

STATE BOARD OF LAND COMMISSIONERS

November 21, 2023

Regular Agenda

Subject

Adoption of Pending Rule, IDAPA 20.01.01 *Rules of Practice and Procedure Before the State Board of Land Commissioners*

Question Presented

Shall the Land Board adopt the pending rule for IDAPA 20.01.01?

Background

The Land Board authorized negotiated rulemaking for IDAPA 20.01.01 at its April 19, 2022 regular meeting. The passage of House Bill 629 during the 2022 legislative session prompted the Department to postpone rulemaking on this rule chapter, until the Office of Administrative Hearings was established. The Land Board reauthorized negotiated rulemaking on March 21, 2023. Following Executive Order 2020-01, Zero-Based Regulation, IDAPA 20.01.01 will be repealed and replaced in 2023 for review during the 2024 legislative session.

The Idaho Department of Lands (Department) administers these rules under the authority of Idaho Code § 58-104 State Land Board – Powers and Duties and Idaho Code § 67-5206(2)(b) – Promulgation of Rules Implementing Administrative Procedure Act. IDAPA 20.01.01 governs the practice and procedure in contested cases before the State Board of Land Commissioners (Land Board) and the Idaho Department of Lands (Department); it protects citizens' due process rights.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin on May 3, 2023.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Posted rulemaking notices to Townhall Idaho.
- Emailed 2,153 interested parties to participate in this rulemaking via email and SMS/text messaging.
- Posted on social media.

Negotiated rulemaking meetings were held in Boise on May 10 and May 17, 2023. A total of 10 non-Department affiliated people attended these meetings. No written comments were received. A summary of the negotiated rulemaking is included as Attachment 1.

The proposed rule was published in the August 2, 2023 Administrative Bulletin. The Notice of Proposed Rulemaking is in Attachment 2. No comments were received during proposed rulemaking.

Upon further review, section 004, previously added, was removed due to redundancy with statute. Attachment 3 has the draft Pending Rule consisting of the Proposed Rule with the engrossed changes highlighted in yellow.

The proposed rule seeks to solve the need for a structured and consistent process for contested cases. The current rules are lengthy and replicate rules already codified elsewhere, making them less transparent and efficient. The proposed rule significantly reduces regulatory volume with a 95 percent net reduction in word count, and a 97.7 percent net reduction in restrictive word count. This proposed rule incorporates by reference rules under development by the Office of Administrative Hearings.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Rule (Attachment 4) to the Office of the Administrative Rules Coordinator for the 2024 legislative session.

Recommendation

Adopt the pending rule for IDAPA 20.01.01 *Rules of Practice and Procedure Before the State Board of Land Commissioners*.

Board Action

Attachments

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking
3. Draft Pending Rule
4. Draft Notice of Adoption of Pending Rule