

IDFG LEGISLATION ANALYSIS

Date: February 12, 2019
Completed By: Greg Wooten, Chief of Enforcement
Bill – RS#: H0110
Sponsors and Interested Parties:

<u>Name</u>	<u>Phone #</u>	<u>E-mail</u>
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Current Law/Background:

Idaho Code Section 36-1303 addresses officers' authority and duty to inspect broadly defined storage facilities and search various other locations when they have probable cause they contain evidence of violations of Title 36. In application, this authority is subject to constitutional requirements for obtaining warrants and court-recognized exceptions that allow warrantless searches.

Idaho Code Section 36-1301(1) broadly defines "officer," including conservation officers, sheriffs, deputy sheriffs, police officers, national forest rangers, and classified IDFG employees.

Synopsis/Analysis:

H0110 will prohibit court-recognized grounds for warrantless searches (supported by probable cause of a violation) of moveable vehicles such as automobiles, boats, private or chartered aircraft, camper and camp trailer without consent. It would set up different warrant requirements for officers to search moveable vehicles related to enforcing Title 36 (Fish and Game) violations versus searches related to enforcement of other Idaho laws (e.g., Title 18 (general criminal Code)).

H0110 states it does not affect a court-recognized exception for warrantless searches conducted incident to lawful arrests (i.e., those supported by probable cause of violation). H0110 also includes a recognition that identifying items "plainly visible" does not constitute a search for purpose of constitutional warrant requirements. H0110 is not clear on the effect on other court-recognized exceptions to warrant requirements for searches.

Additionally, H0110 deletes references in 36-1303(b) to "any equipment or substances used to take such wildlife" related to probable cause for search. The effects of this deletion are unclear, as equipment and substances used in the unlawful take of wildlife are often evidence of Title 36 violations.

Effects to Department Management/Wildlife Resources:

We conclude the following from our technical/legal review:

H0110 would create a different standard making investigation of wildlife crimes (Title 36) more challenging than the investigation of other crimes in Idaho without stated rationale.

H0110 would limit law enforcement from relying on judicially recognized grounds for warrantless searches of mobile conveyances based on probable cause in the investigation of Idaho wildlife crimes (Title 36).

Fiscal Effect to Department:

This bill is likely to result in officers securing mobile conveyances (such as boats, campers, ATVs, aircraft etc.) more frequently than they do now with the court-recognized allowance to search mobile

conveyances based on probable cause. Increasing securing of mobile conveyances while obtaining warrants, increases costs from towing fees, storage fees, and liability.

Bill Status:

H110 is printed and waiting schedule for second reading.

Department Action Recommendation: ☐ Monitor ☐ Answer Qs ☐ Testify

Justification:

Commission Position: ☐ No Position ☐ Support ☐ Not Support ☐ Monitor

Comment:

This analysis is provided for information purposes only. It represents only the informed analysis of this legislation by the appropriate Department subject matter expert. It does not constitute official Idaho Department of Fish and Game policy nor is it a legal opinion in reference to this legislation.