

## 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:** 20-0317-2201

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

Statute Section (include direct link)	Is the authority mandatory or discretionary?
<a href="#">Idaho Code § 58-104(6)</a> – State Land Board – Powers and Duties	Discretionary
<a href="#">Idaho Code Title 58 Chapter 3</a> – Appraisal, Lease, and Sale of Lands	Discretionary
<a href="#">Idaho Code Title 58 Chapter 12</a> – Public Trust Doctrine	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. IDAPA 20.03.17 establishes a consistent process to compensate the state of Idaho for specific commercial and private uses of state-owned navigable waterways. These uses typically include marinas, community docks, non-navigational encroachments, and oversized private docks, which occupy the state's lakes. The proposed changes seek to comply with Executive Order 2020-01, simplify the application process, and adjust the fees so they cover the cost of processing lease applications and assignments.

**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	<a href="https://app.leg.wa.gov/RCW/default.aspx?cite=79.105">https://app.leg.wa.gov/RCW/default.aspx?cite=79.105</a> <a href="https://app.leg.wa.gov/RCW/default.aspx?cite=79.125">https://app.leg.wa.gov/RCW/default.aspx?cite=79.125</a> <a href="https://app.leg.wa.gov/RCW/default.aspx?cite=79.130">https://app.leg.wa.gov/RCW/default.aspx?cite=79.130</a> <a href="https://app.leg.wa.gov/WAC/default.aspx?cite=332-30">https://app.leg.wa.gov/WAC/default.aspx?cite=332-30</a> Application fee is \$25. Rental rates are generally related to land values. Non-water dependent uses have higher rents than water dependent uses. Late charge of 1% per month on past due accounts. Term is up to 55 years for some uses. Insurance and bonding may be required. Appraisals are done by the Department as needed.	Application fees are higher. Lease term is shorter.
Oregon	<a href="https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=347">https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=347</a> Application fee is \$750. Bidding for a lease may be required. Annual rent is one of three options: Flat Rate by square feet; % of the riparian land value; or % of moorage gross receipts. Rent formulas vary by type of use. Minimum annual rent is \$470 (2022). Lease term varies based on project financing and Department analysis with a maximum of 15 years. Bonding may be required. Appraisals may be done by applicant or Department, and applicant may have to pay for the appraisal. Assignment fee is \$750.	Lease term may be shorter.
Nevada	<a href="https://www.leg.state.nv.us/NRS/NRS-322.html#NRS322Sec060">https://www.leg.state.nv.us/NRS/NRS-322.html#NRS322Sec060</a> <a href="https://www.leg.state.nv.us/NAC/NAC-322.html">https://www.leg.state.nv.us/NAC/NAC-322.html</a> Application fee for commercial use is \$500, agricultural use is \$300, and other uses is \$250. Rent varies by use from \$250 up to \$1,500. Most permit terms are ten years. Insurance is required.	Annual rent may be higher for some uses
Utah	<a href="https://rules.utah.gov/publications/utah-adm-code/#/NaturalRe">https://rules.utah.gov/publications/utah-adm-code/#/NaturalRe</a> Search for Natural Resources and R652-30 and R652-70 Application fee is \$300. Rental rates must be fair market value determined based on value of the property or annual income. Minimum annual rent is \$450. Most leases have terms from 20 to 51 years. Bonding may be required. Assignment fee is \$50.	Application and assignment fees are higher. Lease term is shorter.
Wyoming	<a href="https://drive.google.com/file/d/1NBCnY9762VPZdhaosjJDt2vwF3dm1JWu/view">https://drive.google.com/file/d/1NBCnY9762VPZdhaosjJDt2vwF3dm1JWu/view</a> Application fee is \$250. Annual rent is based on fair market value, with a minimum of \$250 or 5.5% of land value. Late fee is 10% of annual rent. Lease term is up to 75 years. Bonding may be required. Appraisals are done by the Department as needed. Assignment fee is \$40.	Application and assignment fees are higher. Lease term is shorter.

