

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 56

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE STATE PERSONNEL SYSTEM; AMENDING SECTION 67-5309,  
 2 IDAHO CODE, TO PROVIDE FOR A RULE THAT ANY INCUMBENT CLASSIFIED  
 3 EMPLOYEE WHO IS REMOVED FROM HIS OR HER POSITION BECAUSE OF  
 4 BUDGET CONSTRAINTS DURING FISCAL YEAR 2009, 2010 OR 2011, SHALL BE  
 5 DEEMED TO BE ON A FURLOUGH AND SHALL BE REINSTATED IN THE SAME  
 6 OR SIMILAR POSITION IF SUCH A POSITION BECOMES AVAILABLE DURING A  
 7 CERTAIN TIME PERIOD, TO PROVIDE FOR AN EXCEPTION AND TO DEFINE A  
 8 TERM; AND DECLARING AN EMERGENCY.  
 9

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

11 SECTION 1. That Section 67-5309, Idaho Code, be, and the same is hereby amended to  
 12 read as follows:

13 67-5309. RULES OF THE DIVISION OF HUMAN RESOURCES AND THE  
 14 PERSONNEL COMMISSION. The administrator of the division of human resources shall have  
 15 the power and authority to adopt, amend, or rescind such rules as may be necessary for proper  
 16 administration of this chapter. Such rules shall include:

17 (a) A rule requiring the administrator, after consulting with each department to develop,  
 18 adopt, and make effective, a job classification system for positions covered by this chapter,  
 19 based upon an analysis of the duties and responsibilities of the positions. The job classification  
 20 shall include an appropriate title for each class, and a description of duties and responsibilities  
 21 of positions in the classes and the requirements of minimum training, experience and other  
 22 qualifications, suitable for the performance of duties of the position.

23 (b) A rule describing the relevant labor markets and benchmark job classifications used  
 24 in the administrator's salary surveys.

25 (c) A rule requiring that all classes of positions which are common to the departments  
 26 concerned shall have the same titles, minimum requirements and compensation ranges.

27 (d) A rule providing for review by the administrator of the personnel system including  
 28 classifications and compensation policies and procedures.

29 (e) A rule that, notwithstanding the procedure for examination and ranking of eligibles  
 30 on a register provided in subsection (f) of this section, an agency may appoint an individual  
 31 directly into an entrance or promotional probation if the division of vocational rehabilitation,  
 32 Idaho commission for the blind and visually impaired or the industrial commission certifies,  
 33 with the concurrence of division of human resources staff, that the individual (1) has a  
 34 disability or handicap as defined under state or federal law; (2) is qualified to perform the  
 35 essential functions of a particular classified position with or without reasonable accommodation;  
 36 and (3) lacks competitiveness in the examination process due to the disability or handicap. The  
 37 probationary period as provided in subsection (j) of this section shall be the sole examination  
 38 for such individuals.

1 (f) A rule requiring fair and impartial selection of appointees to all positions other  
2 than those defined as nonclassified in this chapter, on the basis of open competitive merit  
3 examinations or evaluations. An application for an examination will be accepted after the  
4 closing date of the examination from a person who was serving in the armed forces, or  
5 undergoing service-connected hospitalization up to one (1) year following discharge. The  
6 application must be submitted within one hundred twenty (120) days of separation from the  
7 armed forces or hospitalization and prior to the expiration of the register established as a  
8 result of the examination. A disabled veteran may file an application at any time up until  
9 a selection has been made for any position for which the division maintains a register as a  
10 source for future job openings or for which a register is about to be established, provided  
11 he or she has not already been examined twice for the same position and grade for which  
12 application is made, does not have current eligibility on that register, or is not serving in a  
13 competitive position in the same grade for which application is made. Examinations may be  
14 assembled or unassembled and may include various examining techniques such as rating of  
15 training and experience, written tests, oral interviews, recognition of professional licensing,  
16 performance tests, investigations and any other measure of ability to perform the duties of the  
17 position. Examinations shall be scored objectively. Five (5) percentage points shall be added  
18 to the earned rating of any veteran as defined in section 65-502, Idaho Code, and the widow  
19 or widower of any veteran as defined in section 65-502, Idaho Code, as long as he or she  
20 remains unmarried. Pursuant to section 65-504, Idaho Code, ten (10) percentage points shall be  
21 added to the earned rating of any disabled veteran as defined in section 65-502, Idaho Code,  
22 the widow or widower of any disabled veteran as long as he or she remains unmarried or the  
23 spouse of any eligible disabled veteran who cannot qualify for any public employment because  
24 of a service-connected disability. Employment registers shall be established in order of final  
25 score except that the names of all five (5) and ten (10) percentage point preference eligibles  
26 resulting from any merit system or civil service examination shall be placed on the register  
27 in accordance with their augmented rating. Certification of eligibility for appointment to  
28 vacancies shall be in accordance with a formula which limits selection by the hiring department  
29 from among the ten (10) top ranking available eligibles plus the names of all individuals with  
30 scores identical to the tenth ranking eligible on the register. A register with at least five (5)  
31 eligibles shall be adequate. Selective certification shall be permitted when justified by the  
32 hiring department, under rules to be made by the division defining adequate justification based  
33 on the duties and requirements of the positions. Such examinations need not be held until after  
34 the rules have been adopted, the service classified and a pay plan established, but shall be held  
35 not later than one (1) year after departments commence participation in the personnel system.

36 (g) A rule that, whenever practicable, a vacancy in a classified position shall be filled  
37 by the promotion of a qualified employee of the agency in which the vacancy occurs. An  
38 interagency promotion shall be made through competitive examination and all qualified state  
39 employees shall have the opportunity to compete for such promotions. If an employee's name  
40 appears within certifiable range on a current register for a higher class of position, he shall be  
41 eligible for a transfer and promotion.

