

STATE BOARD OF LAND COMMISSIONERS

April 18, 2023
Regular Agenda

Subject

Negotiated rulemaking to promulgate a new rule chapter related to recreational use of endowment land and implement Senate Bill 1049

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for a new rule chapter related to recreational use of endowment land (IDAPA 20.05.01)?

Background

The Idaho Department of Lands (Department) manages 2.5 million acres of state endowment trust land, with more than 96% of all endowment land accessible by foot, watercraft, or vehicle. About 2.3 million acres are available for hunting, fishing, hiking, camping, or other recreation.

State Board of Land Commissioners' (Land Board) policy allows for public recreation on endowment land, provided those activities do not degrade the land, interfere with management activities, or otherwise negatively affect the long-term financial return to beneficiaries (Attachment 1). The 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.

Unfortunately, bad actors sometimes damage endowment land and degrade its potential for making money for the beneficiaries. Repairing the land can be expensive. While most recreational users behave responsibly, occasionally members of the public cause substantial damage to gates, fences, timber, or areas closed to motorized vehicles. Currently, the only charges available for law enforcement to bring when there is abuse of endowment land are heavy-handed misdemeanor or felony charges.

Discussion

During the 2023 regular session, the Idaho Legislature passed Senate Bill 1049, a stakeholder-sponsored bill designed to curb recreational impacts on endowment land (Attachment 2). A diverse group of stakeholders, including the Idaho State ATV Association, Idaho Sportsmen, Idaho Recreation Council, Idaho Farm Bureau Federation, and Idaho Outfitters and Guides Association developed the legislation.

Authored principally by David Claiborne of Idaho Recreation Council, Senate Bill 1049 seeks to disincentivize the abuse or misuse of endowment land, preserving its revenue-

generating potential for the beneficiaries. The legislation, which was signed into law by the Governor on March 20, 2023, creates a new section of Idaho Code that will become effective on July 1, 2023.

The legislation requires rulemaking to specify prohibited activities that are subject to a warning ticket for minor first offenses, with second violations under the statute being punished with an infraction and \$250 fine.

Citizens' due process rights are further 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 Department's nearest Supervisory Area office.

If approved by the Land Board, the Department will engage stakeholders in the negotiated rulemaking process and post rule drafts on our website to keep participants well informed. The Department will seek to reach consensus on the rule text to meet deadlines for review by the 2024 Idaho Legislature. A proposed timeline for the rulemaking process is provided in Attachment 3.

Recommendation

Authorize the Department to initiate negotiated rulemaking for a new rule chapter related to recreational use of endowment land (IDAPA 20.05.01).

Board Action

Attachments

1. Land Board Recreation Policy (August 18, 2018)
2. Senate Bill 1049 with Statement of Purpose and Fiscal Note
3. Draft rulemaking timeline



LAND BOARD POLICY
Idaho Department of Lands
Agency Guidance Document
[Recreation Program](#)
Boise Staff Office
(208) 334-0200
comments@idl.idaho.gov

Land Board Recreation Policy

In accordance with [Executive Order 2020-02, Transparency in Agency Guidance Documents](#), guidance documents promulgated by the department are not new laws. They represent an interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Lands Program Specialist OHV/Recreation

State Board of Land Commissioners

Recreation Policy

Background

Article IX, Section 8 of the Idaho Constitution mandates that state endowment trust lands are to be managed to secure the maximum long-term financial return to the endowment beneficiaries. Revenue-generating activities on endowment lands and earnings on invested funds provide millions of dollars annually in support of Idaho's public school system and numerous other state of Idaho institutions. In addition to providing financial support to the beneficiaries of nine endowment funds, endowment lands may also benefit the citizens of Idaho by providing access for recreational pursuits, so long as recreation activities are consistent with the constitutional mandate.

The members of the State Board of Land Commissioners (Land Board) are the trustees of endowment lands and the funds they generate. The Land Board provides direction to the Idaho Department of Lands (IDL) in the management of endowment lands.

Land Board Recreation Policy

Idaho has a history and culture of valuing outdoor recreation opportunities and access to lands not privately owned. The outdoor recreation industry contributes hundreds of millions of dollars to Idaho's economy each year. The accessibility of millions of acres of endowment lands for recreation helps strengthen Idaho's economy.

The Land Board recreation policy directs IDL in carrying out the Land Board's fiduciary obligations while managing for recreational activities on endowment lands where those activities do not conflict with the Land Board's fiduciary obligations.

The Land Board supports a policy of allowing the general public continued recreational access to legally accessible endowment lands, as long as the recreational activities do not degrade the lands, interfere with management activities, or otherwise negatively affect the long-term financial return to endowment beneficiaries. The Land Board authorizes the IDL director to implement limitations to certain recreational activities on endowment lands, including closure when necessary, to protect the public or the underlying value and productivity of the endowment land. The Land Board directs IDL to develop internal policies and procedures to bring uniformity to how endowment land managers handle recreation-related management decisions across the state.

