

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 623

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1
2 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURES ACT; AMENDING SECTION
3 67-5201, IDAHO CODE, TO REVISE A DEFINITION AND TO DEFINE TERMS; REPEAL-
4 ING SECTION 67-5240, IDAHO CODE, RELATING TO CONTESTED CASES; AMENDING
5 CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
6 67-5240, IDAHO CODE, TO PROVIDE FOR CONTESTED CASE EXEMPTIONS; AMENDING
7 SECTION 67-5241, IDAHO CODE, TO REVISE PROVISIONS REGARDING DISPOSI-
8 TION, TO PROVIDE FOR INCORPORATION OF AN AGREEMENT OR CONSENT ORDER INTO
9 A FINAL CONTESTED CASE ORDER, TO PROVIDE FOR JUDICIAL REVIEW, TO PROVIDE
10 THAT DISPOSITIONS BY AGREEMENT ARE PUBLIC RECORDS UNLESS EXEMPT UNDER
11 SPECIFIED LAW AND TO PROVIDE THAT CERTAIN NONDISCLOSURE PROVISIONS ARE
12 VOID; REPEALING SECTIONS 67-5242 THROUGH 67-5254, IDAHO CODE, RELATING
13 TO PROCEDURE AT HEARING, ORDERS NOT ISSUED BY AN AGENCY HEAD, REVIEW
14 OF RECOMMENDED ORDERS, REVIEW OF PRELIMINARY ORDERS, FINAL ORDERS AND
15 EFFECTIVENESS OF FINAL ORDERS, EMERGENCY PROCEEDINGS, CONTENTS OF OR-
16 DERS, AGENCY RECORDS, INDEXING OF PRECEDENTIAL AGENCY ORDERS AND INDEX-
17 ING OF AGENCY GUIDANCE DOCUMENTS, EVIDENCE AND OFFICIAL NOTICE, PRESID-
18 ING OFFICERS AND DISQUALIFICATION, EX PARTE COMMUNICATIONS AND AGENCY
19 ACTION AGAINST LICENSEES; REPEALING SECTIONS 67-5270 AND 67-5271,
20 IDAHO CODE, RELATING TO RIGHT OF REVIEW AND EXHAUSTION OF ADMINISTRA-
21 TIVE REMEDIES; REPEALING SECTIONS 67-5273 THROUGH 67-5279, IDAHO CODE,
22 RELATING TO TIME FOR FILING PETITION FOR REVIEW, STAY, AGENCY RECORDS
23 FOR JUDICIAL REVIEW, ADDITIONAL EVIDENCE, JUDICIAL REVIEW OF ISSUES
24 OF FACT, DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES
25 AND SCOPE OF REVIEW AND TYPE OF RELIEF; AMENDING CHAPTER 52, TITLE 67,
26 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5242, IDAHO CODE, TO
27 PROVIDE FOR PRELIMINARY REVIEW AND TO PROVIDE FOR FACT-FINDING; AMEND-
28 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
29 67-5243, IDAHO CODE, TO PROVIDE FOR THE COMMENCEMENT OF CONTESTED CASES
30 AND TO PROVIDE A PROCEDURE FOR COMMENCEMENT; AMENDING CHAPTER 52, TITLE
31 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5244, IDAHO CODE,
32 TO PROVIDE A CONTESTED CASE PROCEDURE; AMENDING CHAPTER 52, TITLE 67,
33 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5245, IDAHO CODE, TO
34 PROVIDE FOR EVIDENCE IN CONTESTED CASES; AMENDING CHAPTER 52, TITLE
35 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5246, IDAHO CODE, TO
36 PROVIDE FOR A HEARING RECORD IN CONTESTED CASES; AMENDING CHAPTER 52,
37 TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5247, IDAHO
38 CODE, TO PROVIDE AN EMERGENCY ADJUDICATION PROCEDURE; AMENDING CHAP-
39 TER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5248,
40 IDAHO CODE, TO PROHIBIT EX PARTE COMMUNICATIONS, TO PROVIDE EXCEPTIONS
41 FOR EX PARTE COMMUNICATIONS, TO PROVIDE PROCEDURES IF PROHIBITED EX
42 PARTE COMMUNICATIONS OCCUR AND TO PROVIDE FOR DISQUALIFICATION; AMEND-
43 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
44 67-5250, IDAHO CODE, TO PROVIDE FOR SUBPOENAS; AMENDING CHAPTER 52,
45 TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5251, IDAHO