42 (h) A rule for development and maintenance of a system of service ratings and the  
43 use of such ratings by all departments in connection with promotions, demotions, retentions,  
44 separations and reassignments. The rule shall require that an evaluation of each classified  
45 employee shall be made after each two thousand eighty (2,080) hour period of credited state  
46 service, and that a copy of the evaluation shall be filed with the division.

1 (i) A rule prohibiting disqualification of any person from taking an examination, from  
2 appointment to a position, from promotion, or from holding a position because of race or  
3 national origin, color, sex, age, political or religious opinions or affiliations, and providing for  
4 right of appeal.

5 (j) A rule establishing a probation period not to exceed one thousand forty (1,040)  
6 hours of credited state service for all appointments and promotions, except that peace officers  
7 as defined in section 19-5101, Idaho Code, shall be subject to a probation period of two  
8 thousand eighty (2,080) hours of credited state service, and for the appointing authority to  
9 provide the employee and the administrator a performance evaluation indicating satisfactory  
10 or unsatisfactory performance not later than thirty (30) days after the expiration of the  
11 probationary period. The rule shall provide that if the appointing authority fails to provide  
12 a performance evaluation within thirty (30) days after the expiration of the probationary  
13 period, the employee shall be deemed to have satisfactorily completed the probation unless the  
14 appointing authority receives approval from the administrator to extend the probationary period  
15 for good cause for an additional specified period not to exceed one thousand forty (1,040) hours  
16 of credited state service. If an employee is performing in an unsatisfactory manner during the  
17 entrance probationary period, the appointing authority shall ask the employee to resign, and if  
18 no resignation is submitted, shall terminate the employment of such employee without the right  
19 of grievance or appeal.

20 (k) A rule concerning provisional appointments.

21 (l) A rule concerning temporary appointments.

22 (m) A rule governing the employment of consultants and persons retained under  
23 independent contract.

24 (n) A rule for the disciplinary dismissal, demotion, suspension or other discipline of  
25 employees only for cause with reasons given in writing. Such rule shall provide that any of the  
26 following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension  
27 of any employee in the state classified service:

28 1. Failure to perform the duties and carry out the obligations imposed by the state  
29 constitution, state statutes and rules of the employee's department, or rules of the  
30 administrator or the division.

31 2. Inefficiency, incompetency, or negligence in the performance of duties, or job  
32 performance that fails to meet established performance standards.

33 3. Physical or mental incapability for performing assigned duties.

34 4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.

35 5. Insubordination or conduct unbecoming a state employee or conduct detrimental to  
36 good order and discipline in the employee's department.

37 6. Intoxication on duty.

38 7. Careless, negligent, or improper use or unlawful conversion of state property,  
39 equipment or funds.

40 8. Use of any influence which violates the principles of the merit system in an attempt to  
41 secure a promotion or privileges for individual advantage.

42 9. Conviction of official misconduct in office, or conviction of any felony, or conviction  
43 of any other crime involving moral turpitude.

44 10. Acceptance of gifts in exchange for influence or favors given in the employee's  
45 official capacity.

46 11. Habitual pattern of failure to report for duty at the assigned place and time.

1 12. Habitual improper use of sick leave privileges.

2 13. Unauthorized disclosure of confidential information from official records.

3 14. Absence without leave.

4 15. Misstatement or deception in the application for the position.

5 16. Failure to obtain or maintain a current license or certificate lawfully required as a  
6 condition for performing the duties of the job.

7 17. Prohibited participation in political activities.

8 (o) A rule to establish procedures for maintenance of a record of the employment history  
9 and appropriate information relating to performance of all employees under the personnel  
10 system. For the purposes of this rule, the state shall be considered one (1) employer.

11 (p) Rules to provide for recruitment programs in cooperation with department heads  
12 and the employment security agency in keeping with current employment conditions and labor  
13 market trends.

14 (q) Rules to establish procedures for examinations as necessary for the purpose of  
15 maintaining current registers from which to fill employment vacancies.

16 (r) Other rules not inconsistent with the foregoing provisions of this section as may be  
17 necessary and proper for the administration and enforcement of this chapter.

18 (s) A rule concerning "project exempt" appointments.

19 (t) Rules relating to leave for state employees from official duties including, but not  
20 limited to, sick leave, military leave, jury duty, leaves of absence without compensation and  
21 such other forms of absence from performance of duties in the course of state employment as  
22 may be necessary.

23 (u) A rule providing up to twenty-five percent (25%) shift differential pay based on local  
24 market practices.

25 (v) A rule to establish guidelines for awarding employee suggestion awards set forth in  
26 sections 59-1603 and 67-5309D, Idaho Code.

27 (w) A rule to establish the reimbursement of moving expenses for a current or  
28 newly-hired state employee.

29 (x) A rule to allow, at the request of the hiring agency, temporary and acting appointment  
30 service time to count toward fulfilling entrance probationary requirements as established in  
31 section 67-5309(j), Idaho Code.

32 (y) From the effective date of this act until June 30, 2012, a rule that any incumbent in a  
33 classified position who is removed from such position because of budgetary constraints during  
34 state fiscal year 2009, 2010 or 2011 shall be deemed to be on a furlough from such position  
35 and shall be reinstated in such position, or in a similar classified position in any agency for  
36 which he or she is qualified, if such position or a similar position becomes available at any  
37 time prior to the end of fiscal year 2012, unless following an offer of such reinstatement such  
38 incumbent gives written notice that he or she does not desire reinstatement. For the purposes  
39 of this subsection, the term "furlough" means a temporary lay off of an employee without pay.

40 SECTION 2. An emergency existing therefor, which emergency is hereby declared to  
41 exist, this act shall be in full force and effect on and after its passage and approval.