

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 202

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION
2 67-5221, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS RELATING TO THE
3 PUBLIC NOTICE OF PROPOSED RULEMAKING AND TO MAKE TECHNICAL CORRECTIONS;
4 AMENDING SECTION 67-5224, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIRE-
5 MENTS RELATING TO A NOTICE OF ADOPTION OF A PENDING RULE AND TO MAKE
6 TECHNICAL CORRECTIONS; AND PROVIDING A SUNSET DATE.
7

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

9 SECTION 1. That Section 67-5221, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adop-
12 tion, amendment, or repeal of a rule, the agency shall publish notice of pro-
13 posed rulemaking in the bulletin. The notice of proposed rulemaking shall
14 include:

15 (a) The specific statutory authority for the rulemaking, including a
16 citation to the specific section of the Idaho Code that has occasioned
17 the rulemaking, or the federal statute or regulation if that is the ba-
18 sis of authority or requirement for the rulemaking;

19 (b) A statement in nontechnical language of the substance of the pro-
20 posed rule, including a specific description of any fee or charge im-
21 posed or increased;

22 (c) A Except as otherwise required in paragraph (d) of this subsection,
23 a specific description, if applicable, of any negative fiscal impact on
24 the state general fund greater than ten thousand dollars (\$10,000) dur-
25 ing the fiscal year when the pending rule will become effective; pro-
26 vided, however, that notwithstanding section 67-5231, Idaho Code, the
27 absence or accuracy of a fiscal impact statement provided pursuant to
28 this subsection paragraph shall not affect the validity or the enforce-
29 ability of the rule;

30 (d) If a notice of proposed rulemaking of the Idaho state tax commis-
31 sion, a specific description of any negative or positive fiscal impact
32 greater than ten thousand dollars (\$10,000) during the fiscal year when
33 the pending rule will become effective; provided however, notwith-
34 standing section 67-5231, Idaho Code, the absence or accuracy of a
35 fiscal impact statement provided pursuant to this paragraph shall not
36 affect the validity or the enforceability of the rule;

37 (e) The text of the proposed rule prepared in legislative format;

38 (ef) The location, date, and time of any public hearings the agency in-
39 tends to hold on the proposed rule;

40 (fg) The manner in which persons may make written comments on the pro-
41 posed rule, including the name and address of a person in the agency to
42 whom comments on the proposal may be sent;

1 (~~g~~h) The manner in which persons may request an opportunity for an oral
2 presentation as provided in section 67-5222, Idaho Code;

3 (~~h~~i) The deadline for public comments on the proposed rule; and

4 (~~i~~j) If negotiated rulemaking was not conducted, an explanation of the
5 agency's determination that negotiated rulemaking was not feasible.

6 (2) (a) Coinciding with each issue of the bulletin, the coordinator
7 shall cause the publication of an abbreviated notice with a brief de-
8 scription of the subject matter, showing any agency's intent to propose
9 a new or changed rule that is a new addition to that issue of the bul-
10 letin. The notice shall be in the form of an official legal notice, as
11 provided for in section 60-105, Idaho Code, and subject to the rates set
12 forth therein.

13 The notice shall include the agency name and address, rule number,
14 rule subject matter as provided in subsection (1) (b) of this section,
15 and the comment deadline. The notice shall also include a brief state-
16 ment that informs citizens where they can view the administrative bul-
17 letin in electronic form.

18 (b) The coordinator shall cause the notice required in subsection
19 (2) (a) of this section to be published in at least the accepting news-
20 paper of largest paid circulation that is published in each county in
21 Idaho or, if no newspaper is published in the county, then in an ac-
22 cepting newspaper of largest paid circulation published in Idaho and
23 circulated in the county. The newspaper of largest circulation shall be
24 established by the sworn statement of average annual paid weekday issue
25 circulation that has been filed by a newspaper with the United States
26 post office for the calendar year immediately preceding the calendar
27 year during which the advertisement in this section is required to be
28 published.

29 (3) Each agency that has a website shall cause the notice required by
30 either subsection (1) or (2) of this section to be placed onto or be accessi-
31 ble from the home page of the agency's website so that interested persons can
32 view it online.

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

35 67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the
36 adoption, amendment, or repeal of a rule, the agency shall consider fully all
37 written and oral submissions respecting the proposed rule.

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

42 (a) ~~Reasons~~ for adopting the rule;

43 (b) ~~a~~A statement of any change between the text of the proposed rule and
44 the text of the pending rule with an explanation of the reasons for any
45 changes;

46 (c) ~~The~~The date on which the pending rule will become final and effective,
47 as provided in subsection (5) of this section, and a statement that the
48 pending rule may be rejected, amended or modified by concurrent resolu-
49 tion of the legislature;

1 (d) ~~a~~An identification of any portion of the pending rule imposing or
 2 increasing a fee or charge and a statement that this portion of the rule
 3 shall not become final and effective unless affirmatively approved by
 4 concurrent resolution of the legislature;

5 (e) ~~†~~The specific statutory authority for the rulemaking including a
 6 citation to the specific section of the Idaho Code that has occasioned
 7 the rulemaking, or the federal statute or regulation if that is the ba-
 8 sis of authority or requirement for the rulemaking; and

9 (f) Except as otherwise required in paragraph (g) of this subsection,
 10 a specific description, if applicable, of any negative fiscal impact on
 11 the state general fund greater than ten thousand dollars (\$10,000) dur-
 12 ing the fiscal year when the pending rule will become effective; pro-
 13 vided however, that notwithstanding section 67-5231, Idaho Code, the
 14 absence or accuracy of a fiscal impact statement provided pursuant to
 15 this subsection paragraph shall not affect the validity or the enforce-
 16 ability of the rule; or

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

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

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

31 (5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,
 32 a pending rule shall become final and effective upon the conclusion of
 33 the legislative session at which the rule was submitted to the legisla-
 34 ture for review, or as provided in the rule, but no pending rule adopted
 35 by an agency shall become final and effective before the conclusion of
 36 the regular or special legislative session at which the rule was sub-
 37 mitted for review. A rule which is final and effective may be applied
 38 retroactively, as provided in the rule.

39 (b) When the legislature approves, amends or modifies a pending rule
 40 pursuant to section 67-5291, Idaho Code, the rule shall become final and
 41 effective upon adoption of the concurrent resolution or such other date
 42 specified in the concurrent resolution.

43 (c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,
 44 no pending rule or portion thereof imposing a fee or charge of any kind
 45 shall become final and effective until it has been approved, amended or
 46 modified by concurrent resolution.

47 (6) Each agency shall provide the administrative rules coordinator
 48 with a description of any pending rule or portion thereof imposing a new fee
 49 or charge or increasing an existing fee or charge, along with a citation of
 50 the specific statute authorizing the imposition or increase of the fee or

1 charge. The administrative rules coordinator shall provide the legislature
2 with a compilation of the descriptions provided by the agencies.

3 (7) At the conclusion of the legislative session or as soon thereafter
4 as is practicable, the coordinator shall publish the date upon which the
5 legislature adjourned sine die and rules became effective and a list of
6 final rules becoming effective on a different date, as provided in section
7 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided
8 in section 67-5226(3), Idaho Code.

9 SECTION 3. The provisions of this act shall be null, void and of no force
10 and effect on and after June 30, 2015.