1 CODE, TO PROVIDE FOR DISCOVERY; AMENDING CHAPTER 52, TITLE 67, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 67-5252, IDAHO CODE, TO PROVIDE
3 FOR DEFAULT; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION
4 OF A NEW SECTION 67-5253, IDAHO CODE, TO PROVIDE FOR CONTESTED CASE OR-
5 DERS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW
6 SECTION 67-5254, IDAHO CODE, TO PROVIDE FOR AGENCY REVIEW OF CONTESTED
7 CASE ORDERS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION
8 OF A NEW SECTION 67-5256, IDAHO CODE, TO PROVIDE FOR RECONSIDERATION;
9 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
10 TION 67-5257, IDAHO CODE, TO PROVIDE FOR STAYS; AMENDING CHAPTER 52,
11 TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5258, IDAHO
12 CODE, TO PROVIDE FOR THE AVAILABILITY AND INDEXING OF FINAL ORDERS, TO
13 PROVIDE AN EXEMPTION FROM INDEXING CERTAIN FINAL ORDERS, TO PROVIDE FOR
14 THE DESIGNATION OF ORDERS AS PRECEDENT AND TO PROVIDE FOR THE INDEXING
15 OF GUIDANCE DOCUMENTS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
16 ADDITION OF A NEW SECTION 67-5259, IDAHO CODE, TO PROVIDE PROCEDURES
17 FOR ACTIONS AGAINST LICENSEES; AMENDING CHAPTER 52, TITLE 67, IDAHO
18 CODE, BY THE ADDITION OF A NEW SECTION 67-5260, IDAHO CODE, TO PROVIDE
19 FOR JUDICIAL REVIEW; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
20 ADDITION OF A NEW SECTION 67-5262, IDAHO CODE, TO PROVIDE FOR THE TIME
21 TO SEEK JUDICIAL REVIEW AND TO PROVIDE LIMITATIONS; AMENDING CHAPTER
22 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5263, IDAHO
23 CODE, TO PROVIDE FOR STAYS PENDING APPEAL; AMENDING CHAPTER 52, TITLE
24 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5264, IDAHO CODE,
25 TO PROVIDE FOR STANDING; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY
26 THE ADDITION OF A NEW SECTION 67-5265, IDAHO CODE, TO PROVIDE FOR THE
27 EXHAUSTION OF ADMINISTRATIVE REMEDIES; AMENDING CHAPTER 52, TITLE 67,
28 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5266, IDAHO CODE, TO
29 PROVIDE FOR THE RECORD ON JUDICIAL REVIEW AND TO PROVIDE EXCEPTIONS;
30 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW
31 SECTION 67-5267, IDAHO CODE, TO PROVIDE A STANDARD OF REVIEW; AMENDING
32 SECTION 67-5255, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE
33 PROVISIONS RELATING TO DECLARATORY RULINGS; AMENDING SECTION 67-5272,
34 IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE VENUE PROVISIONS;
35 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
36 TION 67-5270, IDAHO CODE, TO PROVIDE FOR THE CREATION OF THE OFFICE OF
37 ADMINISTRATIVE HEARINGS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY
38 THE ADDITION OF A NEW SECTION 67-5271, IDAHO CODE, TO PROVIDE FOR THE
39 CHIEF ADMINISTRATIVE HEARING OFFICER; AMENDING CHAPTER 52, TITLE 67,
40 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5272, IDAHO CODE, TO PRO-
41 VIDE FOR HEARING OFFICERS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE,
42 BY THE ADDITION OF A NEW SECTION 67-5273, IDAHO CODE, TO PROVIDE FOR
43 COMPENSATION AND CLASSIFICATION; AMENDING CHAPTER 52, TITLE 67, IDAHO
44 CODE, BY THE ADDITION OF A NEW SECTION 67-5274, IDAHO CODE, TO PROVIDE
45 FOR DISQUALIFICATION; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
46 ADDITION OF A NEW SECTION 67-5275, IDAHO CODE, TO PROVIDE FOR AN ADVI-
47 SORY COUNCIL; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION
48 OF A NEW SECTION 67-5276, IDAHO CODE, TO PROVIDE FOR THE COOPERATION OF
49 AGENCIES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION
50 OF A NEW SECTION 67-5277, IDAHO CODE, TO PROVIDE FOR COST ESTIMATES

1 AND ASSESSMENT OF RECIPIENT AGENCIES; AMENDING SECTION 67-2601, IDAHO
 2 CODE, TO PROVIDE THAT THE DEPARTMENT OF SELF-GOVERNING AGENCIES SHALL
 3 INCLUDE THE OFFICE OF ADMINISTRATIVE HEARINGS AND TO MAKE A TECHNICAL
 4 CORRECTION; AMENDING SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT THE
 5 CHIEF ADMINISTRATIVE HEARING OFFICER AND HEARING OFFICERS IN THE OF-
 6 FICE OF ADMINISTRATIVE HEARINGS SHALL BE NONCLASSIFIED EMPLOYEES AND
 7 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-31-208, IDAHO CODE,
 8 TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 26-31-309, IDAHO
 9 CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-46-302,
 10 IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION
 11 28-46-404, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING
 12 SECTION 33-5209C, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND
 13 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 40-709A, IDAHO CODE,
 14 TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS;
 15 AMENDING SECTION 41-227, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES
 16 AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-328, IDAHO
 17 CODE, TO PROVIDE A CORRECT CODE REFERENCE, TO REMOVE SURPLUS VERBIAGE
 18 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-222, IDAHO CODE,
 19 TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-2509, IDAHO
 20 CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL COR-
 21 RECTION; AMENDING SECTION 58-122, IDAHO CODE, TO PROVIDE CORRECT CODE
 22 REFERENCES; AMENDING SECTION 67-2317, IDAHO CODE, TO PROVIDE A CORRECT
 23 CODE REFERENCE; AMENDING SECTION 67-5206, IDAHO CODE, TO PROVIDE COR-
 24 RECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING
 25 EFFECTIVE DATES AND PROVIDING A SUNSET DATE.

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

27 SECTION 1. That Section 67-5201, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 67-5201. DEFINITIONS. As used in this act:

30 (1) "Administrative code" means the Idaho administrative code estab-
 31 lished in this chapter.

32 (2) "Agency" means each state board, commission, department or officer
 33 authorized by law to make rules or to determine contested cases, but does not
 34 include the legislative or judicial branches, executive officers listed in
 35 section 1, article IV, of the constitution of the state of Idaho in the exer-
 36 cise of powers derived directly and exclusively from the constitution, the
 37 state militia or the state board of correction.

38 (3) "Agency action" means:

39 (a) ~~The whole or part~~ Issuance of a rule or order;

40 (b) The failure to issue a rule or order; or

41 (c) An agency's performance of, or failure to perform, any duty placed
 42 on it by law.

43 (4) "Agency decision" means an agency action in a proceeding other than
 44 rulemaking.

45 (5) "Agency head" means an individual or body of individuals in whom the
 46 ultimate legal authority of the agency is vested by any provision of law.

47 (56) "Bulletin" means the Idaho administrative bulletin established in
 48 this chapter.

1 (67) "Contested case" means a proceeding an adjudication proceeding
2 arising out of an agency decision or failure to issue an agency decision,
3 from which results in the issuance of an order an opportunity for an eviden-
4 tiary hearing is required by the federal constitution, a federal statute
5 or the constitution or a statute of this state. A contested case commences
6 when a request for a contested case proceeding is filed with the office of
7 administrative hearings under section 67-5243, Idaho Code.

