

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fourth Legislature                      Second Regular Session - 2018

IN THE \_\_\_\_\_  
\_\_\_\_\_ BILL NO. \_\_\_\_\_  
BY \_\_\_\_\_ COMMITTEE

AN ACT

RELATING TO ENVIRONMENTAL QUALITY; AMENDING SECTION 39-175B, IDAHO CODE, TO CHANGE REFERENCE TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM TO THE STATE PROGRAM; AMENDING SECTION 39-175C, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO THE PURSUIT OF APPROVAL OF AN NPDES PROGRAM, TO REMOVE REFERENCE TO SUBMITTAL OF AN APPLICATION BY A DATE CERTAIN, TO PROVIDE FOR AUTHORIZATION OF THE MEMORANDUM OF AGREEMENT BETWEEN DEQ AND EPA; TO EXCLUDE STATE AUTHORITY FOR PERMITTING VESSELS UNDER THE NPDES PROGRAM; AND ADDING A NEW SECTION 39-175F, IDAHO CODE, TO PROVIDE FOR THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM FUND; **AND DECLARING AN EMERGENCY.**

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

SECTION 1. That Section 39-175B, Idaho Code, be, and the same is hereby amended to read as follows:

39-175B. RELATIONSHIP BETWEEN STATE AND FEDERAL LAW. The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. Further, the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the clean water act and regulations adopted pursuant thereto. Further, the department will not require ~~NPDES~~ Idaho Pollutant Discharge Elimination System (IPDES) permits for activities and sources not required to have permits by the United States environmental protection agency.

SECTION 2. That Section 39-175C, Idaho Code, be, and the same is hereby amended to read as follows:

39-175C. APPROVAL OF ~~STATE NPDES~~ IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM. (1) The department is authorized to ~~pursue approval of an NPDES~~ implement an IPDES program consistent with the requirements of this section. ~~The department shall submit a complete application consistent with the requirements of the clean water act and 40 CFR 123 to the environmental protection agency to obtain approval for a state NPDES program by September 1, 2016.~~ The program shall not include the authority to issue permits for any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions ~~that may eventually be necessary to obtain~~ maintain approval of a ~~state NPDES~~ the IPDES program by the United States environmental protection agency including rules authorizing the collection of reasonable fees for processing and implementing an ~~NPDES~~ IPDES permit program. Such fees shall not be assessed or collected ~~until~~ unless the state ~~obtains~~ maintains an approved ~~NPDES~~ IPDES program consistent with the requirements of this section.

(3) Any memorandum of agreement ~~executed~~ negotiated by the director to ~~obtain~~ maintain approval to operate a ~~state NPDES~~ an IPDES program shall ~~not~~ be binding on the state of Idaho ~~unless authorized by~~ upon enactment of a this statute. Any memorandum of agreement ~~not authorized in the above manner shall be of no force and effect.~~

(4) Implementation of a ~~state NPDES~~ the IPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection section 39-175C(3), Idaho Code ~~of this section.~~

(5) The director, as appropriate, shall establish agreements with other state agencies with expertise to administer the ~~NPDES~~-IPDES program.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and [title 42](#), Idaho Code.

(7) Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.

SECTION 3. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-175F, Idaho Code, and to read as follows:

39-175F. IPDES PROGRAM FUND ESTABLISHED.

(1) There is hereby created in the state treasury a fund to be known as the "IPDES Program Fund" which shall consist of all moneys received from fees collected from facilities obtaining an IPDES permit or coverage under a general permit pursuant to Section 39-175C(2), Idaho Code, and the rules promulgated pursuant thereto. Such fees shall be collected by the department and shall be paid into the IPDES Program Fund which is hereby established, reserved, set aside, appropriated and made available until expended and used and administered consistent with this section.

(2) All moneys deposited in the IPDES Program Fund and all interest earned thereon shall be kept in the IPDES Program Fund and shall be expended pursuant to appropriation for the costs and expenses incurred by the department in performing the duties, and the exercise of its powers in carrying out the IPDES program, including, but not limited to, compliance, training, technical, legal and administrative support **and proceedings** necessary for implementing the program required under the IPDES program as provided in this chapter.

(3) Pending such expenditure and use, surplus moneys in the IPDES Program Fund established in this section shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest earned on all such investments shall be paid into the IPDES Program Fund.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

## STATEMENT OF PURPOSE

The proposed legislation is necessary for Idaho to receive authorization to implement a state National Pollutant Discharge Elimination System (NPDES) program to be known as the Idaho Pollutant Discharge Elimination System (IPDES) program. The proposed legislation 1) corrects references of the national program to the state program; 2) provides for the legislative approval of the memorandum of agreement negotiated between the Idaho Department of Environmental Quality (DEQ) and the U.S. Environmental Protection Agency (EPA; 3) excludes permitting authority for vessels regulated by EPA under a nationwide general permit; and 4) provides for the establishment of a dedicated fund for the collection of IPDES fees.

The 2014 Legislature passed House Bill 406 which allows DEQ to collect fees for the IPDES program. Fees were expected to be reasonable and not be assessed or collected until the state obtains an approved NPDES program. To this end, fees will not be assessed until one full year after DEQ anticipates approval of the IPDES program. Program approval is anticipated to be July 1, 2018. Fees would not be collected until July 1, 2019 for the municipal permittees, industrial permittees July 1, 2020, and storm water permittees July 1, 2022.

An expenditure report on how DEQ manages fees levied on those obtaining IPDES permits from the agency will be provided to the Legislature and Governor annually by February 1. This legislation will establish a dedicated fund for the IPDES program to provide for better accountability and transparency. With a dedicated fund, the Legislature and State Controller will be able to view all revenues and expenditures from the Statewide Accounting and Reporting System (STARS), and DEQ will be able to complete an accurate fee expenditure report. In addition, a dedicated fund will earn interest which may increase the fund's balance and decrease fees in subsequent years.

## FISCAL NOTE

There will be costs to the state of Idaho to implement aspects of the IPDES program. The costs are accounted for as part of the overall cost of the program. There is no fiscal impact to establish a dedicated fund for the IPDES program fees.

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