

IN THE SENATE

SENATE BILL NO. 1363, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION
2 67-5201, IDAHO CODE, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS;
3 AMENDING SECTION 67-5206, IDAHO CODE, TO REVISE PROVISIONS REGARDING
4 RULEMAKING; AMENDING SECTION 67-5240, IDAHO CODE, TO PROVIDE THAT IS-
5 SUANCE OF ORDERS BY CERTAIN ENTITIES SHALL NOT RESULT IN A CONTESTED
6 CASE GOVERNED BY THE PROVISIONS OF SPECIFIED LAW; AMENDING SECTION
7 67-5252, IDAHO CODE, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES NO PARTY
8 SHALL HAVE THE RIGHT TO A DISQUALIFICATION WITHOUT CAUSE AND TO MAKE
9 TECHNICAL CORRECTIONS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY
10 THE ADDITION OF A NEW SECTION 67-5280, IDAHO CODE, TO PROVIDE FOR THE
11 OFFICE OF ADMINISTRATIVE HEARINGS AND TO PROVIDE FOR POWERS AND DUTIES;
12 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW
13 SECTION 67-5281, IDAHO CODE, TO PROVIDE FOR THE CHIEF ADMINISTRATIVE
14 HEARING OFFICER; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE AD-
15 DITION OF A NEW SECTION 67-5282, IDAHO CODE, TO PROVIDE FOR DUTIES AND
16 PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE HEARING OFFICER; AMEND-
17 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
18 67-5283, IDAHO CODE, TO PROVIDE FOR THE SALARY OF THE CHIEF ADMINISTRA-
19 TIVE HEARING OFFICER; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
20 ADDITION OF A NEW SECTION 67-5284, IDAHO CODE, TO PROVIDE FOR HEARING
21 OFFICER QUALIFICATIONS AND TO PROVIDE FOR POWERS AND DUTIES; AMEND-
22 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
23 67-5285, IDAHO CODE, TO PROVIDE FOR THE COOPERATION OF AGENCIES; AMEND-
24 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
25 67-5286, IDAHO CODE, TO PROVIDE FOR THE OFFICE OF ADMINISTRATIVE HEAR-
26 INGS, TO PROVIDE FOR COST ESTIMATES, AND TO PROVIDE FOR THE ASSESSMENT
27 OF RECIPIENT AGENCIES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
28 ADDITION OF A NEW SECTION 67-5287, IDAHO CODE, TO PROVIDE FOR THE AD-
29 VISORY COUNCIL TO THE OFFICE OF ADMINISTRATIVE HEARINGS AND TO PROVIDE
30 A SUNSET DATE; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDI-
31 TION OF A NEW SECTION 67-5288, IDAHO CODE, TO PROVIDE FOR THE CONDUCT OF
32 CONTESTED CASE PROCEEDINGS, TO PROVIDE FOR THE SUBMISSION OF CERTAIN
33 MATERIAL BY THE DEPARTMENT OF HEALTH AND WELFARE TO THE CENTERS FOR
34 MEDICARE AND MEDICAID SERVICES, TO AUTHORIZE CERTAIN OVERSIGHT, AND TO
35 PROVIDE FOR EXTENSION OF COMMENCEMENT OF SPECIFIED CONTESTED CASE HEAR-
36 INGS UNDER A CERTAIN CONDITION; AMENDING SECTION 58-122, IDAHO CODE, TO
37 PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 67-5303, IDAHO
38 CODE, TO PROVIDE THAT CERTAIN HEARING OFFICERS AND STAFF SHALL BE NON-
39 CLASSIFIED EMPLOYEES AND TO MAKE TECHNICAL CORRECTIONS.
40

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

42 SECTION 1. That Section 67-5201, Idaho Code, be, and the same is hereby
43 amended to read as follows:

1 67-5201. DEFINITIONS. As used in this act:

2 (1) "Administrative code" means the Idaho administrative code estab-
3 lished in this chapter.

4 (2) "Agency" means each state board, commission, department or officer
5 authorized by law to make rules or to determine contested cases, but does not
6 include the legislative or judicial branches, executive officers listed in
7 section 1, article IV, of the constitution of the state of Idaho in the exer-
8 cise of powers derived directly and exclusively from the constitution, the
9 state militia or the state board of correction.

10 (3) "Agency action" means:

11 (a) The whole or part of a rule or order;

12 (b) The failure to issue a rule or order; or

13 (c) An agency's performance of, or failure to perform, any duty placed
14 on it by law.

15 (4) "Agency head" means an individual or body of individuals in whom the
16 ultimate legal authority of the agency is vested by any provision of law.

17 (5) "Bulletin" means the Idaho administrative bulletin established in
18 this chapter.

19 (6) "Chief administrative hearing officer" means the administrator of
20 the office of administrative hearings created pursuant to section 67-5280,
21 Idaho Code.

22 (7) "Contested case" means a proceeding which results in the issuance
23 of an order.

24 (78) "Coordinator" means the administrative rules coordinator pre-
25 scribed in section 67-5202, Idaho Code.

26 (89) "Document" means any executive order, notice, rule or statement of
27 policy of an agency.