8 (78) "Contested case order" means an order issued by a hearing officer
9 resolving issues in a contested case and includes all findings of fact and
10 conclusions of law upon which the order is based.

11 (9) "Coordinator" means the administrative rules coordinator pre-
12 scribed in section 67-5202, Idaho Code.

13 (810) "Document" means any executive order, notice, rule or statement
14 of policy of an agency.

15 (11) "Final order" means:

16 (a) A contested case order that is final as provided in sections 67-5253
17 and 67-5254, Idaho Code; or

18 (b) A declaratory ruling order that is a final agency action subject to
19 judicial review.

20 (912) "Final rule" means a rule that has been adopted by an agency under
21 the regular rulemaking process and is in effect.

22 (13) "Hearing officer" means an individual, appointed by the chief ad-
23 ministrative hearing officer of the office of administrative hearings pur-
24 suant to section 67-5271, Idaho Code.

25 (104) "License" means the whole or part of any agency permit, certifi-
26 cate, approval, registration, charter, or similar form of authorization re-
27 quired by law, but does not include a license required solely for revenue
28 purposes.

29 (145) "Official text" means the text of a document issued, prescribed,
30 or promulgated by an agency in accordance with this chapter, and is the only
31 legally enforceable text of such document. Judicial notice shall be taken
32 of all documents issued, prescribed, or promulgated in accordance with this
33 chapter.

34 (126) "Order" means an agency action of particular applicability that
35 determines the legal rights, duties, privileges, immunities, or other legal
36 interests of one (1) or morespecific persons. The granting of an applica-
37 tion for a license that is unconditional in respect to the license requested,
38 and that does not affect the rights of a third party who may have a right to
39 commence a contested case, is not an order.

40 (137) "Party" means each person or agency named or admitted as a party,
41 or properly seeking and entitled as of right to be admitted as a party.

42 (148) "Pending rule" means a rule that has been adopted by an agency un-
43 der the regular rulemaking process and remains subject to legislative re-
44 view.

45 (159) "Person" means any individual, partnership, corporation, associ-
46 ation, governmental subdivision or agency, or public or private organiza-
47 tion or entity of any character.

48 (20) "Preliminary review" means the receipt, collection, processing,
49 and analyzing of information, or other activity of an agency preparatory to
50 and including the making of an agency decision.

1 ~~(1621)~~ "Proposed rule" means a rule published in the bulletin as pro-
2 vided in section 67-5221, Idaho Code.

3 ~~(1722)~~ "Provision of law" means the whole or a part of the state or fed-
4 eral constitution, or of any state or federal:

5 (a) Statute; or

6 (b) Rule or decision of court.

7 ~~(1823)~~ "Publish" means to bring before the public by publication in the
8 bulletin or administrative code, by electronic means or as otherwise specif-
9 ically provided by law.

10 (24) "Record" means information that is inscribed on a tangible medium
11 or that is stored in an electronic or other medium and is retrievable in per-
12 ceivable form.

13 ~~(1925)~~ "Rule" means the whole or a part of an agency statement of general
14 applicability that has been promulgated in compliance with the provisions of
15 this chapter and that implements, interprets, or prescribes:

16 (a) Law or policy; or

17 (b) The procedure or practice requirements of an agency. The term in-
18 cludes the amendment, repeal, or suspension of an existing rule, but
19 does not include:

20 (i) Statements concerning only the internal management or in-
21 ternal personnel policies of an agency and not affecting private
22 rights of the public or procedures available to the public; or

23 (ii) Declaratory rulings issued pursuant to section 67-5232,
24 Idaho Code; or

25 (iii) Intra-agency memoranda; or

26 (iv) Any written statements given by an agency which pertain to
27 an interpretation of a rule or to the documentation of compliance
28 with a rule.

29 ~~(206)~~ "Rulemaking" means the process for formulation, adoption, amend-
30 ment or repeal of a rule.

31 ~~(217)~~ "Standard" means a manual, guideline, criterion, specification,
32 requirement, measurement or other authoritative principle providing a model
33 or pattern in comparison with which the correctness or appropriateness of
34 specified actions, practices or procedures may be determined.

35 ~~(228)~~ "Submitted for review" means that a rule has been provided to the
36 legislature for review at a regular or special legislative session as pro-
37 vided in section 67-5291, Idaho Code.

38 ~~(239)~~ "Temporary rule" means a rule authorized by the governor to be-
39 come effective before it has been submitted to the legislature for review and
40 which expires by its own terms or by operation of law no later than the con-
41 clusion of the next succeeding regular legislative session unless extended
42 or replaced by a final rule as provided in section 67-5226, Idaho Code.

43 SECTION 2. That Section 67-5240, Idaho Code, be, and the same is hereby
44 repealed.

45 SECTION 3. That Chapter 52, Title 67, Idaho Code, be, and the same is
46 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
47 ignated as Section 67-5240, Idaho Code, and to read as follows:

1 67-5240. CONTESTED CASE EXEMPTIONS. A proceeding by an agency, other
2 than the public utilities commission, the industrial commission, the de-
3 partment of water resources or the water resources board that may result in a
4 contested case order is governed by the provisions of this chapter, except
5 as provided by other provisions of law.