Montana	<a href="https://leg.mt.gov/bills/mca/title_0770/chapter_0010/part_0090/sections_index.html">https://leg.mt.gov/bills/mca/title_0770/chapter_0010/part_0090/sections_index.html</a> <a href="https://leg.mt.gov/bills/mca/title_0770/chapter_0010/part_0110/sections_index.html">https://leg.mt.gov/bills/mca/title_0770/chapter_0010/part_0110/sections_index.html</a> <a href="https://rules.mt.gov/gateway/ruleno.asp?RN=36.25.915">https://rules.mt.gov/gateway/ruleno.asp?RN=36.25.915</a> <a href="https://rules.mt.gov/gateway/Subchapterhome.asp?scn=36%2E25.11">https://rules.mt.gov/gateway/Subchapterhome.asp?scn=36%2E25.11</a> <a href="https://rules.mt.gov/gateway/ruleno.asp?RN=36%2E2%2E1003">https://rules.mt.gov/gateway/ruleno.asp?RN=36%2E2%2E1003</a> Application fee is \$50. Annual rent is based on full market value, or as determined by the Board, with a minimum of \$150. Lease term is up to 99 years. Bonding may be required. Assignment fee is \$50.	Application fees are higher. Lease term is shorter.
Alaska	<a href="http://www.akleg.gov/basis/statutes.asp#38.05.010">http://www.akleg.gov/basis/statutes.asp#38.05.010</a> <a href="https://www.akleg.gov/basis/aac.asp#11.58">https://www.akleg.gov/basis/aac.asp#11.58</a> <a href="https://www.akleg.gov/basis/aac.asp#11.62">https://www.akleg.gov/basis/aac.asp#11.62</a> Application fees are \$1,200 for 1 acre or less, \$2,000 for larger leases that are processed in 100 hours or less, and additional fees are due for time spent over 100 hours. Bidding for a lease may be required. Rent varies by use but must be market value, and minimum rent is \$500. Lease term is 10 to 55 years. Bonding is required. Appraisal and surveying costs may be collected from an applicant. Assignment fee is \$600, and more is due if over 30 hours are needed for processing.	Lease term may be shorter.
South Dakota	<a href="https://sdlegislature.gov/Statutes/Codified_Laws/2034116">https://sdlegislature.gov/Statutes/Codified_Laws/2034116</a> <a href="https://sdlegislature.gov/Statutes/Codified_Laws/2034073">https://sdlegislature.gov/Statutes/Codified_Laws/2034073</a> <a href="https://sdlegislature.gov/Rules/Administrative/293">https://sdlegislature.gov/Rules/Administrative/293</a> Commissioner sets rental rates based on location, access, utility of land, and current rental rates. Bidding for a lease may be required. Term is up to 99 years. Assignment fee is \$250.	Lease term is shorter.

**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:**

The proposed lease application fee of \$425 and assignment fee of \$200 for Idaho is higher than similar fees charged in a few of the other states. Funding for Idaho’s Navigable Waterways Program, however, is from a dedicated account. The proposed lease fees are needed to cover the costs of processing these lease transactions.

The proposed lease term of 10 years is shorter than many of the other states. The lease term in many of those states is not fixed and is subject to the state agency’s determination. Having a set term of 10 years allows more certainty for lessees and has not been observed to hinder any development on Idaho’s navigable waterways. The 10-year term also requires the Department to review lease rates more frequently than a longer lease term would. This prevents lease rates from falling too far behind the market rate.

Rental rates in Idaho may be higher than those in Nevada due to the hard rental rate limits in the Nevada regulations. Most states, like Idaho, charge rent based on market values, lessee income, or other factors that allow for a more robust revenue stream to the state.

**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 capturing revenue from specific commercial and private uses of the state-owned navigable waterways. For the application and assignment fees, a workload analysis was used to estimate the time and cost of reviewing and processing leases. Based on that analysis, \$425 is an appropriate application fee and \$200 is an appropriate assignment fee.

Late payment requirements are much clearer and better aligned with current practices of the Department. Payment extensions have not been requested by lessees for many years, so their removal is not expected to impact any lessees.

The Department no longer has appraisers available for this program and appraisals for leases have not been needed for many years, so the appraisal changes greatly simplify this process.

**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 lease program is funded by the Navigable Waterways Fund, a state dedicated fund. Increased fees will result in an estimated annual increase of \$8,200 and allow IDL to cover the costs of processing submerged land leases. Current lease holders will not be affected, but applicants for new leases will pay an increased fee. No fiscal impact to the General Fund is anticipated. Impacts to state funds are expected to be diminutive. A notice of rulemaking will be sent to the one state agency that has an active submerged land lease.
Impact to Idaho businesses, with special consideration for small businesses	This lease program is funded by the Navigable Waterways Fund, a state dedicated fund. Increased fees will result in an estimated annual increase of \$8,200 and allow IDL to cover the costs of processing submerged land leases. Current lease holders will not be affected. Applicants for new leases will pay an increased fee. Most leases are issued for community docks, commercial marinas and various non-navigational encroachments for a term of ten years. Because an application fee is only paid once every ten years, this is expected to have minimal fiscal impact to applicants.

Category	Potential Impact
Impact to any local government in Idaho	This lease program is funded by the Navigable Waterways Fund, a state dedicated fund. Increased fees will result in an estimated annual increase of \$8,200 and allow IDL to cover the costs of processing submerged land leases. Current lease holders will not be affected. Applicants for new leases will pay an increased fee once every ten years when the lease expires. One lease is currently issued to a local government agency, so impact to this agency would be minimal. A notice of rulemaking will be sent to the local government agency that has an active submerged land lease.

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

Category	Impact
Net change in word count	Reduced by 664 words (-17%)
Net change in restrictive word count	Reduced by 8 words (-23%)