28 (910) "Final rule" means a rule that has been adopted by an agency under
29 the regular rulemaking process and is in effect.

30 (101) "Hearing officer" means the chief administrative hearing offi-
31 cer and any hearing officers appointed by him pursuant to sections 67-5281
32 through 67-5284, Idaho Code, or a person appointed by an agency or board to
33 hear a contested case.

34 (12) "License" means the whole or part of any agency permit, certifi-
35 cate, approval, registration, charter, or similar form of authorization re-
36 quired by law, but does not include a license required solely for revenue
37 purposes.

38 (113) "Official text" means the text of a document issued, prescribed,
39 or promulgated by an agency in accordance with this chapter, and is the only
40 legally enforceable text of such document. Judicial notice shall be taken
41 of all documents issued, prescribed, or promulgated in accordance with this
42 chapter.

43 (124) "Order" means an agency action of particular applicability that
44 determines the legal rights, duties, privileges, immunities, or other legal
45 interests of one (1) or more specific persons.

46 (135) "Party" means each person or agency named or admitted as a party,
47 or properly seeking and entitled as of right to be admitted as a party.

48 (146) "Pending rule" means a rule that has been adopted by an agency un-
49 der the regular rulemaking process and remains subject to legislative re-
50 view.

1 (157) "Person" means any individual, partnership, corporation, associ-
 2 ation, governmental subdivision or agency, or public or private organiza-
 3 tion or entity of any character.

4 (168) "Proposed rule" means a rule published in the bulletin as provided
 5 in section 67-5221, Idaho Code.

6 (179) "Provision of law" means the whole or a part of the state or fed-
 7 eral constitution, or of any state or federal:

8 (a) Statute; or

9 (b) Rule or decision of court.

10 (~~1820~~) "Publish" means to bring before the public by publication in the
 11 bulletin or administrative code, by electronic means or as otherwise specif-
 12 ically provided by law.

13 (~~1921~~) "Rule" means the whole or a part of an agency statement of general
 14 applicability that has been promulgated in compliance with the provisions of
 15 this chapter and that implements, interprets, or prescribes:

16 (a) Law or policy; or

17 (b) The procedure or practice requirements of an agency. The term in-
 18 cludes the amendment, repeal, or suspension of an existing rule, but
 19 does not include:

20 (i) Statements concerning only the internal management or in-
 21 ternal personnel policies of an agency and not affecting private
 22 rights of the public or procedures available to the public; or

23 (ii) Declaratory rulings issued pursuant to section 67-5232,
 24 Idaho Code; or

25 (iii) Intra-agency memoranda; or

26 (iv) Any written statements given by an agency ~~which~~ that pertain
 27 to an interpretation of a rule or to the documentation of compli-
 28 ance with a rule.

29 (~~202~~) "Rulemaking" means the process for formulation, adoption, amend-
 30 ment or repeal of a rule.

31 (~~213~~) "Standard" means a manual, guideline, criterion, specification,
 32 requirement, measurement or other authoritative principle providing a model
 33 or pattern in comparison with which the correctness or appropriateness of
 34 specified actions, practices or procedures may be determined.

35 (~~224~~) "Submitted for review" means that a rule has been provided to the
 36 legislature for review at a regular or special legislative session as pro-
 37 vided in section 67-5291, Idaho Code.

38 (~~235~~) "Temporary rule" means a rule authorized by the governor to be-
 39 come effective before it has been submitted to the legislature for review
 40 and ~~which~~ that expires by its own terms or by operation of law no later than
 41 the conclusion of the next succeeding regular legislative session unless
 42 extended or replaced by a final rule as provided in section 67-5226, Idaho
 43 Code.

44 SECTION 2. That Section 67-5206, Idaho Code, be, and the same is hereby
 45 amended to read as follows:

46 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE
 47 ACT. (1) In accordance with the rulemaking requirements of this chapter, the
 48 administrative rules coordinator shall promulgate rules implementing the

1 provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules
2 shall:

- 3 (a) ~~e~~Establish a uniform numbering system applicable to rules adopted
4 by all agencies;
- 5 (b) ~~e~~Establish a uniform style and format applicable to rules adopted
6 by all agencies;
- 7 (c) ~~e~~Establish a publication schedule for the bulletin and the adminis-
8 trative code, including deadlines for the submission of documents to be
9 included within each publication;
- 10 (d) ~~e~~Establish a uniform indexing system for agency orders; and
- 11 (e) ~~i~~Include such other rules as the coordinator deems necessary to im-
12 plement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho
13 Code, and this section.

14 (2) In accordance with the rulemaking requirements of this chapter, the
15 attorney general shall promulgate rules of procedure appropriate for use by
16 as many agencies as possible. The rules shall deal with all general func-
17 tions and duties performed in common by several agencies.

