

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 585

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO NEGOTIATED RULEMAKING; AMENDING SECTION 67-5220, IDAHO CODE, TO
2 PROVIDE ADDITIONAL REQUIREMENTS FOR NEGOTIATED RULEMAKING WHEN A RULE
3 IS SUBMITTED TO THE LEGISLATURE AND TO MAKE A TECHNICAL CORRECTION.
4

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

6 SECTION 1. That Section 67-5220, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 67-5220. NOTICE OF INTENT TO PROMULGATE RULES -- NEGOTIATED RULEMAK-
9 ING. (1) Prior to the adoption, amendment or repeal of a rule, an agency
10 shall determine whether negotiated rulemaking is feasible. The agency's
11 determination of whether negotiated rulemaking is feasible is not subject
12 to judicial review. If the agency determines that negotiated rulemaking is
13 feasible, it shall publish in the bulletin a notice of intent to promulgate a
14 rule. The notice shall contain a brief, nontechnical statement of the sub-
15 ject matter to be addressed in the proposed rulemaking, and shall include the
16 purpose of the rule, the statutory authority for the rulemaking, citation to
17 a specific federal statute or regulation if that is the basis of authority
18 or requirement for the rulemaking, and the principal issues involved. The
19 notice shall also state that interested persons have the opportunity to
20 participate with the agency in negotiated rulemaking as provided in this
21 section and shall identify an individual to whom comments on the proposal may
22 be sent. If the agency determines that negotiated rulemaking is not feasi-
23 ble, it shall explain why negotiated rulemaking is not feasible in a notice
24 of proposed rulemaking published pursuant to section 67-5221, Idaho Code,
25 and shall proceed with rulemaking as provided pursuant to this chapter. Each
26 agency that has a website shall cause the notice of intent to promulgate
27 rules to be placed onto or accessible from the home page of the agency's web-
28 site.

29 (2) The notice of intent to promulgate a rule is intended to facili-
30 tate negotiated rulemaking, a process in which all interested persons and
31 the agency seek consensus on the content of a rule. Agencies shall proceed
32 through such informal rulemaking whenever it is feasible to do so in order to
33 improve the substance of proposed rules by drawing upon shared information,
34 knowledge, expertise and technical abilities possessed by interested per-
35 sons and to expedite formal rulemaking.

36 (3) To facilitate the achievement of the purposes of this section,
37 agencies shall, at a minimum:

38 (a) Provide a reasonable period of time for interested persons to re-
39 spond to the notice of intent to promulgate rules;

40 (b) Provide notice of meetings to interested persons who responded to
41 the notice of intent to promulgate rules;

1 (c) Upon request, make available to persons attending the meetings
2 all information that is considered by the agency in connection with the
3 formulation of the proposed rule and that is not exempt from disclosure
4 pursuant to chapter 1, title 74, Idaho Code;

5 (d) Consider the recommendations of interested persons concerning the
6 subject of the proposed rule;

7 (e) Establish, maintain and timely update the negotiated rulemaking
8 schedule and a list of written comments and other documents and informa-
9 tion pertinent to the proposed rule and make that information available
10 to persons attending the negotiated rulemaking meeting;

11 (f) Prepare a written summary of unresolved issues, key information
12 considered and conclusions reached during and as a result of the nego-
13 tiated rulemaking and make that summary available to all persons who
14 attended the negotiated rulemaking meetings. The written summary shall
15 also include the following information:

16 (i) How, where and how many times the negotiated rulemaking was
17 advertised, noticed or published.

18 (ii) How many negotiated rulemaking meetings were held, the lo-
19 cations of those meetings, who was notified to attend those meet-
20 ings, how many persons responded and attended those meetings, how
21 many provided testimony, and the number of people in favor or op-
22 posed to the rules and their reasons for agreeing with or opposing
23 the rules.

24 (4) An agency that conducts negotiated rulemaking and submits the rules
25 to the legislature for final review and consideration shall also submit with
26 the rules the written summary prepared by the agency that conducted the nego-
27 tiated rulemaking as required in subsection (3) (f) of this section.

28 (5) Minutes shall be kept for all negotiated rulemaking meetings by the
29 agency that conducts negotiated rulemaking. The minutes shall be available
30 to the legislature and a written summary prepared by the agency that con-
31 ducted the negotiated rulemaking shall be attached to the rule when submit-
32 ted to the legislature.