Recreation Funding

- A portion of every Off-Highway Vehicle registration fee currently is directed to IDL to "provide off-highway vehicle opportunities and to repair damage directly related to off-highway vehicle use" (Idaho Code § 67-7126(4)).

- The Land Board directs IDL to pursue mechanisms to compensate the endowment beneficiaries for dispersed recreational uses of endowment lands as a means to help protect continued recreational access to legally accessible endowment lands for the general public.
- Non-exclusive leasing and land use permitting will give due consideration to net revenue and risks to the endowments.

Partnerships

- The Land Board directs IDL to work with law enforcement agencies to ensure compliance with recreation management objectives on endowment lands.
- The Land Board directs IDL to partner with other agencies and organizations to assist in the development of managed and/or organized recreation opportunities on endowment lands.

References

Idaho Constitution, Article IX Section 8
Idaho Constitution, Article I Section 23
Idaho Code § 67-7126(4)

The Idaho State Board of Land Commissioners approved this policy on August 21, 2018.



IN THE SENATE

SENATE BILL NO. 1049

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO ENDOWMENT LAND; AMENDING CHAPTER 1, TITLE 58, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 58-156, IDAHO CODE, TO PROVIDE FOR NOTICE REGARDING ANY RESTRICTION, REGULATION, OR PROHIBITION OF SPECIFIED ACTIVITIES ON STATE ENDOWMENT LANDS AND TO PROVIDE FOR VIOLATIONS AND PENALTIES; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

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. ENDOWMENT LAND -- CLOSURE, RESTRICTION, REGULATION, OR PROHIBITION. (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) Notices shall be posted on the Idaho department of lands website and made available at the department's supervisory area offices; and

(b) Notices 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) or imprisonment in the county jail for no more than six (6) months or both.

(d) For any offense that is accompanied by any actual physical harm, injury, or damage to personal property or natural resources, the viola-

1 tion shall be treated as criminal trespass pursuant to section 18-7008,
2 Idaho Code, and subject to the penalties for criminal trespass with dam-
3 age set forth in section 18-7008(3)(b).

4 (3) For any conviction under subsection (2)(b) or (c) of this section,
5 the court shall additionally impose an order of restitution directing that
6 the violator pay restitution to the Idaho department of lands in an amount
7 sufficient to repair, replace, or correct any actual physical harm, injury,
8 or damage to personal property or natural resources resulting from the vio-
9 lation.

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

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

REVISED

STATEMENT OF PURPOSE

RS30068 / S1049

This legislation adds a new section to Idaho Code, Title 58, Chapter 1, to deal with closures and restrictions on State endowment land. The purpose of this legislation is to protect State land from being abused and misused. This legislation states that the State Board of Land Commissioners provides notice to the public of any restrictions, closures, prohibitions, and regulations on State endowment land. Proper posting is required, and fines and restitution requirements are outlined.

FISCAL NOTE

There is no expected fiscal impact to the State General Fund or to local governments since it will not add to the administrative budget already set.

Contact:

Senator Mark Harris
(208) 332-1341
Mr. David Claiborne
Sawtooth Law Offices
(208) 629-7447

DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).



Draft Rulemaking Timeline

IDAPA 20.05.01

Recreational Use of Endowment Land

April 18, 2023	Approval from Land Board to start negotiated rulemaking (regular agenda)
May 5, 2023	Last day to submit <i>Notice of Intent to Promulgate Rules</i> to the Office of the Administrative Rules Coordinator (OARC) for publication in June
May TBD, 2023	Post information on IDL website about this rulemaking
June 7, 2023	<i>Notice of Intent to Promulgate Rules</i> publishes in the Idaho Administrative Bulletin; public comment period opens
June TBD, 2023	Negotiated rulemaking public meetings
July TBD, 2023	Negotiated rulemaking public meetings
July 31, 2023	End of comment period for negotiated rulemaking
August 15, 2023	Present update on this rulemaking to the Land Board (information agenda)
August 18, 2023	Last day to submit proposed rule to DFM for the 2024 Legislature
September 1, 2023	Last day to submit <i>Notice of Proposed Rule</i> to OARC for the 2024 Legislature
October 4, 2023	Proposed rule publishes in the Idaho Administrative Bulletin and 21-day public comment period begins
October TBD, 2023	Public hearing
October 25, 2023	End of public comment period on proposed rule
November 21, 2023	Request approval from Land Board to adopt pending rule (regular agenda)
November 24, 2023	Submit <i>Notice of Pending Rule</i> to OARC for publication in January 2024 Administrative Bulletin
	Pending rule to be reviewed during the 2024 legislative session

Note: All dates are subject to change.