18 (3) In accordance with the rulemaking requirements of this chapter, the
19 attorney general shall promulgate rules implementing the provisions of sec-
20 tions 67-5220 through 67-5232, Idaho Code. The rules shall specify:

- 21 (a) ~~t~~The form and content for petitions requesting an opportunity for
22 an oral presentation in a substantive rulemaking;
- 23 (b) ~~p~~Procedures for the creation of a record of comments received at any
24 oral presentation;
- 25 (c) ~~t~~The standards by which exemptions from regular rulemaking re-
26 quirements will be authorized to correct typographical errors, tran-
27 scription errors, or clerical errors;
- 28 (d) ~~t~~The form and content for a petition for the adoption of rules and
29 the procedure for its submission, consideration and disposition;
- 30 (e) ~~p~~Procedures to facilitate negotiated rulemaking;
- 31 (f) ~~t~~The form and content of a petition for a declaratory ruling on the
32 applicability of statutes or regulations; and
- 33 (g) ~~s~~Such other provisions as may be necessary or useful.

34 (4) In accordance with the ~~rule making~~ rulemaking requirements of this
35 chapter, the attorney general shall promulgate rules implementing the pro-
36 visions of sections 67-5240 through 67-5255, Idaho Code. The rules shall
37 specify:

- 38 (a) ~~f~~Form and content to be employed in giving notice of a contested
39 case;
- 40 (b) ~~p~~Procedures and standards required for intervention in a contested
41 case;
- 42 (c) ~~p~~Procedures for prehearing conferences;
- 43 (d) ~~f~~Format for pleadings, briefs, and motions;
- 44 (e) ~~t~~The method by which service shall be made;
- 45 (f) ~~p~~Procedures for the issuance of subpoenas, discovery orders, and
46 protective orders if authorized by other provisions of law;
- 47 (g) ~~q~~Qualifications for persons seeking to act as a hearing officer;
- 48 ~~(h)~~ ~~q~~Qualifications for persons seeking to act as a representative for
49 parties to contested cases;
- 50 (~~i~~i) ~~p~~Procedures to facilitate informal settlement of matters; and

1 (ji) ~~p~~Procedures for placing ex parte contacts on the record, and
 2 (k) ~~such other provisions as may be necessary or useful.~~

3 (5) (a) After July 1, 1993, the rules promulgated by the attorney gen-
 4 eral under this section shall apply to all agencies that do not affirma-
 5 tively promulgate alternative procedures after the promulgation of the
 6 rules by the attorney general. The rules promulgated by the attorney
 7 general shall supersede the procedural rules of any agency in effect on
 8 June 30, 1993, unless that agency promulgates its own procedures as pro-
 9 vided in paragraph (b) of this subsection.

10 (b) After July 1, 1993, an agency that promulgates its own procedures
 11 shall include in the rule adopting its own procedures a finding that
 12 states the reasons why the relevant portion of the attorney general's
 13 rules were inapplicable to the agency under the circumstances.

14 (6) With respect to contested cases and other proceedings conducted by
 15 the office of administrative hearings as authorized by this chapter, rules
 16 promulgated by the attorney general or any agency pursuant to subsection (4)
 17 of this section shall remain in full force and effect, except with respect
 18 to hearing officer qualifications, until such time as the office of admin-
 19 istrative hearings promulgates replacement rules, and thereafter such rules
 20 of the office of administrative hearings shall govern unless otherwise re-
 21 quired by governing federal law.

22 SECTION 3. That Section 67-5240, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 67-5240. CONTESTED CASES. A proceeding by an agency, other than the
 25 public utilities commission, ~~or~~ the industrial commission, ~~that~~ the Idaho
 26 personnel commission, and the Idaho transportation department's driver's
 27 license suspension contested case hearings, which may result in the issuance
 28 of an order, is a contested case and is governed by the provisions of this
 29 chapter, except as provided by other provisions of law.

30 SECTION 4. That Section 67-5252, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 67-5252. PRESIDING OFFICER -- DISQUALIFICATION. (1) Except as pro-
 33 vided in subsection (4) of this section, any party shall have the right to one
 34 (1) disqualification without cause of any person serving or designated to
 35 serve as presiding officer, and any party shall have a right to move to dis-
 36 qualify for bias, prejudice, interest, substantial prior involvement in the
 37 matter other than as a presiding officer, status as an employee of the agency
 38 hearing the contested case, lack of professional knowledge in the subject
 39 matter of the contested case, or any other cause provided in this chapter or
 40 any cause for which a judge is or may be disqualified.

41 (2) Any party may petition for the disqualification of a person serving
 42 or designated to serve as presiding officer:

43 (a) ~~w~~Within fourteen (14) days after receipt of notice indicating that
 44 the person will preside at the contested case; or

45 (b) ~~p~~Promptly upon discovering facts establishing grounds for disqual-
 46 ification, whichever is later.

1 Any party may assert a blanket disqualification for cause of all employees of
2 the agency hearing the contested case, other than the agency head, without
3 awaiting designation of a presiding officer.

4 (3) A person whose disqualification for cause is requested shall deter-
5 mine in writing whether to grant the petition, stating facts and reasons for
6 the determination.

7 (4) ~~Where~~ When disqualification of the agency head or a member of the
8 agency head would result in an inability to decide a contested case, the ac-
9 tions of the agency head shall be treated as a conflict of interest under the
10 provisions of section 74-404, Idaho Code.

