

STATE BOARD OF LAND COMMISSIONERS

December 20, 2022

Regular Agenda

Subject

Stakeholder legislation to address recreational impacts on endowment land

Question Presented

Pursuant to Land Board policy enacted on February 22, 1979, shall the Land Board authorize the Department to support stakeholder legislation designed to help address recreational impacts on endowment land?

Background

The Idaho State Board of Land Commissioners (Land Board) seeks to keep endowment land open for recreational use by the public when such use does not impede the Land Board's constitutional mandate to maximize long-term returns for the beneficiaries.

More than 96% of endowment land in Idaho is accessible by foot, watercraft, or vehicle, with about 2.3 million acres available for hunting, fishing, hiking, camping, or other recreation. There are currently 183 miles of designated and signed trails on endowment land that are actively managed.

While most recreational users behave responsibly, occasionally a few bad actors will cause substantial damage to gates, fences, timber, or engage in activities that damage the land. Currently, those who damage endowment land may only face misdemeanor or felony charges under Idaho's criminal trespass statute, but prosecuting attorneys are reluctant to bring such heavy-handed charges forward for minor offenses. Consequently, in severe cases the only recourse available to the Department is to close endowment land to public access.

Over the past year, the Idaho Department of Lands (Department) worked with a diverse group of stakeholders to understand their needs and concerns about efforts undertaken in the 2022 legislative session to provide an alternative to criminal trespass for damage to endowment land. This effort resulted in many ideas being shared and collaboration that produced a new, better version of the recreation legislation, HB468, that the Department presented in the 2022 legislative session.

The stakeholders engaged in the collaborative process included:

- *IDAHO CATTLE ASSOCIATION* - Wyatt Prescott and Cameron Mulrony
- *IDAHO DEPARTMENT OF LANDS* - Todd Wernex, Dustin Miller, Michele Andersen and Scott Phillips
- *IDAHO FARM BUREAU FEDERATION* – Russ Hendricks, Brayden Jensen and Chyla Wilson

- *IDAHO LEGISLATURE* – Rep. Mike Kingsley
- *IDAHO RECREATION COUNCIL* – Sandra Mitchell
- *IDAHO SPORTSMEN* – Benn Brocksome
- *IDAHO STATE ATV ASSOCIATION* – David Claiborne
- *IDAHO OUTFITTERS AND GUIDES ASSOCIATION* – Jeff Britton and Aaron Lieberman

The stakeholders involved in crafting the new legislation and the Department view this collaborative approach as the best way to solve the problem and keep endowment land open for the public.

Throughout this process the Department kept the Idaho Department of Fish and Game apprised of the work to develop new legislation because it potentially impacts an agreement between the two agencies that provides public access to endowment land and patrolling of endowment land that is open for recreation.

Discussion

The stakeholder bill, authored principally by David Claiborne of the Idaho State ATV Association, eliminates heavy-handed misdemeanor or felony charges for minor offenses which are the only charges currently available for law enforcement to bring. Instead, the new bill allows POST-certified law enforcement officials to issue a warning ticket for minor first offenses, with second violations under the statute being punished with an infraction and \$250 fine.

Due process is protected by requiring the Department to post visible signage in the area where recreation use restrictions may apply, publish the restrictions on the agency's website and make the information available at the nearest Department of Lands' area office.

The bill preserves the option of treating egregious cases as criminal trespass and allows courts to mandate restitution for damages. Additionally, under the bill, courts may order those found guilty to participate in boating, off-road, or snowmobile operator classes offered by the Idaho Department of Parks and Recreation. Any amounts collected as citations under the legislation will remain with the district courts.

The stakeholders and the Department agree the new bill will provide law enforcement with a tool that is both practical to use and supports a broad public education campaign about recreating responsibly on endowment land.

Recommendation

Authorize the Department to support the stakeholder legislation that addresses recreational impacts on endowment land.

Board Action

Attachments

1. Proposed Draft Stakeholder Bill

Proposed Draft Stakeholder Bill

SECTION 1. That Chapter 1, Title 58, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 58-156, Idaho Code, and to read as follows:

58-156. PREVENTING DAMAGE TO ENDOWMENT LAND. (1) Whenever the state board of land commissioners has promulgated rules pursuant to chapter 52, title 67, Idaho Code, for the closure of endowment lands or for restricting, regulating, or prohibiting specified activities on state endowment lands, the board shall provide notice of such closure, restriction, regulation, or prohibition to the public as follows:

(a) Notice of said closure, restriction, regulation, or prohibition shall be posted on the Idaho department of lands website and made available at the department's supervisory area offices; and

(b) Notices of closures, restrictions, regulations, or prohibitions shall also be posted at gates or road or trail entry points onto the endowment land to which they apply and shall state:

(i) "Use restrictions apply," or similar wording; and

(ii) A website address and phone number for contacting the department.

(2) Violation of any properly posted closure, restriction, regulation, or prohibition of endowment lands promulgated by the state board of land commissioners pursuant to subsection (1) of this section shall be punishable as follows:

(a) a warning ticket and advisory of the applicable closure, restriction, regulation, or prohibition shall be issued to the violator if it is the violator's first offense under this section within five (5) years;

(b) If the violation is the violator's second violation of this section within five (5) years of any prior conviction or warning under this section, the violation shall be an infraction punishable by a fine of two hundred fifty dollars (\$250);

(c) If the violation is the violator's third violation of this section within five (5) years of any prior conviction or warning under this section, the violation shall be a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) and imprisonment in the county jail for no more than six (6) months;

(d) Provided that for any offense that is accompanied by any actual, physical harm, injury or damage to personal property or natural resources, the violation shall be treated as criminal trespass under section 18-7008, Idaho Code, and subject to the penalties for criminal trespass with damage set forth at section 18-7008(3)(b).

(3) For any conviction under subsection 2(b) and 2(c), the court shall additionally impose an order of restitution directing that the violator pay restitution to the Idaho department of lands in an amount sufficient to repair, replace or correct any actual, physical harm, injury or damage to personal property or natural resources resulting from the violation.

(4) For any conviction under subsection 2(b) and 2(c), the court may additionally impose an order requiring the violator to undergo boating and/or off-road and/or snowmobile operator education classes offered by the Idaho department of parks and recreation.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2023.

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