

IN THE SENATE

SENATE BILL NO. 1397

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1
2 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION
3 67-5226, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND TO REVISE
4 PROVISIONS REGARDING TEMPORARY RULES; AMENDING SECTION 67-5224, IDAHO
5 CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMERGENCY
6 AND PROVIDING AN EFFECTIVE DATE.

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

8 SECTION 1. That Section 67-5226, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 67-5226. TEMPORARY RULES. (1) The legislature finds that temporary
11 rules do not follow the negotiated rulemaking process. Therefore, to en-
12 sure accountability of agencies to the legislature and to Idaho citizens,
13 temporary rules shall be used only in emergency situations where negotiated
14 rulemaking is not feasible. Agencies shall make every effort to promulgate
15 rules utilizing the negotiated rulemaking process.

16 (2) If the governor finds that:

17 (a) Protection of the public health, safety, or welfare; ~~or~~

18 (b) Compliance with deadlines in amendments to governing law ~~or federal~~
19 ~~programs;~~ or

20 (c) ~~Conferring a benefit~~ Imminent danger to citizens' rights from a
21 specified threat that was unknown to the agency prior to or during the
22 most recent session of the legislature or the measurable worsening of
23 such threat or danger;

24 requires a rule to become effective before it has been submitted to the leg-
25 islature for review, the agency may proceed with such notice as is practi-
26 cable and adopt a temporary rule, except as otherwise provided in section
27 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immedi-
28 ately effective. The agency shall incorporate the required finding and a
29 concise statement of its supporting reasons in each rule adopted in reliance
30 upon the provisions of this subsection.

31 (23) A rule adopted pursuant to subsection (12) of this section ~~which~~
32 ~~that~~ imposes a fee or charge may become effective under this section before
33 it has been approved by concurrent resolution only if the governor finds that
34 the fee or charge is necessary to avoid immediate danger ~~which that~~ justifies
35 the imposition of the fee or charge.

36 (34) In no case shall a rule adopted pursuant to this section remain in
37 effect beyond the conclusion of the next succeeding regular session of the
38 legislature unless the rule is approved by concurrent resolution, in which
39 case the rule may remain in effect until the time specified in the resolu-
40 tion or until the rule has been replaced by a final rule ~~which that~~ has be-
41 come effective as provided in section 67-5224(5), Idaho Code. If a tempo-
42 rary rule is not approved by concurrent resolution during the next succeed-

1 ing regular session of the legislature, the rule expires and cannot be repro-
 2 mulgated without going through the negotiated rulemaking process involving
 3 affected stakeholders and citizens. An agency director or the governor may
 4 identify nonsubstantive changes that are exempt from the prohibition within
 5 this section on repromulgation. The legislature may override that determi-
 6 nation through a concurrent resolution rejecting such changes.

7 (45) Temporary rules shall be published in the first available issue of
 8 the bulletin.

9 (56) Temporary rules are not subject to the requirements of section
 10 67-5223, Idaho Code, ~~provided that the administrative rules coordinator~~
 11 ~~sends a copy of the temporary rules to the director of the legislative ser-~~
 12 ~~vices office.~~

13 (67) Concurrently with the promulgation of a rule under this section,
 14 or as soon as reasonably possible thereafter, an agency shall commence the
 15 promulgation of a proposed rule in accordance with the rulemaking require-
 16 ments of this chapter, unless the temporary rule adopted by the agency will
 17 expire by its own terms or by operation of law before the proposed rule could
 18 become final.

19 SECTION 2. That Section 67-5224, Idaho Code, be, and the same is hereby
 20 amended to read as follows:

21 67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the
 22 adoption, amendment, or repeal of a rule, the agency shall consider fully all
 23 written and oral submissions respecting the proposed rule.