11 (5) ~~Where~~ When a decision is required to be rendered within fourteen
12 (14) weeks of the date of a request for a hearing by state or federal statutes
13 or rules and regulations, or when the presiding officer is the chief admin-
14 istrative hearing officer or appointed by the chief administrative hearing
15 officer as defined in section 67-5201, Idaho Code, no party shall have the
16 right to a disqualification without cause.

17 SECTION 5. That Chapter 52, Title 67, Idaho Code, be, and the same is
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
19 ignated as Section 67-5280, Idaho Code, and to read as follows:

20 67-5280. CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS -- POWERS AND
21 DUTIES. (1) There is hereby created in the department of self-governing
22 agencies the office of administrative hearings.

23 (2) For agencies not excluded herein, the office of administrative
24 hearings shall:

25 (a) Unless otherwise specified by law, conduct all contested case pro-
26 ceedings that arise from an appeal of an agency order;

27 (b) Conduct such adjudicatory hearings, mediations, and arbitrations
28 not required by this chapter that are requested by agencies and agreed
29 to by the office of administrative hearings at such monetary rates as
30 established by the office of administrative hearings; and

31 (c) Promulgate rules consistent with state and federal law to implement
32 provisions relating to its duties and actions authorized by this chap-
33 ter.

34 (3) The office of administrative hearings shall not hear and shall not
35 have authority over or oversight of any action by the department of water re-
36 sources or the water resource board.

37 (4) The office of administrative hearings shall be subject to audit in
38 the same manner as other agencies of the state.

39 SECTION 6. That Chapter 52, Title 67, Idaho Code, be, and the same is
40 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
41 ignated as Section 67-5281, Idaho Code, and to read as follows:

42 67-5281. CHIEF ADMINISTRATIVE HEARING OFFICER -- APPOINTMENT -- QUAL-
43 IFICATIONS -- REMOVAL. (1) A chief administrative hearing officer shall be
44 appointed by the governor, and confirmed by the senate, to serve a four (4)
45 year term. A person may be reappointed to serve additional terms. Provided,
46 however, there is no right to reappointment.

1 (2) The chief administrative hearing officer must meet the following
2 qualifications on the effective date of his appointment:

3 (a) Be at least thirty (30) years of age;

4 (b) Be a citizen of the United States;

5 (c) Have held a license to practice law or held a judicial office in one
6 (1) or more jurisdictions of the United States for at least five (5) con-
7 tinuous years immediately preceding such appointment; and

8 (d) Be or become an active member of the Idaho state bar within one (1)
9 year of appointment and remain an active member in good standing there-
10 after.

11 (3) For purposes of this section, the following terms have the follow-
12 ing meanings:

13 (a) "Active" and "good standing" have the same definitions as those
14 terms are given by rule 301 of the Idaho bar commission rules or any suc-
15 cessor to those rules; and

16 (b) "Jurisdiction" means a state or territory of the United States, the
17 District of Columbia, or any branch of the United States military.

18 (4) The chief administrative hearing officer shall not have served as
19 an administrative hearing officer for an agency, other than the office of ad-
20 ministrative hearings, nor as an attorney for an agency, whether as an em-
21 ployee, an independent contractor, or pursuant to a special appointment, for
22 the one (1) year period immediately preceding his initial appointment. A
23 hearing officer having served for at least one (1) year within the office of
24 administrative hearings shall be eligible for consideration as the chief ad-
25 ministrative hearing officer.

26 (5) The chief administrative hearing officer may be removed from of-
27 fice only by the governor for conviction of a felony or misdemeanor offense,
28 failing to retain those qualifications of his office established in subsec-
29 tion (2) of this section, engaging in prohibited conduct established in sec-
30 tion 67-5282(2), Idaho Code, disability, inefficiency, neglect of duty, or
31 malfeasance. Before such removal, the governor shall give the chief admin-
32 istrative hearing officer a written copy of the charges against him, provide
33 him an opportunity to submit a written response no less than fourteen (14)
34 calendar days thereafter, and may provide him such other process as the gov-
35 ernor deems appropriate. If the chief administrative hearing officer is re-
36 moved, the governor shall provide the house of representatives and the sen-
37 ate written notice of the removal, the effective date of the removal, and the
38 reason or reasons therefor.

39 (6) If the chief administrative hearing officer resigns, dies, or is
40 removed from office as provided in this section, the governor shall appoint a
41 person who meets the qualifications established in this section, subject to
42 confirmation by the senate, to fill the unexpired term.

43 SECTION 7. That Chapter 52, Title 67, Idaho Code, be, and the same is
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
45 ignated as Section 67-5282, Idaho Code, and to read as follows:

46 67-5282. DUTIES AND PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE
47 HEARING OFFICER. (1) The chief administrative hearing officer shall:

48 (a) Serve as the administrator of the office of administrative hear-
49 ings;

1 (b) Conduct such contested case proceedings and such other proceedings
2 as are conducted by the office of administrative hearings in accordance
3 with section 67-5280(2)(a) and (b), Idaho Code;

4 (c) Devote full time to the office of administrative hearings and his
5 obligations as chief administrative hearing officer;