6 SECTION 4. That Section 67-5241, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 67-5241. INFORMAL DISPOSITION BY AGREEMENT. (1) ~~Unless prohibited by~~
9 ~~other provisions of law:~~

10 ~~(a) an agency or a presiding officer may decline to initiate a contested~~
11 ~~case;~~

12 ~~(b) any part of the evidence in a contested case may be received in writ-~~
13 ~~ten form if doing so will expedite the case without substantially preju-~~
14 ~~dicating the interests of any party;~~

15 ~~(c) Informal disposition by written agreement prior to filing a request~~
16 ~~for contested case proceeding by a party is not a contested case. Informal~~
17 ~~settlement of matters is to be encouraged.~~

18 ~~informal disposition may be made of any contested case by negotiation,~~
19 ~~stipulation, agreed settlement, or consent order. Informal settlement of~~
20 ~~matters is to be encouraged;~~

21 ~~(d) the parties may stipulate as to the facts, reserving the right to~~
22 ~~appeal to a court of competent jurisdiction on issues of law.~~

23 (2) ~~An agency or a presiding officer may request such additional in-~~
24 ~~formation as required to decide whether to initiate or to decide a contested~~
25 ~~case as provided in subsection (1) of this section~~ After filing of a request
26 for contested case, disposition of all or part of the issues in a case may
27 be made between the parties in a written agreement or a consent order. The
28 agreement or consent order must be filed with the office of administrative
29 hearings. If the agreement or consent order is a full disposition of all is-
30 ssues, a contested case order adopting the agreement or consent order shall be
31 signed by the hearing officer and shall be served upon the parties pursuant
32 to section 67-5253, Idaho Code.

33 (3) ~~If an agency or a presiding officer declines to initiate or decide~~
34 ~~a contested case under the provisions of this section, the agency or the of-~~
35 ~~ficer shall furnish a brief statement of the reasons for the decision to all~~
36 ~~persons involved. This subsection does not apply to investigations or in-~~
37 ~~quiries directed to or performed by law enforcement agencies defined in sec-~~
38 ~~tion 74-101(7), Idaho Code~~ If the agreement or consent order does not resolve
39 all of the issues, it shall not be final, but shall be incorporated into the
40 final contested case order resolving all of the issues.

41 (4) ~~The agency may not abdicate its responsibility for any informal~~
42 ~~disposition of a contested case. Disposition of a contested case as provided~~
43 ~~in this section is a final agency action~~ A contested case order based upon
44 agreement or consent order disposing of all the issues is subject to judicial
45 review when final, as any other final order, unless as part of the agreement
46 or consent order the right to judicial review has been expressly waived.

47 (5) Any disposition by agreement is a public record except as otherwise
48 exempt under chapter 1, title 74, Idaho Code, and any nondisclosure provi-
49 sion protecting nonexempt information is void as against public policy.

1 SECTION 5. That Sections [67-5242](#) through [67-5254](#), Idaho Code, be, and
2 the same are hereby repealed.

3 SECTION 6. That Sections [67-5270](#) and [67-5271](#), Idaho Code, be, and the
4 same are hereby repealed.

5 SECTION 7. That Sections [67-5273](#) through [67-5279](#), Idaho Code, be, and
6 the same are hereby repealed.

7 SECTION 8. That Chapter 52, Title 67, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
9 ignated as Section 67-5242, Idaho Code, and to read as follows:

10 67-5242. PRELIMINARY REVIEW -- EXCLUSION. (1) Except as otherwise
11 provided by law, the provisions of this act do not apply to an agency prelimi-
12 nary review until an order is issued, not issued within the time required by
13 law, or the agency fails to perform a duty required by law.

14 (2) Notwithstanding subsection (1) of this section, an agency may use,
15 and adopt by rule, provisions of this act for preliminary reviews consistent
16 with requirements of due process.

17 (3) If an agency determines that as part of a preliminary review the use
18 of a fact finder is beneficial or legally required, it has authority to as-
19 sign an employee or contract with a private individual or entity to perform
20 such fact-finding. Such fact finder shall not be from the office of adminis-
21 trative hearings, and any fact-finding shall be for the use of the agency in
22 making an agency decision, and is not binding in any way as findings of fact
23 in a contested case proceeding.

24 SECTION 9. That Chapter 52, Title 67, Idaho Code, be, and the same is
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
26 ignated as Section 67-5243, Idaho Code, and to read as follows:

27 67-5243. COMMENCEMENT OF CONTESTED CASES. (1) This section applies to
28 an emergency adjudication under section 67-5247, Idaho Code, except as oth-
29 erwise provided in that section.

30 (2) A contested case commences when a request for a contested proceed-
31 ing is filed as provided in this section by:

32 (a) A person who has received notice of an agency decision;

33 (b) A person challenging the failure of an agency to timely issue an
34 agency decision;

35 (c) A person challenging an emergency order issued pursuant to section
36 67-5247, Idaho Code, when the order is not included within the subject
37 matter of an existing contested case proceeding;

38 (d) An agency seeking to revoke, suspend, annul or withdraw an existing
39 license as provided in section 67-5259, Idaho Code; or

40 (e) An agency decision to take other adverse action against a person in
41 connection with which the person or the agency is entitled by law to an
42 opportunity for an evidentiary hearing.

43 (3) An agency shall give notice to a person of an agency decision that
44 would entitle the person to initiate a contested case proceeding. The no-
45 tice must be in writing, set forth the agency decision, inform the person

1 of the right, procedure and time limit to file a contested case request, and
2 provide a copy of the procedures governing contested cases. Within twenty-
3 eight (28) days of receipt of the notice provided for in this subsection, the
4 affected person may file a request for a contested case proceeding that sets
5 forth the grounds for the request for a contested case proceeding.

6 (4) A person or agency filing a request for a contested case proceeding
7 as provided in subsection (2) of this section shall file the request with the
8 office of administrative hearings. The request shall identify the matter
9 that is the subject of the request, including the agency and person or per-
10 sons that are parties, the nature of the contested case, and the grounds upon
11 which the matter is contested.

12 (5) A person may also file a request for a contested case proceeding
13 with the agency. The agency shall then, within seven (7) days of receipt of
14 the request for a contested case proceeding, file the request with the office
15 of administrative hearings.

16 (6) When a request for contested case proceeding is filed with the of-
17 fice of administrative hearings by a person, the office shall, within seven
18 (7) days of receipt of the request for contested case proceeding, forward a
19 copy of the same to the agency.

20 (7) When an agency files a request for a contested case proceeding, it
21 shall simultaneously serve a copy of the request upon the other parties.
22 When a request for contested case proceeding is filed by an agency with the
23 office of administrative hearings, the office shall, within seven (7) days
24 of receipt, forward a copy of the same to the other named parties giving no-
25 tice of filing of the request with the office.

26 (8) In a contested case proceeding initiated by a person, not later than
27 seven (7) days after the filing of the contested case proceeding request with
28 the office of administrative hearings, the office of administrative hear-
29 ings shall give notice to all parties that the case has been commenced. The
30 notice must contain:

31 (a) A statement that a case has been commenced that may result in an or-
32 der affecting the rights of the parties;

33 (b) A short and plain statement of the matters asserted in the request
34 for a contested case proceeding;

35 (c) A statement of the legal authority under which the hearing will be
36 held citing the statutes and any rules involved;

37 (d) The official file or other reference number and the name of the pro-
38 ceeding;

39 (e) The name, official title and mailing address of the hearing officer
40 and the name, official title, mailing address and telephone number of
41 the agency's representative;

42 (f) A statement that a party who fails to attend or participate in any
43 subsequent proceeding in the case may be held in default;

44 (g) A statement of the date, time, place and nature of the prehearing
45 conference or hearing, if any;

46 (h) The names and last known addresses of all parties and other persons
47 to which notice is being given; and

48 (i) Any other information that the hearing officer considers desirable
49 to expedite the proceedings.

1 SECTION 10. That Chapter 52, Title 67, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 67-5244, Idaho Code, and to read as follows:

4 67-5244. CONTESTED CASE PROCEDURE. (1) In a contested case, the hear-
5 ing officer shall give all parties a timely opportunity to file pleadings,
6 motions and objections. The hearing officer may give all parties the oppor-
7 tunity to file briefs, proposed findings of fact and conclusions of law, and
8 proposed contested case orders. The hearing officer, with the consent of all
9 parties, may refer the parties in a contested case to mediation or other dis-
10 pute resolution procedure.

11 (2) In a contested case, to the extent necessary for full disclosure of
12 all relevant facts and issues, the hearing officer shall give all parties the
13 opportunity to respond, present evidence and argument, conduct cross-exami-
14 nation and submit rebuttal evidence.

15 (3) Except as otherwise provided by law other than this act, the hear-
16 ing officer may conduct all or part of an evidentiary hearing or a prehearing
17 conference by telephone, television, video conference or other electronic
18 means. The hearing may be conducted by telephone or other method by which the
19 witnesses may not be seen only if all parties consent or the hearing officer
20 finds that this method will not impair reliable determination of the credi-
21 bility of testimony. Each party must be given an opportunity to attend, hear
22 and be heard at the proceeding as it occurs.

23 (4) Any part of the evidence in a contested case may be received in writ-
24 ten form if doing so will expedite the case without substantially prejudic-
25 ing the interests of any party.

26 (5) Except as otherwise provided by law or in subsection (6) of this
27 section, a hearing in a contested case must be open to the public. A hearing
28 conducted by telephone, television, video conference or other electronic
29 means is open to the public if members of the public have an opportunity to
30 attend the hearing at the place where the hearing officer is located or to
31 hear or see the proceeding as it occurs.

32 (6) A hearing officer may close a hearing to the public on a ground on
33 which a court of this state may close a judicial proceeding to the public or
34 pursuant to law of this state other than this act.

35 (7) Unless prohibited by law of this state other than this act, a party,
36 at the party's expense, may be advised or represented by counsel. If allowed
37 by administrative rule or statute, a party may be advised or represented by
38 another individual. A corporate or other business entity may be represented
39 by an officer, general partner or manager of the corporation or business en-
40 tity.

41 (8) A hearing officer shall ensure that a hearing record is created that
42 complies with section 67-5246, Idaho Code.

43 (9) The order in a contested case must be based on the hearing record
44 and contain a statement of the findings of fact and conclusions of law upon
45 which the order is based. The order must be prepared electronically and, on
46 request, made available in writing.

47 (10) The parties may stipulate as to the facts, reserving the right to
48 appeal to a court of competent jurisdiction on issues of law.

1 (11) Unless prohibited by law of this state other than this act, a hear-
2 ing officer may dispose of a contested case without a hearing by stipulation.

3 SECTION 11. That Chapter 52, Title 67, Idaho Code, be, and the same is
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
5 ignated as Section 67-5245, Idaho Code, and to read as follows:

6 67-5245. EVIDENCE IN CONTESTED CASES. The following rules apply in a
7 contested case:

8 (1) Except as otherwise provided in subsection (2) of this section, all
9 relevant evidence is admissible, including hearsay evidence, if it is of a
10 type commonly relied on by a reasonably prudent individual in the conduct of
11 the affairs of the individual.

12 (2) The hearing officer may exclude evidence with or without objection
13 if the evidence is irrelevant, immaterial, unduly repetitious, or exclud-
14 able on constitutional or statutory grounds or on the basis of an evidentiary
15 privilege recognized in the courts of this state.

16 (3) If the hearing officer excludes evidence with or without objection,
17 the offering party may make an offer of proof before further evidence is pre-
18 sented or at a later time determined by the hearing officer.

19 (4) Documentary evidence may be received in the form of a copy if the
20 original is not readily available. On request, parties must be given an op-
21 portunity to compare the copy with the original.

22 (5) Testimony must be made under oath or affirmation.

23 (6) Evidence must be made part of the hearing record of the case. Infor-
24 mation or evidence may not be considered in determining the case unless it is
25 part of the hearing record. If the hearing record contains information that
26 is confidential, the hearing officer may conduct a closed hearing to discuss
27 the information, issue necessary protective orders, and seal all or part of
28 the hearing record.

29 (7) The hearing officer may take official notice of all facts of which
30 judicial notice may be taken and of scientific, technical or other facts
31 within the specialized knowledge of the agency. A party must be notified at
32 the earliest practicable time of the facts proposed to be noticed and their
33 source, including any staff memoranda or data. The party must be afforded
34 an opportunity to contest any officially noticed fact before the decision
35 becomes final.

