

Moved by Winder

Seconded by Anthon

IN THE SENATE
SENATE AMENDMENT TO H.B. NO. 206

AMENDMENT TO THE BILL

On page 3 of the printed bill, following line 36, insert:

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

67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE ACT. ~~(1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:~~

~~(a) Establish a uniform numbering system applicable to rules adopted by all agencies;~~

~~(b) Establish a uniform style and format applicable to rules adopted by all agencies;~~

~~(c) Establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;~~

~~(d) Establish a uniform indexing system for agency orders; and~~

~~(e) Include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.~~

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

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

~~(a) The form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;~~

~~(b) Procedures for the creation of a record of comments received at any oral presentation;~~

~~(c) The standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;~~

~~(d) The form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;~~

~~(e) Procedures to facilitate negotiated rulemaking;~~

~~(f) The form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and~~

~~(g) Such other provisions as may be necessary or useful.~~

1 one (1) political party. Two (2) members of the board shall be chosen
2 with due regard to their knowledge of and interest in solid waste; two
3 (2) members shall be chosen for their knowledge of and interest in air
4 quality; two (2) members shall be chosen for their knowledge of and in-
5 terest in water quality; and one (1) member shall be chosen with due re-
6 gard for his knowledge of and interest in air, water and solid waste is-
7 sues. At least four (4) of the board members shall represent the pub-
8 lic's interest and not derive any significant portion of their income
9 from persons subject to air quality permits or enforcement orders.

10 (b) The members of the board of environmental quality shall be ap-
11 pointed for a term of four (4) years. In appointing members whose terms
12 begin in 2000, the governor shall designate three (3) members to be ap-
13 pointed for a term of three (3) years, two (2) members appointed for a
14 term of four (4) years, and two (2) members appointed for a term of two
15 (2) years. Successors to the members appointed for a term of less than
16 four (4) years shall be appointed for a term of four (4) years there-
17 after.

18 (2) The board annually shall elect a chairman, a vice chairman, and a
19 secretary and shall hold such meetings as may be necessary for the orderly
20 conduct of its business, and such meetings shall be held from time to time on
21 seventy-two (72) hours' notice of the chairman or a majority of the members.
22 Five (5) members shall be necessary to constitute a quorum at any regular or
23 special meeting, and the action of the majority of members present shall be
24 the action of the board. The members of the board shall be compensated as
25 provided in section 59-509(h), Idaho Code.

26 (3) The board, in furtherance of its duties under this act and under its
27 rules, shall have the power to administer oaths, certify to official acts,
28 and to issue subpoenas for the attendance of witnesses and the production of
29 papers, books, accounts, documents and testimony. The board may, if a wit-
30 ness refuses to attend or testify or to produce any papers required by such
31 subpoenas, report to the district court in and for the county in which the
32 proceeding is pending, by petition, setting forth that due notice has been
33 given of the time and place of attendance of said witnesses or the produc-
34 tion of said papers, that the witness has been properly summoned, and that
35 the witness has failed and refused to attend or produce the papers required
36 by this subpoena before the board or has refused to answer questions pro-
37 pounded to him in the course of said proceedings, and ask an order of said
38 court compelling the witness to attend and testify and produce said papers
39 before the board. The court, upon the petition of the board, shall enter an
40 order directing the witness to appear before the court at a time and place to
41 be fixed by the court in such order, the time to be not more than ten (10) days
42 from the date of the order, and then and there shall show cause why he has not
43 attended and testified or produced said papers before the board. A copy of
44 said order shall be served upon said witness. If it shall appear to the court
45 that said subpoena was regularly issued by the board and regularly served,
46 the court shall thereupon order that said witness appear before the board at
47 the time and place fixed in said order and testify or produce the required pa-
48 pers. Upon failure to obey said order, said witness shall be dealt with for
49 contempt of court.

1 (4) The director, his designee, or any party to the action may, in an in-
2 vestigation or hearing before the board, cause the deposition or interroga-
3 tory of witnesses or parties residing within or without the state to be taken
4 in the manner prescribed by law for like depositions and interrogatories in
5 civil actions in the district court of this state and to that end may compel
6 the attendance of said witnesses and production of books, documents, papers
7 and accounts.

8 (5) Any person aggrieved by an action or inaction of the department
9 shall be afforded an opportunity for a fair hearing upon request therefor
10 in writing pursuant to chapter 52, title 67, Idaho Code, and the rules pro-
11 mulgated thereunder. In those cases where the board has been granted the
12 authority to hold such a hearing pursuant to a provision of the Idaho Code,
13 the hearing may be conducted by the board at a regular or special meeting,
14 or the board may designate hearing officers, who shall have the power and
15 authority to conduct hearings in the name of the board at any time and place.
16 In any hearing, a member of the board or a hearing officer designated by it
17 shall have the power to administer oaths, examine witnesses, and issue in
18 the name of the board subpoenas requiring the testimony of witnesses and the
19 production of evidence relevant to any matter in the hearing.

20 (6) Any person adversely affected by a final determination of the board
21 may secure judicial review by filing a petition for review as prescribed un-
22 der the provisions of chapter 52, title 67, Idaho Code. The petition for re-
23 view shall be served upon the chairman of the board, the director of the de-
24 partment, and upon the attorney general of the state of Idaho. Such service
25 shall be jurisdictional and the provisions of this section shall be the ex-
26 clusive procedure for appeal.

27 (7) The board, by the affirmative vote of four (4) of its members, may
28 adopt, amend or repeal the rules, codes, and standards of the department that
29 are necessary and feasible in order to carry out the purposes and provisions
30 of this act and to enforce the laws of this state. The rules and orders so
31 adopted and established shall have the force and effect of law and may deal
32 with any matters deemed necessary and feasible for protecting the environ-
33 ment of the state.

34 (8) All rulemaking proceedings and hearings of the board shall be gov-
35 erned by the provisions of chapter 52, title 67, Idaho Code.

36 (9) The board shall adopt contested case rules consistent with the
37 rules adopted by the attorney general under section ~~67-5206(4)~~(1), Idaho
38 Code, the provisions of this act and other statutory authority of the depart-
39 ment.

40 (10) All rules, permits and other actions heretofore adopted, issued
41 or taken by the board of health and welfare pertaining to the environmental
42 protection functions administered by the division of environmental quality
43 shall remain in full force and effect until superseded.

44 (11) The board of environmental quality shall be the successor to all
45 rights, powers and duties of the board of health and welfare regarding all
46 rulemaking proceedings, administrative proceedings, contested cases, civil
47 actions, contracts, delegations, authority and other matters pertaining to
48 environmental protection functions administered by the division of environ-
49 mental quality.