24 (2) Subject to the provisions of subsection (3) of this section, the
 25 agency shall publish the text of a pending rule and a notice of adoption of
 26 the pending rule in the bulletin. The notice of adoption of the pending rule
 27 shall consist of a concise explanatory statement containing:

28 (a) Reasons for adopting the rule;

29 (b) A statement of any change between the text of the proposed rule and
 30 the text of the pending rule with an explanation of the reasons for any
 31 changes;

32 (c) The date on which the pending rule will become final and effective,
 33 as provided in subsection (5) of this section, and a statement that the
 34 pending rule may be rejected by concurrent resolution of the legisla-
 35 ture;

36 (d) An identification of any portion of the pending rule imposing or in-
 37 creasing a fee or charge and a statement that this portion of the rule
 38 shall not become final and effective unless affirmatively approved by
 39 concurrent resolution of the legislature;

40 (e) The specific statutory authority for the rulemaking including a ci-
 41 tation to the specific section of the Idaho Code that has occasioned the
 42 rulemaking, or the federal statute or regulation if that is the basis of
 43 authority or requirement for the rulemaking; and

44 (f) Except as otherwise required in paragraph (g) of this subsection,
 45 a specific description, if applicable, of any negative fiscal impact on
 46 the state general fund greater than ten thousand dollars (\$10,000) dur-
 47 ing the fiscal year when the pending rule will become effective; pro-
 48 vided however, that notwithstanding section 67-5231, Idaho Code, the
 49 absence or accuracy of a fiscal impact statement provided pursuant to

1 this paragraph shall not affect the validity or the enforceability of
2 the rule; or

3 (g) If a notice of proposed rulemaking of the Idaho state tax commis-
4 sion, a specific description of any negative or positive fiscal impact
5 greater than ten thousand dollars (\$10,000) during the fiscal year when
6 the pending rule will become effective; provided however, notwith-
7 standing section 67-5231, Idaho Code, the absence or accuracy of a
8 fiscal impact statement provided pursuant to this paragraph shall not
9 affect the validity or the enforceability of the rule.

10 (3) With the permission of the coordinator, the agency need not pub-
11 lish in full the text of the pending rule if no significant changes have been
12 made from the text of the proposed rule as published in the bulletin, but the
13 notice of adoption of the pending rule must cite the volume of the bulletin
14 where the text is available and note all changes that have been made.

15 (4) An agency shall not publish a pending rule until at least seven (7)
16 days after the close of all public comment.

17 (5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,
18 a pending rule shall become final and effective upon the conclusion of
19 the legislative session at which the rule was submitted to the legisla-
20 ture for review, or as provided in the rule, but no pending rule adopted
21 by an agency shall become final and effective before the conclusion of
22 the regular or special legislative session at which the rule was sub-
23 mitted for review. A rule which is final and effective may be applied
24 retroactively, as provided in the rule.

25 (b) When the legislature approves a pending rule pursuant to section
26 67-5291, Idaho Code, the rule shall become final and effective upon
27 adoption of the concurrent resolution or such other date specified in
28 the concurrent resolution.

29 (c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,
30 no pending rule or portion thereof imposing a fee or charge of any kind
31 shall become final and effective until it has been approved by concur-
32 rent resolution.

33 (6) Each agency shall provide the administrative rules coordinator
34 with a description of any pending rule or portion thereof imposing a new fee
35 or charge or increasing an existing fee or charge, along with a citation of
36 the specific statute authorizing the imposition or increase of the fee or
37 charge. The administrative rules coordinator shall provide the legislature
38 with a compilation of the descriptions provided by the agencies.

39 (7) At the conclusion of the legislative session or as soon thereafter
40 as is practicable, the coordinator shall publish the date upon which the
41 legislature adjourned sine die and rules became effective and a list of
42 final rules becoming effective on a different date, as provided in section
43 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided
44 in section 67-5226(~~34~~), Idaho Code.

45 SECTION 3. An emergency existing therefor, which emergency is hereby
46 declared to exist, this act shall be in full force and effect on and after
47 July 1, 2022.