6 (d) Subject to applicable law and regulation, appoint, supervise, and
7 remove hearing officers and staff as he deems appropriate to the proper
8 functioning of the office of administrative hearings, determine the
9 duties of such appointees as he deems appropriate, and, from among the
10 hearing officers employed by the office of administrative hearings,
11 designate a deputy chief administrative hearing officer to act in place
12 of the chief administrative hearing officer when the chief administra-
13 tive hearing officer is unable to perform his duties;

14 (e) In consultation with the advisory council to the office of admin-
15 istrative hearings, and on behalf of the office of administrative hear-
16 ings, promulgate rules to implement the provisions of sections 67-5280
17 through 67-5287, Idaho Code;

18 (f) Establish a hearing officer code of conduct that shall, among other
19 things, provide for independent and unbiased decision-making by hear-
20 ing officers both as perceived and in fact;

21 (g) Provide for a system to monitor compliance with, and sanction vio-
22 lations of, the hearing officer code of conduct;

23 (h) Protect and ensure the decisional independence of hearing offi-
24 cers;

25 (i) Implement a system for monitoring the quality of contested case
26 proceedings and such other proceedings as are conducted by the office of
27 administrative hearings in accordance with section 67-5280(2)(a) and
28 (b), Idaho Code;

29 (j) Submit a written report on the activities of the office of adminis-
30 trative hearings, the quality of its work, its compliance with the code
31 of conduct, and such other matters as he deems appropriate for the im-
32 mediately preceding fiscal year to the governor, the judiciary, rules,
33 and administration committee of the house of representatives, the ju-
34 diciary and rules committee of the senate, and the advisory council to
35 the office of administrative hearings on or before the first day of each
36 legislative session;

37 (k) As he deems appropriate, create specialized subject matter divi-
38 sions within the office of administrative hearings;

39 (l) At his discretion, unless otherwise prohibited by state or federal
40 law, retain independent contractor hearing officers at reasonable and
41 consistent rates of compensation; provided that an independent con-
42 tractor hearing officer with specialized expertise may be compensated
43 at a higher rate if such expertise is necessary to the proper adjudica-
44 tion of the case and such higher rate of compensation is necessary in
45 order to obtain such expertise;

46 (m) Purchase, lease, or otherwise acquire for the office of administra-
47 tive hearings office space, furnishings, equipment, and supplies for
48 the proper functioning of the office of administrative hearings; and

1 (n) Contract with agencies to conduct such adjudicatory hearings, me-
2 diations, and arbitrations authorized by section 67-5280(2) (b), Idaho
3 Code.

4 (2) The chief administrative hearing officer shall not:

5 (a) Engage in the practice of law outside of his role in the office of
6 administrative hearings;

7 (b) Hold, or be a candidate for, any federal, state, county, municipal,
8 district, or other elective office;

9 (c) Serve as the agent, representative, officer, political treasurer,
10 or employee, whether for profit or otherwise, of any political party,
11 political committee, or candidate, whether as defined in either chapter
12 1, title 34, or chapter 66, title 67, Idaho Code, or otherwise; and

13 (d) Hold any other public or private sector position, whether for
14 profit or otherwise, except for volunteer positions that are not incon-
15 sistent with his duties as chief administrative hearing officer.

16 SECTION 8. That Chapter 52, Title 67, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 67-5283, Idaho Code, and to read as follows:

19 67-5283. SALARY OF THE CHIEF ADMINISTRATIVE HEARING OFFICER. The
20 chief administrative hearing officer shall receive the same salary as a mag-
21 istrate judge, as listed in section 59-502, Idaho Code.

22 SECTION 9. That Chapter 52, Title 67, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 67-5284, Idaho Code, and to read as follows:

25 67-5284. HEARING OFFICER QUALIFICATIONS -- POWERS -- DUTIES. (1) The
26 chief administrative hearing officer and hearing officers appointed by the
27 chief administrative hearing officer shall:

28 (a) On the effective date of their appointments and throughout their
29 tenure, meet and retain all of the qualifications specified in section
30 67-5281(2), Idaho Code;

31 (b) Take the oath of office as prescribed in chapter 4, title 59, Idaho
32 Code;

33 (c) Comply with the hearing officer code of conduct;

34 (d) Not engage in the conduct prohibited in section 67-5282(2), Idaho
35 Code. Provided, however, to the extent that it does not create a con-
36 flict of interest, the code of conduct may waive some or all of these
37 prohibitions for contract hearing officers; and

38 (e) Be deemed the presiding officer of contested case proceedings and
39 other proceedings conducted by the office of administrative hearings
40 and assigned to him and have the power to issue subpoenas, administer
41 oaths, control the course of the proceedings, order the use of alter-
42 native dispute resolution with the parties' consent, enter such awards
43 for costs and attorney's fees as authorized by law, and perform other
44 necessary and appropriate acts in the performance of their duties with
45 respect to such cases.

1 (2) (a) Independent contractors may be hired as hearing officers with-
2 out the limitation on outside work or outside practice of law provided
3 that:

4 (i) A disclosure is filed with the chief administrative hearing
5 officer that states what other outside work the independent con-
6 tractor is engaged in;

7 (ii) The independent contractor does not engage in outside work
8 presenting a conflict of interest; and

9 (iii) The independent contractor discloses such other informa-
10 tion as required by the code of conduct.

