

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 561

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO NAVIGATIONAL ENCROACHMENT; AMENDING SECTION 58-1305, IDAHO
CODE, TO PROVIDE THAT A PERMIT IS NOT REQUIRED FOR REPLACING AN EXISTING
NAVIGATIONAL ENCROACHMENT IF CERTAIN CONDITIONS ARE MET.

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

SECTION 1. That Section 58-1305, Idaho Code, be, and the same is hereby
amended to read as follows:

58-1305. NONCOMMERCIAL NAVIGATIONAL ENCROACHMENTS -- PROCEDURES --
REPAIRS -- FORMS. (a) Applications for construction, or enlargement ~~or~~
~~replacement~~ of navigational encroachments not extending beyond the line of
navigability nor intended primarily for commercial or community use shall
be processed by the board with a minimum of procedural requirements and
shall not be denied nor appearance required except in the most unusual of
circumstances or if the proposed encroachment infringes upon or it appears
it may infringe upon the riparian or littoral rights of an adjacent property
owner.

(b) If the plans of the proposed encroachment indicate such
infringement will or may occur, the board shall require that the applicant
secure the consent of such adjacent owner or that he be given notice of the
application by personal service or by certified or registered mail, return
receipt requested, directed to him at his usual place of address, which, if
not otherwise known, shall be the address shown on the records of the county
treasurer or assessor, and such adjacent owner shall have ten (10) days from
the date of personal service or receipt of certified or registered mail
to file objection with the board. The application itself shall be deemed
sufficient notice if the adjacent owner is the state of Idaho.

(c) In the event objection to the application is filed by an adjacent
owner or if the board deems it advisable because of the existence of unusual
circumstances, the board shall fix a time, no later than sixty (60) days from
the date of filing application, and a place, for affording the applicant
and the adjacent owner filing objection to appear and present evidence
in support of or in opposition to the application and within forty-five
(45) days thereafter shall render a decision and give notice thereof to
the parties concerned who may thereafter resort to appellate procedures
prescribed in section 58-1306, Idaho Code.

(d) A permit shall not be required for repair of an existing
navigational encroachment.

(e) A permit shall not be required for replacement of an existing
navigational encroachment if all the following conditions are met:

(1) The existing encroachment is covered by a valid permit in good
standing.

1 (2) The existing encroachment meets the current requirements for new
2 encroachments.

3 (3) The location and orientation of the replacement do not change from
4 the existing encroachment.

5 (4) The replacement will be the exact same size or smaller and the same
6 shape as the existing encroachment.

7 (5) The replacement will not be located closer to adjacent littoral
8 right lines than the existing encroachment.

9 (f) Applications submitted under this section shall be upon forms to
10 be furnished by the board and shall be accompanied by plans of the proposed
11 navigational encroachment containing information required by section
12 58-1302(k), Idaho Code, and such other information as the board may by rule
13 require in conformance with the intent and purpose of this chapter.

14 ~~(g)~~ If notice to an adjacent owner is not required or if the adjacent
15 owner has consented to the proposed encroachment or has failed to file
16 objection to the proposed encroachment within the time allowed following
17 service of notice, the board shall act upon the application as expeditiously
18 as possible but no later than sixty (60) days from receipt of the application
19 and failure to act within such time shall constitute approval of the
20 application.

21 ~~(g)~~ All permits issued for noncommercial navigational encroachments
22 shall be recorded in the records of the county in which the encroachment
23 is located and shall be a condition of issuance of a permit. Proof of
24 recordation shall be furnished to the department by the permittee before
25 a permit becomes valid. Such recordation shall be at the expense of
26 the permittee. Recordation of an issued permit serves only to provide
27 constructive notice of the permit to the public and subsequent purchasers
28 and mortgagees, but conveys no other right, title or interest on the
29 permittee other than validation of said permit.