36 SECTION 12. That Chapter 52, Title 67, Idaho Code, be, and the same is
37 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
38 ignated as Section 67-5246, Idaho Code, and to read as follows:

39 67-5246. HEARING RECORD IN CONTESTED CASES. (1) The hearing officer
40 and office of administrative hearings shall cause the hearing to be recorded
41 at the agency's expense. Any party, at that party's expense, may have a
42 transcript prepared or may cause additional recordings to be made during the
43 hearing if the making of the additional recording does not cause distraction
44 or disruption.

45 (2) The office of administrative hearings shall maintain the hearing
46 record in each contested case for a period of not less than six (6) months

1 after the expiration of the last date for judicial review, unless otherwise
2 provided by law.

3 (3) The hearing record must contain:

4 (a) A recording of each hearing;

5 (b) Notice of each hearing;

6 (c) Any prehearing order;

7 (d) Any motion, pleading, brief, request and intermediate ruling;

8 (e) Evidence admitted;

9 (f) A statement of any matter officially noticed;

10 (g) Any proffer of proof and objection and ruling thereon;

11 (h) Any proposed finding, requested order, and exception;

12 (i) Any transcript of the proceeding;

13 (j) Any contested case order and any orders preliminary thereto, or any
14 order on reconsideration; and

15 (k) Any matter placed on the record after an ex parte communication un-
16 der section 67-5248, Idaho Code.

17 (4) The hearing record constitutes the exclusive basis for hearing of-
18 ficer action in a contested case.

19 SECTION 13. That Chapter 52, Title 67, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 67-5247, Idaho Code, and to read as follows:

22 67-5247. EMERGENCY ADJUDICATION PROCEDURE. (1) If otherwise autho-
23 rized by law of this state, an agency may take action and issue an order to
24 address an immediate danger to the public health or safety. The agency shall
25 take only such actions as are necessary to prevent or avoid the immediate
26 danger to the public health or safety that justifies the use of an emergency
27 order.

28 (2) Before issuing an order under this section, an agency, if practica-
29 ble, shall give notice and an opportunity to be heard to the person to which
30 the agency action is directed. The notice of the hearing and the hearing may
31 be oral or written and may be by telephone, facsimile or other electronic
32 means.

33 (3) An order issued under this section must briefly explain the factual
34 and legal reasons for using emergency adjudication procedures. The order is
35 effective when signed by the agency head or the designee of the agency head.

36 (4) As soon as practicable, but not more than seven (7) days after is-
37 suance of an order, an agency shall give notice to the person to which the
38 agency action is directed that an order has been issued. The notice shall
39 contain the information required under section 67-5243 (3), Idaho Code, and
40 shall contain a copy of the emergency order.

41 (5) A person receiving a notice of issuance of an emergency order may
42 within twenty-one (21) days file a request for a contested case proceeding
43 pursuant to section 67-5243, Idaho Code, if the emergency order is not oth-
44 erwise part of an existing contested case proceeding. The office of adminis-
45 trative hearings shall, as soon as practicable, but no more than thirty (30)
46 days after the filing of the request for contested case proceeding, conduct
47 a hearing following the procedure under section 67-5244, Idaho Code, to de-
48 termine the issues underlying the emergency order. The time for hearing may
49 be extended upon request of the person against whom the order was issued. The

1 hearing officer may shorten times and limit discovery, which in his discre-
2 tion are consistent with both an expedited hearing and equity. In the event
3 that a contested case proceeding was previously initiated regarding the sub-
4 ject matter of the emergency order, the hearing officer shall set an expe-
5 dited hearing only with regard to the issuance of the emergency order follow-
6 ing procedures consistent with this section.

7 (6) An order issued under this section, unless stayed after hearing or
8 otherwise, may be effective for not longer than one hundred twenty (120) days
9 or until the expiration date of any order issued under subsection (1) of this
10 section, whichever is shorter. Provided however, an emergency order may be
11 extended for a reasonable time upon motion of the agency with notice to all
12 parties, and for good cause determined after hearing by the hearing officer.

13 SECTION 14. That Chapter 52, Title 67, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 67-5248, Idaho Code, and to read as follows:

16 67-5248. EX PARTE COMMUNICATIONS. (1) Except as otherwise provided in
17 subsection (2) of this section, while a contested case is pending, the hear-
18 ing officer may not make to or receive from any person any communication con-
19 cerning the case without notice and opportunity for all parties to partici-
20 pate in the communication. For the purpose of this section, a contested case
21 is considered pending upon the filing of a request for contested case pro-
22 ceeding with the office of administrative hearings.

23 (2) A hearing officer may communicate about a pending contested case
24 with any person if the communication is required for the disposition of ex
25 parte matters authorized by statute or if it concerns an uncontested proced-
26 ural issue.

27 (3) If a communication prohibited by this section is made, the hearing
28 officer shall notify all parties of the prohibited communication and permit
29 parties to respond in a record not later than fourteen (14) days after the
30 notice is given. For good cause, the hearing officer may permit additional
31 testimony in response to the prohibited communication.

32 (4) If necessary to eliminate the effect of a communication received in
33 violation of this section, a hearing officer may be disqualified under sec-
34 tion 67-5274, Idaho Code, the parts of the record pertaining to the communi-
35 cation may be sealed by protective order, or other appropriate relief may be
36 granted, including an adverse ruling on the merits of the case or dismissal
37 of the application.

38 SECTION 15. That Chapter 52, Title 67, Idaho Code, be, and the same is
39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
40 ignated as Section 67-5250, Idaho Code, and to read as follows:

41 67-5250. SUBPOENAS. (1) On request by a party in a contested case, the
42 hearing officer, on a showing of general relevance and reasonable scope of
43 the evidence sought for use at the hearing, shall issue a subpoena for the
44 attendance of a witness and the production of books, records and other evi-
45 dence.

46 (2) Unless otherwise provided by law or agency rule, a subpoena issued
47 under subsection (1) of this section shall be served and, on application to

1 the court by a party or the agency, enforced in the manner provided by law for
2 the service and enforcement of a subpoena in a civil action.

3 (3) Witness fees shall be paid by the party requesting a subpoena in the
4 manner provided by law for witness fees in a civil action.

5 (4) The provisions of this section shall provide the exclusive method
6 for the issuance of subpoenas in all contested cases.

7 SECTION 16. That Chapter 52, Title 67, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
9 ignated as Section 67-5251, Idaho Code, and to read as follows:

10 67-5251. DISCOVERY. (1) In this section, "statement" includes a
11 record of a person's written statement signed by the person and a record that
12 summarizes an oral statement made by the person.

13 (2) Except as otherwise provided for in an emergency hearing under
14 section 67-5247, Idaho Code, a party, on written notice to another party
15 at least thirty (30) days before an evidentiary hearing, unless otherwise
16 ordered by the hearing officer under this section, may:

17 (a) Obtain the names and addresses of witnesses the other party will
18 present at the hearing to the extent known to the other party; and

19 (b) Inspect and copy any of the following materials in the possession,
20 custody or control of the other party:

21 (i) Statements of parties and witnesses proposed to be called by
22 the other party;

23 (ii) All records, including reports of mental, physical, and
24 blood examinations, and other evidence the other party proposes to
25 offer;

26 (iii) Investigative reports made by or on behalf of the agency or
27 other party pertaining to the subject matter of the adjudication;

28 (iv) Statements of expert witnesses proposed to be called by the
29 other party;

30 (v) Any exculpatory material in the possession of the agency; and

31 (vi) Other materials for good cause.

32 (3) Parties to a contested case have a duty to supplement responses pro-
33 vided under subsection (2) of this section to include information thereafter
34 acquired, to the extent that the information will be relied on in the hear-
35 ing.

36 (4) On request, the hearing officer may issue a protective order for
37 any material for which discovery is sought under this section that is exempt,
38 privileged, or otherwise made confidential or protected from disclosure by
39 law of this state other than this act, and material, the disclosure of which
40 would result in annoyance, embarrassment, oppression or undue burden or ex-
41 pense to any person.

42 (5) On request, the hearing officer may issue an order compelling dis-
43 covery for refusal to comply with a discovery request unless good cause ex-
44 ists for refusal. Failure to comply with the order may be enforced according
45 to the rules of civil procedure.

46 (6) On request and for good cause, the hearing officer may issue an or-
47 der authorizing additional discovery tools allowed under the Idaho rules of
48 civil procedure.

1 SECTION 17. That Chapter 52, Title 67, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 67-5252, Idaho Code, and to read as follows:

4 67-5252. DEFAULT. (1) Unless otherwise provided by law of this state
5 other than this act, if a party without good cause fails to attend or partic-
6 ipate in a prehearing conference or hearing in a contested case, the hearing
7 officer may issue a default order.

8 (2) If a default order is issued, the hearing officer may conduct any
9 further proceedings necessary to complete the adjudication without the de-
10 faulting party and shall determine all issues in the adjudication, including
11 those affecting the defaulting party, and issue a contested case order.

12 (3) A contested case order issued against a defaulting party may be
13 based on the defaulting party's admissions or other evidence that may be used
14 without notice to the defaulting party. If the burden of proof is on the
15 defaulting party to establish that the party is entitled to the agency action
16 sought, the hearing officer may issue a contested case order without taking
17 evidence.

18 (4) Not later than sixty (60) days after notice to a party subject to
19 a default order that any resulting contested case order has been rendered
20 against the party, the party may request the hearing officer to vacate the
21 contested case order. If good cause is shown for the party's failure to
22 appear, the hearing officer shall vacate the contested case order and, af-
23 ter proper service of notice, conduct another evidentiary hearing. If good
24 cause is not shown for the party's failure to appear, the hearing officer
25 shall deny the motion to vacate.

26 SECTION 18. That Chapter 52, Title 67, Idaho Code, be, and the same is
27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
28 ignated as Section 67-5253, Idaho Code, and to read as follows:

29 67-5253. CONTESTED CASE ORDERS. (1) A contested case order must sep-
30 arately state findings of fact and conclusions of law on all material is-
31 sues of fact, law, or discretion, the remedy prescribed, and, if applica-
32 ble, the action taken on a request for a stay. The hearing officer may per-
33 mit a party to submit proposed findings of fact and conclusions of law. A
34 contested case order must state any circumstances under which the contested
35 case order, without further notice, may become a final order.

36 (2) Findings of fact must be based on the evidence and matters offi-
37 cially noticed in the hearing record in the contested case.

38 (3) A contested case order is issued under this section when it is
39 signed by the hearing officer.

40 (4) A contested case order must be served by the office of administra-
41 tive hearings in a record on each party and the agency head not later than
42 sixty (60) days after the hearing ends, the record closes, or memoranda,
43 briefs, or proposed findings are submitted, whichever is latest. The hear-
44 ing officer may extend the time by stipulation of the parties or upon motion
45 and finding of good cause. The contested case order shall be accompanied by
46 proof of service stating the service date, each party who was served and the
47 method of service.

1 (5) A contested case order is final twenty-eight (28) days after its
2 service date unless reconsideration is granted under section 67-5256, Idaho
3 Code, or if there is an agency review under section 67-5254, Idaho Code.

4 (6) The hearing officer shall attach to the contested case order the
5 available procedures and time limits for seeking reconsideration or other
6 administrative relief and must state the time limits for seeking judicial
7 review of the contested case order.

8 SECTION 19. That Chapter 52, Title 67, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 67-5254, Idaho Code, and to read as follows:

11 67-5254. AGENCY REVIEW OF CONTESTED CASE ORDER. (1) An agency head may
12 review a contested case order before the order is final. If the agency head
13 decides to review a contested case order, the agency head shall give notice
14 in a record to the parties and the administrative hearing officer that he in-
15 tends to review the order. A notice of review of a contested case order by
16 an agency head must be filed with the office of administrative hearings not
17 later than twenty-eight (28) days after the service date of the hearing of-
18 ficer's order. The agency head shall also contemporaneously serve a copy of
19 the notice of review on the parties. The office of administrative hearings
20 shall serve notice within three (3) days to all parties that a notice of re-
21 view has been filed by the agency head, and the date of the filing.

