

Dear Senators TIPPETS, Patrick, Schmidt, and
Representatives HARTGEN, Anderson, King:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Commerce :

IDAPA 28.03.01 - Rules Pertaining To The Rules of the Idaho Opportunity Fund (New Chapter)
(Docket No. 28-0301-1301);

IDAPA 28.03.04 - Rules Pertaining To The Rules of the Business & Jobs Development Grant Fund
(Chapter Repeal) (Docket No. 28-0304-1301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/04/2013. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/04/2013.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address on the
memorandum attached below.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee
FROM: Division Manager - Mike Nugent
DATE: September 17, 2013
SUBJECT: Department of Commerce

IDAPA 28.03.01 - Rules Pertaining To The Rules of the Idaho Opportunity Fund (New Chapter) (Docket No. 28-0301-1301)

IDAPA 28.03.04 - Rules Pertaining To The Rules of the Business & Jobs Development Grant Fund (Chapter Repeal) (Docket No. 28-0304-1301)

The Department of Commerce is proposing to promulgate two sets of temporary and proposed rules. The first set of temporary and proposed rules govern the Idaho Opportunity Fund as enacted in House Bill 100. House Bill 100 formally established the Idaho Opportunity Fund and added five new Sections to 67-4732 through 67-4736, Idaho Code. These rules are necessary to outline the specific parameters for the award and disbursement of Idaho Opportunity Fund grants to cities and counties.

The second temporary and proposed rule would repeal the rules that House Bill No. 100 replaced. The repealed rule is what provided grants issued through the Business and Jobs Development Fund to provide funding to Idaho cities and counties for infrastructure development to support the retention of existing businesses and recruitment of new businesses to the state.

It appears that both sets of proposed rules have been promulgated within the scope of statutory authority granted to the Department of Commerce.

cc: Department of Commerce - Governmental Affairs
Megan Ronk

IDAPA 28 - DEPARTMENT OF COMMERCE

28.03.01 - RULES OF THE IDAHO OPPORTUNITY FUND

DOCKET NO. 28-0301-1301 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2013.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-4733, Idaho Code, and Sections 67-4732 through 67-4736, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These comprehensive rules will govern the Idaho Opportunity Fund as enacted in House Bill 100. House Bill 100 formally established the Idaho Opportunity Fund and added five new Sections to 67-4732 through 67-4736, Idaho Code. These rules are necessary to outline the specific parameters for the award and disbursement of Idaho Opportunity Fund grants to cities and counties.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is being adopted to bring the rule into compliance with the statutory changes made by House Bill 100. The temporary rule also confers a benefit to cities and counties that may be eligible for these funds.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

House Bill 100 formally established the Idaho Opportunity Fund in the Idaho State Treasury. In Fiscal Year 2014 the Idaho Opportunity Fund will be funded as follows:

\$400,000 ongoing appropriation in Department of Commerce budget (General Fund); and
\$3,000,000 in onetime funding in Department of Commerce budget (General Fund).

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, it was not feasible to conduct negotiated rulemaking because of the need to adopt this rule as a temporary rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Megan Ronk, Chief Communications & Governmental Affairs Officer, Idaho Department of Commerce at (208) 334-2470.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 31st day of July, 2013

Megan Ronk
Chief Communications & Governmental Affairs Officer
Idaho Department of Commerce
700 W State Street
Boise, ID 83702
Phone: 208-334-2470
Fax: 208-334-2631

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 28-0301-1301**

IDAPA 28
TITLE 03
CHAPTER 01

28.03.01 - RULES OF THE IDAHO OPPORTUNITY FUND

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4733, Idaho Code. (8-1-13)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 28.03.01, "Rules of the Idaho Opportunity Fund." (8-1-13)T

02. Scope. These rules implement House Bill H100, enacted by the First Regular Session of the Sixty-second Legislature and signed into law on March 21, 2013. These rules amend Chapter 47, Title 67, Idaho Code, by the addition of new sections 67-4732 through 67-4736, Idaho Code. The three (3) new sections provide a short title and legislative intent, provide rulemaking authority to the Director of the Department of Commerce create the Opportunity Fund in the State Treasury, provide for the makeup and use of the fund, provide that agreements are required for disbursement of funds and provide for annual reporting by the Director of the Department of Commerce. (8-1-13)T

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretations of these rules. (8-1-13)T

003. ADMINISTRATIVE APPEALS.

The award of grants under the Opportunity Fund are made at the discretion of the Director of the Department of Commerce. In light of the discretionary nature of awarding these grants, there is no administrative appeal under these rules. (8-1-13)T

004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The mailing address of the Department for information regarding the Opportunity Fund Act is: 700 West State Street, PO Box 83720, Boise, ID 83702-0093; the telephone number is (208) 334-2470; and the facsimile number is (208) 334-2631. Documents may be filed at the state office during regular business hours of 8am to 5pm, Monday through

Friday, excluding holidays. (8-1-13)T

005. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (title 9, chapter 3, Idaho Code). (8-1-13)T

006. -- 009. (RESERVED)

013. DEFINITIONS.

01. Company Performance Agreement. An agreement between a local government and a Grantee Business, in addition to any requirements in rules adopted by the Department. (8-1-13)T

02. Department. Idaho Department of Commerce. (8-1-13)T

03. Grantee Business. A non-governmental company or organization that receives funding through a Company Performance Agreement. (8-1-13)T

04. Local Government Grant Agreement. An agreement between the Department and one (1) or more local governments. (8-1-13)T

06. Public Cost. Any cost incurred by the state of Idaho or local government of the state of Idaho for the purpose of promoting economic development to retain, expand, or attract quality jobs in industries deemed vital to the health of the local and statewide economy. Public costs do not include impact fees or easements. (8-1-13)T

014. GRANT AWARDS.

01. Funding. The Director of the Department may, in his sole discretion, award Opportunity Fund grants to local government for public costs incurred with the purpose to retain, expand or attract jobs which shall include: (8-1-13)T

a. Construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations; (8-1-13)T

b. Flood zone or environmental hazard mitigation; or (8-1-13)T

c. Construction, upgrade or renovation of other infrastructure related items including, but not limited to, railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects. (8-1-13)T

02. Local Match. The local government must provide allowable local match. Allowable match includes those costs which are allowable within the Opportunity Fund and must be provided by the local government as cash, in-kind services, fee waivers (such as development impact fees), donation of assets, the provision of infrastructure or a combination thereof. The match must represent a material commitment from the local government that is commensurate with the local government's financial condition. The Director of the Department has the authority to approve other forms of local match or waive the local match requirements. (8-1-13)T

03. Local Government Grant Agreements. Local Government Grant Agreements will be entered into between the Department and one (1) or more local governments, and shall contain the following provisions: (8-1-13)T

a. A commitment on the part of the local government to match, in whole or in part, the funds allocated by the Department; (8-1-13)T

b. A provision requiring the local government to recapture any funds to which the local government is entitled under the Company Performance Agreement; (8-1-13)T

c. A provision requiring repayment from the local government to the Department for any funds used for unapproved purposes or disbursed prior to compliance with the Company Performance Agreement or achievement of the job creation or other performance targets; (8-1-13)T

d. A provision allowing the Department access to records possessed by the local government necessary to ensure compliance with the Company Performance Agreement and with the requirements of the Opportunity Fund; (8-1-13)T

e. A provision establishing a schedule for the disbursement of funds from the Opportunity Fund to the local government that reflects the disbursement schedule established in the Company Performance Agreement; and (8-1-13)T

f. Any other lawful provision the Department deems necessary to ensure the proper use of state funds. (8-1-13)T

04. Company Performance Agreements. Company Performance Agreements will be entered into between one (1) or more local governments and a Grantee Business, and may contain the following provisions: (8-1-13)T

a. A commitment to create or retain a specified number of jobs within a specified salary range at a specific location; (8-1-13)T

b. A commitment regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained; (8-1-13)T

c. A commitment to complete the construction related to the agreed upon capital expenditures; (8-1-13)T

d. A provision that a reasonable percentage of the total amount of the grant be withheld until specified performance targets are met; (8-1-13)T

e. A provision that a reasonable percentage of the total amount of the grant be withheld until the specified number of jobs are maintained for a specified period of time; (8-1-13)T

f. A commitment to provide proof satisfactory to the local government and the Department of new jobs created or existing jobs retained and the salary level of those jobs; (8-1-13)T

g. A provision that funds received under the Company Performance Agreement may be used only for a purpose as authorized by the Opportunity Fund; (8-1-13)T

h. A provision allowing the Department or the local government to inspect the records of the Grantee Business as required to confirm compliance with the Company Performance Agreement or with the requirements of the Opportunity Fund. The provision shall limit the access of the Department and/or local government to only those records of the Grantee Business that are necessary to ensure compliance; (8-1-13)T

i. A provision establishing the method for determining compliance with the Company Performance Agreement; (8-1-13)T

j. A provision establishing a schedule for disbursement of funds under the Company Performance Agreement that allows disbursement of funds only in proportion to the amount of performance completed under the Company Performance Agreement; (8-1-13)T

k. A provision requiring repayment of grant funds and corresponding terms for repayment, if applicable, in the event a Grantee Business subsequently fails to comply with the terms of the Company Performance Agreement; (8-1-13)T

l. A provision that any repayments of grant funds required if the performance targets are not achieved

may be prorated to reflect a partial attainment of job creation or other performance targets; and (8-1-13)T

m. Any other lawful provision the Department or the local government finds necessary to ensure the proper use of state or local funds. (8-1-13)T

05. Disbursements. Funds will be disbursed from the Opportunity Fund to the local government as defined in the Local Government Grant Agreement and after the local government has demonstrated that the Grantee Business has complied with the terms of the Company Performance Agreement. (8-1-13)T

06. Award Amounts. The amount of each grant shall be determined by the Director, in his sole discretion. (8-1-13)T

016. REPORTING.

01. Quarterly. The Director of the Department shall report to the Economic Advisory Council quarterly on the grant activity and performance. (8-1-13)T

02. Annually. The Director of the Department shall publish an annual report regarding the state of the Opportunity Fund no later than September 30 each year. The report shall contain information on the commitment of funds, disbursement and use of the funds, the number of jobs committed and created, the total capital expenditures resulting from grant funds and the median wage of total jobs created. The annual report will be made available to the Governor, the Joint Finance-Appropriations Committee and the public. (8-1-13)T

017. -- 999. (RESERVED)

IDAPA 28 - DEPARTMENT OF COMMERCE

28.03.04 - RULES OF THE BUSINESS AND JOBS DEVELOPMENT GRANT FUND

DOCKET NO. 28-0304-1301 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2013.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-4733, Idaho Code, and Sections 67-4732 through 67-4736, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The grants issued through the Business & Jobs Development Fund provide funding to Idaho cities and counties for infrastructure development to support the retention of existing businesses and recruitment of new businesses to the state. In compliance with House Bill 100, the Department has adopted a new temporary rule, which is promulgated under Docket No. 28-0301-1301 and published in this Bulletin, to replace this program. The new chapter, IDAPA 28.03.01, "Idaho Opportunity Fund," provides the same funding with new and additional parameters. Therefore, this chapter is repealed in its entirety.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

In compliance with House Bill 100 this rule is being repealed in its entirety and replaced by a new temporary rule that is being promulgated in this Bulletin under Docket No. 28-0301-1301.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

No fees or charges are being imposed as a result of this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact to the general fund. A \$400,000 ongoing appropriation in Department of Commerce budget (General Fund) that was available to the Department for Business & Jobs Development Fund grants is now available to the Department under the new Idaho Opportunity Fund per changes made to the department's budget for FY2014.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to adopt a temporary rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Megan Ronk, Chief Communications & Governmental Affairs Officer, Idaho Department of Commerce at (208) 334-2470.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 31st day of July, 2013.

Megan Ronk
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Idaho Department of Commerce
700 W State Street
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IDAPA 28.03.04 IS BEING REPEALED IN ITS ENTIRETY