, including without lim-
30 itation, chapter 52, title 67, Idaho Code, the exclusive means of appeal-
31 ing the department's final decision regarding an IPDES permit shall be as set
32 forth in this section and in rules authorized by this section and sections
33 39-175A through 39-175C, Idaho Code. Any person aggrieved by the depart-
34 ment's final decision regarding an IPDES permit may appeal that decision.
35 The appeal of the decision shall be heard by a hearing officer appointed by
36 the director from a pool of hearing officers approved by the board. Hearing
37 officers should be persons with technical expertise or experience in the is-
38 sues presented in appeals. All appeals shall be based solely on the record
39 developed by the department as required by subsection (1) of this section and
40 the rules adopted by the board, and no further or additional evidence may be
41 presented except as provided in rules adopted by the board.

1 (3) No person, including the director and hearing officer, who has or
2 shares authority to approve all or portions of IPDES permits either in the
3 first instance, as modified or reissued, or on appeal, shall have a conflict
4 of interest as defined in 40 CFR 123.25(c).

5 (4) Any person aggrieved by a final determination of the hearing offi-
6 cer regarding an IPDES permit may secure judicial review by filing a petition
7 for review as prescribed under the rules adopted by the board and the provi-
8 sions of chapter 52, title 67, Idaho Code. The petition for review shall be
9 served upon the hearing officer, the director of the department and the at-
10 torney general. Such service shall be jurisdictional, and the provisions of
11 this section shall be the exclusive procedure for appeal.

12 (5) The board shall adopt rules consistent with the provisions of this
13 section.

14 SECTION 2. That Chapter 1, Title 39, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 39-175E, Idaho Code, and to read as follows:

17 39-175E. IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM INVES-
18 TIGATION, INSPECTION AND ENFORCEMENT AUTHORITIES. (1) All investigation,
19 inspection and enforcement authorities and requirements set forth in the
20 environmental protection and health act, sections 39-101 through 39-130,
21 Idaho Code, shall be available to the department and shall apply with re-
22 spect to the Idaho pollutant discharge elimination system (IPDES) program.
23 Such authorities include, without limitation, the authorities in sections
24 39-108, 39-109 and 39-117, Idaho Code, which shall be available to the de-
25 partment to conduct investigations, inspections and enforcement relating to
26 violations of the rules, permits, requirements or orders issued or adopted
27 pursuant to sections 39-175A through 39-175E, Idaho Code.

28 (2) The department is further authorized to enforce, through the au-
29 thorities provided in this section, pretreatment standards, including local
30 limits, developed and adopted by publicly owned treatment works, as required
31 by 40 CFR 403.10(f) (1) (iv).

STATEMENT OF PURPOSE

RS23979

The proposed legislation is necessary for Idaho to submit an application to the Environmental Protection Agency (EPA) requesting authorization to implement a state National Pollutant Discharge Elimination System (NPDES) program. Idaho Code 39-175C directs the Department of Environmental Quality (DEQ) to submit a complete application, consistent with the requirements of the clean water act, by September 1, 2016. The application will request authorization for what will be known as the Idaho Pollutant Discharge Elimination System (IPDES) program. The proposed legislation 1) establishes the process for appealing IPDES permits issued by DEQ, and 2) provides DEQ with necessary minimum enforcement authorities.

FISCAL NOTE

There will be costs to the State of Idaho to implement these aspects of the IPDES program. The costs are accounted for as part of the overall cost of the program.

Contact:

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SENATE BILL 1239

The status of each bill, resolution, proclamation, and memorial is updated when the offices of the Secretary of the Senate and the Chief Clerk of the House publish the un-official daily journals and should not be deemed official. The official bill actions are located in the final journal, which are maintained by the offices of the Secretary of the Senate and the Chief Clerk of the House. **The daily journals are published at the end of each legislative day.**

Full Bill Information**Individual Links:**[Bill Text](#)[Statement of Purpose / Fiscal Note](#)

S1239 by RESOURCES AND ENVIRONMENT COMMITTEE

ENVIRONMENTAL QUALITY - Adds to existing law to require public notice and opportunity to comment on tentative decisions by the Department of Environmental Quality regarding Idaho Pollutant Discharge Elimination System (IPDES) permits, to provide for appeals of final decisions and for judicial review, to prohibit conflicts of interest; and to provide that provisions of Idaho's Environmental Protection and Health Act shall apply to the IPDES Program and to provide for the enforcement of pretreatment standards.

02/02Introduced; read first time; referred to JR for Printing

02/03Reported Printed; referred to Resources & Environment

02/22Reported out of Committee with Do Pass Recommendation; Filed for second reading

02/23Read second time; filed for Third Reading

02/25Read third time in full - **PASSED - 35-0-0**

AYES -- Anthon, Bair, Bayer, Brackett, Buckner-Webb, Burgoyne, Davis, Den Hartog, Guthrie, Hagedorn, Harris, Heider, Hill, Johnson, Jordan, Keough, Lacey, Lakey, Lee, Lodge, Martin, McKenzie, Mortimer, Nonini, Nuxoll, Patrick, Rice, Schmidt, Siddoway, Souza, Stennett, Thayn, Vick, Ward-Engelking, Winder

NAYS -- None**Absent and excused** -- None**Floor Sponsor - Bayer**

Title apvd - to House

02/26Received from the Senate, Filed for First Reading

Read First Time, Referred to Environment, Energy, & Technology

03/09Reported out of Committee with Do Pass Recommendation,

Filed for Second Reading

03/10Read second time; Filed for Third Reading

03/11U.C. to hold place on third reading calendar until Monday, March 14, 2016

03/14Read Third Time in Full - **PASSED - 62-3-5**

AYES -- Anderson, Andrus, Batt, Beyeler, Boyle, Burtenshaw, Chaney, Cheatham, Chew, Clow, Collins, Crane, Dayley, DeMordaunt, Dixon, Erpelding, Gannon, Gestrin, Gibbs, Harris, Hartgen, Hixon, Holtzclaw, Horman, Jordan(Memmott), Kauffman, Kerby, King, Kloc, Loertscher, Luker, Malek, McCrostie, McDonald, McMillan, Mendive, Miller, Monks, Moyle, Nielsen, Nye, Packer, Palmer, Pence,

Perry, Raybould, Redman, Romrell, Rubel, Rudolph, Rusche, Sims, Smith, Thompson, Troy, Trujillo, VanOrden, Vander Woude, Wintrow, Wood, Youngblood, Mr. Speaker

NAYS -- Barbieri, Nate, Scott

Absent -- Anderst, Bateman, Bell, Shepherd, Wills

Floor Sponsor - Chaney

Title apvd - to Senate

03/15Returned From House Passed; referred to enrolling

Reported enrolled; signed by President; to House for signature of Speaker

03/16Received from Senate; Signed by Speaker; Returned to Senate

03/17Reported signed by the Speaker & ordered delivered to Governor

03/18Reported delivered to Governor at 10:35 a.m. on 03/17/16

03/23Signed by Governor on 03/23/16

Session Law Chapter

Effective: