

Zero-Based Regulation Prospective Analysis

Fill out entire form to the best of your ability, unless submitting a Notice to
Negotiate only fill out 1, 2, and 5

Agency Name: Idaho Department of Lands

Rule Docket Number: 20-0309-2101

1. What is the specific legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Idaho Code § 58-104(6)	Discretionary
Idaho Code Title 58 Chapters 6, 12 and 13	Discretionary

2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?

Upon statehood, Idaho obtained title to the beds of navigable lakes and rivers to hold in trust for the benefit of the public. Recognizing that some uses of lake beds and riverbeds serve the public (e.g., highway bridges) and some uses, while serving private interests, have a minimal impact on the public (e.g., utility lines), these rules establish a process that may be applied consistently to address inquiries to use these public lands. The proposed changes seek to comply with Executive Order 2020-01, simplify the application process, and adjust fees to ensure they cover the cost of processing applications.

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law? No.

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
None	None	

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington	https://app.leg.wa.gov/RCW/default.aspx?cite=79.36.350 https://app.leg.wa.gov/wac/default.aspx?cite=332-30-122&pdf=true Application fees are 20% of the easement charge, which varies from \$5,000 for one mile in length or less up to \$20,000 for lengths greater than five miles. Easement term is 30 years.	N/A
Oregon	https://secure.sos.state.or.us/oard/displayDivisionRules.action?electedDivision=4854 Application fees are \$125 for structures or facilities necessary for the use of water, and \$750 for all other structures and facilities. No application fee for water, gas, electric or communication service lines across non-trust lands outside of city limits. Cost of easement is based on 33 1/3 percent of the market value of the adjacent riparian tax lots up to \$11.93 per square foot. Compensatory payment not required for some uses, especially utilities and public bridges. Easement term is up to 30 years, unless otherwise authorized by the director.	N/A
Nevada	https://www.leg.state.nv.us/NAC/NAC-322.html Application fees for commercial use of state land other than agricultural are \$500. Application fees for agricultural use is \$300. Application fees for other uses of state land are \$250. Cost of easement and term of easement varies by use.	N/A
Utah	R652-40-800 Application fee is \$150. Cost of easement is a minimum of \$225. An assessment fee of 10% is also charged every three years. Easement term is normally 30 years.	N/A
Wyoming	https://drive.google.com/file/d/1cqgLOzsXaCHE1QIrdchXHS351X3EO5-m/view Application fee is \$100. Cost of easement is greater of \$250 or the market value. Easement term is normally no more than 35 years.	For smaller easements or those adjacent to land with low value, the proposed application fee of \$500 for Idaho will be slightly higher than the total Wyoming cost.
Montana	Montana Rule 36.25.1105(2) and (6) Application fee is \$50. Cost of easement is the greater of \$100, the calculated market value of the footprint, market evidence, or the current fee schedule.	For smaller easements or those adjacent to land with low value, the proposed application fee of \$500 for Idaho could be higher than the total Montana cost.
Alaska	http://www.akleg.gov/basis/aac.asp#11.51 http://www.akleg.gov/basis/aac.asp#11.05.070 Application fees are \$480 for 1 acre or less and \$1,200 for larger easements that are processed in 60 hours or less. Additional fees are then due for time spent over 60 hours. Easement term is 22 to 55 years for private easements.	N/A

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
South Dakota	https://sdlegislature.gov/Statutes/Codified_Laws/2053131 https://sdlegislature.gov/Statutes/Codified_Laws/2034102 https://sdlegislature.gov/Statutes/Codified_Laws/2034103 Application fees are the appraised value of the land with a minimum fee of \$500. No additional fees required. Easement term is perpetual if used continuously.	N/A

c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:

For smaller easements or those adjacent to land with low value, the proposed application fee of \$500 for Idaho will be slightly higher than the total easement cost required by Montana and Wyoming. Funding for Idaho’s Navigable Waters Program, however, is from a dedicated account. The application fee of \$500 is needed to cover the costs of processing submerged land easements.

4. What evidence is there that the rule, as proposed, will solve the problem?

In general, the existing rules have served well for almost 30 years to provide a predictable and stable process for authorizing a variety of activities on state-owned navigable waters. For the application fee, a workload analysis was used to estimate the time and cost of reviewing and processing easements. Based on that analysis, \$500 is an appropriate fee. No further fees are needed for most easements such as bridges, powerlines, and other utilities because they typically do not result in any additional administrative costs.

5. What is the anticipated impact of the proposed rule on various stakeholders? Include, how will you involve them in the negotiated rulemaking process?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	This easement program is funded by the Navigable Waterways Fund, a state dedicated fund. Increased fees will result in an estimated annual increase of \$800 and allow IDL to cover the costs of processing submerged land easements. Current easement holders will not be affected, but applicants for new easements would pay an increased fee. No fiscal impact to the General Fund is anticipated. An easement is issued to the Idaho Transportation Department approximately once every four years, so impact to state and federal highway funds would be minimal. A notice of rulemaking will be sent to state and federal agencies that have active submerged land easements.

Category	Potential Impact
Impact to Idaho businesses, with special consideration for small businesses	This easement program is funded by the Navigable Waterways Fund, a state dedicated fund. Increased fees will result in an estimated annual increase of \$800 and allow IDL to process applications in a timely manner. Current easement holders will not be affected, but applicants for new easements would pay an increased fee. Most easements are issued to regulated utilities and this will have a minimal fiscal impact on them. By requiring less paperwork with the application, the process should become easier for businesses. Notice of rulemaking will be sent to businesses that have active submerged land easements.
Impact to any local government in Idaho	This easement program is funded by the Navigable Waterways Fund, a state dedicated fund. Increased fees will result in an estimated annual increase of \$800 and allow IDL to cover the costs of processing submerged land easements. Current easement holders will not be affected, but applicants for new easements would pay an increased fee. An easement is issued to local governmental agencies approximately once every two years, so impact to these agencies would be minimal. A notice of rulemaking will be sent to local governmental agencies that have active submerged land easements.

6. What cumulative regulatory volume does this proposed rule add?

Category	Impact
Net change in word count	-413
Net change in restrictive word count	-42