11 (b) If a failure to comply with the requirements of this subsection by
12 an independent contractor is brought to the attention of the chief ad-
13 ministrative hearing officer within thirty (30) days of the issuance of
14 the independent contractor hearing officer's order, the chief admin-
15 istrative hearing officer shall declare such order void and of no ef-
16 fect within fourteen (14) days. The chief administrative hearing offi-
17 cer shall be permitted to issue a stay while he investigates the issue of
18 failure to comply if the order involves a financial transaction.

19 (3) Those individuals serving as hearing officers in the office of
20 the attorney general for department of health and welfare contested case
21 hearings on December 31, 2021, shall have the option to be appointed hearing
22 officers when the office of administrative hearings begins conducting such
23 hearings on January 1, 2022, as provided by section 67-5288, Idaho Code, if
24 they meet the hearing officer qualifications requirements set forth in this
25 section and if such hearing officer positions are available in the office of
26 administrative hearings on an employment or independent contractor basis.

27 SECTION 10. That Chapter 52, Title 67, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 67-5285, Idaho Code, and to read as follows:

30 67-5285. COOPERATION OF AGENCIES. (1) No agency or state officer,
31 other than the chief administrative hearing officer, shall attempt to in-
32 fluence the selection of a hearing officer for a contested case proceeding
33 or any other matter, except mediations, and the chief administrative hear-
34 ing officer shall not permit any such influence; provided that agencies and
35 state officers may inform the office of administrative hearings in writing
36 of their views regarding:

37 (a) Expertise needed or desired with respect to types of potential con-
38 tested cases;

39 (b) Proposed rules under consideration for adoption by the office of
40 administrative hearings;

41 (c) Legislation or rules under consideration or being proposed by the
42 office of administrative hearings;

43 (d) Legislation or rules under consideration or being proposed by such
44 agencies or state officers; and

45 (e) Alleged violations of the code of conduct.

46 (2) Nothing in this section shall be deemed to prohibit an agency direc-
47 tor, the attorney general, or a designee of either of them from carrying out
48 their duties as a member of the advisory council to the office of administra-
49 tive hearings.

1 SECTION 11. That Chapter 52, Title 67, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 67-5286, Idaho Code, and to read as follows:

4 67-5286. OFFICE OF ADMINISTRATIVE HEARINGS -- COST ESTIMATES -- AS-
5 SESSMENT OF RECIPIENT AGENCIES. (1) The office of administrative hearings
6 shall prepare an estimate of costs for state budgeting purposes for services
7 provided by the office of administrative hearings. The office of adminis-
8 trative hearings shall notify the division of financial management of such
9 estimated costs by October 1. The division of financial management shall no-
10 tify all state agencies of these cost estimates for the next fiscal year on or
11 before November 1. The division of financial management and the legislative
12 services office shall allow state agencies to modify their budget requests
13 in response to such estimates.

14 (2) The office of administrative hearings shall assess each recipient
15 agency the amounts allocated for services provided. Amounts so assessed
16 shall be separately accounted for and can be expended only after legislative
17 appropriation. Such amount shall be paid by each state entity in the suc-
18 ceeding fiscal year to the indirect cost recovery fund. Before June 30 of
19 each fiscal year, the state controller shall transfer an amount equal to such
20 deposits to the state general fund.

21 SECTION 12. That Chapter 52, Title 67, Idaho Code, be, and the same is
22 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
23 ignated as Section 67-5287, Idaho Code, and to read as follows:

24 67-5287. ADVISORY COUNCIL TO THE OFFICE OF ADMINISTRATIVE HEAR-
25 INGS. (1) There is hereby created the advisory council to the office of
26 administrative hearings, referred to as "the council" in this section.

27 (2) The council shall consist of ten (10) members, which shall not in-
28 clude the chief administrative hearing officer or any hearing officers or
29 staff of the office of administrative hearings. Members shall include the
30 following:

31 (a) One (1) senator from the majority party selected by the president
32 pro tempore and one (1) senator from the minority party selected by the
33 minority leader;

34 (b) One (1) member of the house of representatives from the majority
35 party selected by the speaker of the house of representatives and one
36 (1) member of the house of representatives from the minority party se-
37 lected by the minority leader;

38 (c) The attorney general, or a deputy attorney general designated by
39 the attorney general;

40 (d) Two (2) state agency directors, appointed by the governor, or their
41 designees. Provided, however, a designee of an agency director must be
42 an employee of the agency and may not be a deputy attorney general. Pro-
43 vided further, only those agencies subject to application of the con-
44 tested case provisions of this act shall be eligible for appointment;
45 and

46 (e) Three (3) members of the public appointed by the governor, none of
47 whom shall be an employee or independent contractor or otherwise have a
48 financial relationship with the office of administrative hearings. One

1 (1) of the public members must be a member in good standing of the Idaho
2 state bar. None of the other public members shall be an attorney or for-
3 mer attorney. One (1) of the nonattorney public members shall be a mem-
4 ber of an advocacy organization serving persons eligible for public as-
5 sistance benefits.

6 (3) The terms of the public members shall be for four (4) years. An
7 agency director and a designee may be replaced by the appointing or designat-
8 ing authority at any time. A vacancy shall exist with respect to any member
9 who no longer holds the position or qualifications required to be such a mem-
10 ber and as to any public member who has failed to meaningfully participate in
11 the council's business as determined by the governor upon the recommendation
12 of the chair of the council. Public members may serve more than one (1) term.

13 (4) Members shall serve without honorarium or compensation of any kind,
14 but shall be reimbursed for actual and necessary expenses, subject to the
15 limits provided in section 67-2008, Idaho Code.

16 (5) A quorum shall consist of a majority of the members, and any action
17 of the council shall be taken by majority vote.

18 (6) Members shall elect two (2) officers, a chair, and a vice chair,
19 who shall serve two (2) year terms. The vice chair shall serve in place of
20 the chair when the chair is absent or the chair's position is vacant. In the
21 event of a vacancy in the office of chair or vice chair, the office shall be
22 filled at the next meeting of the board, and the new officeholder shall com-
23 plete the term of the officer being replaced.

24 (7) The council's duties shall be as follows:

25 (a) To make recommendations to the chief administrative hearing offi-
26 cer about:

27 (i) The operation of the office of administrative hearings;

28 (ii) Rules being considered for promulgation by the office of ad-
29 ministrative hearings;

30 (iii) The code of conduct and the annual written report required
31 pursuant to section 67-5282, Idaho Code;

32 (iv) Hearing officer training; and

33 (v) Such other matters as the council deems appropriate to the
34 proper operation of the office of administrative hearings;

35 (b) To make recommendations to the governor, the chief administrative
36 hearing officer, and the legislature as it deems appropriate; and

37 (c) To meet at least annually at such times and places as the council
38 determines. The meetings shall be conducted in accordance with the open
39 meetings law as provided in chapter 2, title 74, Idaho Code.

40 (8) This section shall be null, void, and of no force and effect on and
41 after September 1, 2025.

42 SECTION 13. That Chapter 52, Title 67, Idaho Code, be, and the same is
43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
44 ignated as Section 67-5288, Idaho Code, and to read as follows:

45 67-5288. CONDUCT OF CONTESTED CASE PROCEEDINGS. (1) Notwithstanding
46 any other provision of this chapter, the office of administrative hearings
47 shall not conduct contested case proceedings until January 1, 2021. Con-
48 tested case proceedings commenced prior to that date shall proceed under the
49 law as it existed as of June 30, 2020, unless the hearing for such contested

1 case did not commence prior to January 1, 2021. Provided, however, the of-
2 fice of administrative hearings shall not conduct department of health and
3 welfare contested case hearings until January 1, 2022, and such hearings
4 commenced prior to that date shall be completed by the office of administra-
5 tive hearings.

6 (2) The department of health and welfare shall expeditiously submit to
7 the centers for medicare and medicaid services (CMS) all that may be required
8 for CMS to approve the conduct of department of health and welfare contested
9 case hearings by the office of administrative hearings commencing on January
10 1, 2022, as provided for in subsections (1) and (3) of this section, includ-
11 ing but not limited to state plan amendments, waivers, and memorandums of
12 agreement. The governor, by and through the director, shall retain the au-
13 thority to exercise appropriate oversight of hearings necessary to comply
14 with requirements described in 42 U.S.C. 1396a and related regulations.

15 (3) The governor may, after notice to the chief administrative hear-
16 ing officer and the advisory council, extend the date on which the office of
17 administrative hearings is to commence conducting department of health and
18 welfare contested case hearings as provided for in subsection (1) of this
19 section until CMS has approved the conduct of hearings by the office of ad-
20 ministrative hearings.

21 SECTION 14. That Section 58-122, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 58-122. CONTESTED CASES -- PROCEDURE. It shall be the duty of the
24 director of the department of lands in any or all contested cases, at the
25 direction of the board, to appoint hearing officers, receive evidence,
26 issue subpoenas and to hold contested case hearings in accordance with sec-
27 tions 67-5240 through 67-5271, Idaho Code, when hearings are necessary and
28 witnesses may be required to be examined. Provided however, that when the
29 state board of land commissioners is exercising its duties and authorities
30 concerning the direction, control or disposition of the public lands of the
31 state pursuant to sections 7 and 8, article IX, of the constitution of the
32 state of Idaho, such actions shall not be considered to be contested cases
33 as defined in subsection (67) of section 67-5201, Idaho Code, and section
34 67-5240, Idaho Code, unless the board, in its discretion, determines that a
35 contested case hearing would be of assistance to the board in the exercise of
36 its duties and authorities.

37 SECTION 15. That Section 67-5303, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state
40 of Idaho and all employees in such departments, except those employees
41 specifically defined as nonclassified, shall be classified employees, who
42 are subject to this chapter and to the system of personnel administration
43 which it prescribes. Nonclassified employees shall be:

44 (a) Members of the state legislature and all other officers of the state
45 of Idaho elected by popular vote, and persons appointed to fill vacancies in
46 elective offices, and employees of the state legislature.

1 (b) Members of statutory boards and commissions and heads of depart-
2 ments appointed by and serving at the pleasure of the governor, deputy direc-
3 tors appointed by the director and members of advisory boards and councils
4 appointed by the departments.

5 (c) All employees and officers in the office, and at the residence, of
6 the governor; and all employees and officers in the offices of the lieutenant
7 governor, secretary of state, attorney general, state treasurer, state con-
8 troller, and state superintendent of public instruction who are appointed on
9 and after the effective date of this chapter.

10 (d) Except as otherwise provided by law, not more than one (1) declared
11 position for each board or commission and/or head of a participating depart-
12 ment, in addition to those declared to be nonclassified by other provisions
13 of law.

14 (e) Part-time professional consultants who are paid on a fee basis for
15 any form of legal, medical or other professional service, and who are not en-
16 gaged in the performance of administrative duties for the state.

17 (f) Judges, temporary referees, receivers and jurors.

18 (g) All employees of the Idaho supreme court, Idaho court of appeals and
19 district courts.

20 (h) All employees of the Idaho state bar.

21 (i) Assistant attorneys general attached to the office of the attorney
22 general.

23 (j) Officers, members of the teaching staffs of state educational in-
24 stitutions, the professional staff of the Idaho department of education
25 administered by the board of regents and the board of education, and the
26 professional staffs of the Idaho division of career technical education
27 and vocational rehabilitation administered by the state board for career
28 technical education. "Teaching staff" includes teachers, coaches, resident
29 directors, librarians and those principally engaged in academic research.
30 The word "officer" means presidents, vice presidents, deans, directors, or
31 employees in positions designated by the state board who receive an annual
32 salary of not less than step "A" of the pay grade equivalent to three hundred
33 fifty-five (355) Hay points in the state compensation schedule. A nonclas-
34 sified employee who is designated as an "officer" on July 5, 1991, but does
35 not meet the requirements of this subsection, may make a ~~one (1) time~~ onetime
36 irrevocable election to remain nonclassified. Such an election must be made
37 not later than August 2, 1991. When such positions become vacant, these
38 positions will be reviewed and designated as either classified or nonclassi-
39 fied in accordance with this subsection.

40 (k) Employees of the military division.

41 (l) Patients, inmates or students employed in a state institution.

42 (m) Persons employed in positions established under federal grants,
43 which, by law, restrict employment eligibility to specific individuals or
44 groups on the basis of nonmerit selection requirements. Such employees
45 shall be termed "project exempt" and the tenure of their employment shall
46 be limited to the length of the project grant, or twenty-four (24) months,
47 or four thousand one hundred sixty (4,160) hours of credited state service,
48 whichever is of the shortest duration. No person hired on a project-exempt
49 appointment shall be employed in any position allocated to the classified
50 service.

1 (n) Temporary employees.

2 (o) All employees and officers of the following named commodity commis-
3 sions, and all employees and officers of any commodity commission created
4 hereafter: the Idaho potato commission, as provided in chapter 12, title 22,
5 Idaho Code; the Idaho honey commission, as provided in chapter 28, title 22,
6 Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22,
7 Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, ti-
8 tle 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33,
9 title 22, Idaho Code; the Idaho pea and lentil commission, as provided in
10 chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in
11 chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in
12 chapter 37, title 22, Idaho Code; the Idaho mint commission, as provided in
13 chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as
14 provided in chapter 1, title 25, Idaho Code; the state brand inspector, and
15 all district supervisors, as provided in chapter 11, title 25, Idaho Code;
16 the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and
17 the Idaho dairy products commission, as provided in chapter 31, title 25,
18 Idaho Code.

19 (p) All inspectors of the fresh fruit and vegetable inspection service
20 of the Idaho department of agriculture, except those positions involved in
21 the management of the program.

22 (q) All employees of correctional industries within the department of
23 correction.

24 (r) All deputy administrators and wardens employed by the department of
25 correction. Deputy administrators are defined as only the deputy adminis-
26 trators working directly for the nonclassified division administrators un-
27 der the director of the department of correction.

28 (s) All public information positions, with the exception of secretar-
29 ial positions, in any department.

30 (t) Any division administrator.

31 (u) Any regional administrator or division administrator in the de-
32 partment of environmental quality.

33 (v) All employees of the division of financial management, all employ-
34 ees of the STEM action center, all employees of the office of species conser-
35 vation, all employees of the office of drug policy and all employees of the
36 office of energy resources.

37 (w) All employees of the Idaho food quality assurance institute.

38 (x) The state appellate public defender, deputy state appellate public
39 defenders and all other employees of the office of the state appellate public
40 defender.

41 (y) All quality assurance specialists or medical investigators of the
42 Idaho board of medicine.

43 (z) All pest survey and detection employees and their supervisors hired
44 specifically to carry out activities under the Idaho plant pest act, chapter
45 20, title 22, Idaho Code, including but not limited to pest survey, detec-
46 tion and eradication, except those positions involved in the management of
47 the program.

48 (aa) All medical directors employed by the department of health and
49 welfare who are engaged in the practice of medicine, as defined by section
50 54-1803, Idaho Code, at an institution named in section 66-115, Idaho Code.

1 (bb) All hearing officers and staff in the office of administrative
2 hearings as provided for in sections 67-5280 through 67-5286, Idaho Code.