22 (2) A party may request an agency head to review a contested order be-
23 fore it is final. The party shall serve a request for review upon the office
24 of administrative hearings. If the request is timely, the office of admin-
25 istrative hearings shall serve the request within three (3) days upon the
26 agency head, with notice of service to all parties. The agency head shall
27 have fourteen (14) days from the service of the request for review upon the
28 agency head to file a notice with the office of administrative hearings with
29 service upon the other parties either accepting or declining the request for
30 review. If no timely notice accepting or declining the review is filed by
31 the agency head, the request shall be deemed declined. If the request is de-
32 clined, the contested case order shall be final from the date of the notice of
33 or last day for declining the review or twenty-eight (28) days after filing
34 of the contested case order, whichever is later. If the agency head accepts
35 the request for review, the time for review under subsection (6) of this sec-
36 tion commences on the date of the filing of the notice of acceptance of the
37 request for review.

38 (3) If a request for review is not filed or the agency head does not
39 elect to review the contested case order within the prescribed time limit,
40 the order becomes a final order as provided in section 67-5253 (5), Idaho
41 Code.

42 (4) A notice of agency review or a request for agency review may not
43 be filed during the pendency of a request for reconsideration under section
44 67-5256, Idaho Code. If request for reconsideration is filed after a notice
45 of agency review, the request for reconsideration takes precedence and shall
46 be decided first by the hearing officer. If the reconsideration is granted,
47 a pending notice shall be deemed moot, subject to filing of a new notice fol-
48 lowing filing of the reconsidered contested case order. If the request for
49 reconsideration is denied, the agency head review process shall proceed as

1 if the request for reconsideration had not been filed with any relevant time
2 periods tolled during the pendency of the request for reconsideration.

3 (5) When reviewing a contested case order, the agency head shall ex-
4 ercise the decision-making power that the agency head would have had if the
5 agency head had conducted the hearing that produced the order, except that
6 the agency head shall not modify findings of fact.

7 (6) If an agency head reviews a contested case order, the agency head
8 shall issue a final order disposing of the proceeding not later than sixty
9 (60) days after the notice to review the contested case order was filed with
10 the office of administrative hearings.

11 (7) An order issued after agency head review of a contested case or-
12 der must identify any difference between the final order and the contested
13 case order and must state the law that supports any difference in legal
14 conclusions and the policy reasons that support any difference in the ex-
15 ercise of discretion. Findings of fact shall not be modified in the review
16 process. A final order under this section must include, or incorporate by
17 express reference to the contested case order, the matters required by sec-
18 tion 67-5253(1), Idaho Code. The agency head shall file the order with the
19 office of administrative hearings, which order shall be final upon filing,
20 and which shall be a final contested case order. The agency head shall also
21 simultaneously serve the parties with a copy of the final order.

22 SECTION 20. That Chapter 52, Title 67, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 67-5256, Idaho Code, and to read as follows:

25 67-5256. RECONSIDERATION. (1) A party, not later than fourteen (14)
26 days after the service date of a contested case order, may file a request for
27 reconsideration with the office of administrative hearings that states the
28 specific grounds on which relief is requested.

29 (2) If a request for reconsideration is timely filed, and if the re-
30 quester has complied with procedural rules for reconsideration, the time for
31 filing a request for judicial review does not begin until the hearing officer
32 fully disposes of the request for reconsideration as provided in subsection
33 (3) of this section.

34 (3) Not later than twenty-one (21) days after a request is filed under
35 subsection (1) of this section, the hearing officer shall issue a written or-
36 der denying the request, granting the request and modifying the contested
37 case order, or granting the request and setting the matter for further pro-
38 ceedings. The parties may extend the time by filing a stipulation for exten-
39 sion of time before the expiration of the twenty-one (21) days. If the hear-
40 ing officer fails to act upon the request within the twenty-one (21) days or
41 extension thereof, the request is deemed denied. The tolling under subsec-
42 tion (2) of this section ends on the date the request is deemed denied.

43 SECTION 21. That Chapter 52, Title 67, Idaho Code, be, and the same is
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
45 ignated as Section 67-5257, Idaho Code, and to read as follows:

46 67-5257. STAY. Except as otherwise provided by law of this state other
47 than this act, a party, not later than seven (7) days after the service date

1 of the final order, may request the agency to stay a final order pending judi-
2 cial review. The agency may grant the request for a stay pending judicial re-
3 view if the agency finds that justice requires. The agency may grant or deny
4 the request for stay of the order before, on, or after the effective date of
5 the order.

6 SECTION 22. That Chapter 52, Title 67, Idaho Code, be, and the same is
7 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
8 ignated as Section 67-5258, Idaho Code, and to read as follows:

9 67-5258. AVAILABILITY OF ORDERS -- INDEX -- INDEXING OF GUIDANCE DOC-
10 UMENTS. (1) Except as otherwise provided in subsections (2) and (3) of this
11 section, an agency shall create an index of all final orders in contested
12 cases and make the index and all final orders available for public inspection
13 and copying, at cost, in its principal offices.

14 (2) Final orders that are exempt, privileged, or otherwise made confi-
15 dential or protected from disclosure by the public records law of this state
16 are not public records and may not be indexed.

17 (3) An agency may not rely on a final order adverse to a party other than
18 the agency as precedent in future adjudications, unless the agency desig-
19 nates the order as a precedent and the order has been published, placed in an
20 index, and made available for public inspection.

21 (4) Unless otherwise prohibited by any provision of law, each agency
22 shall index by subject all agency guidance documents. The index and the
23 guidance documents shall be available for public inspection and copying at
24 cost in the main office and each regional or district office of the agency.
25 As used in this section, "agency guidance" means all written documents,
26 other than rules, orders, and pre-decisional material, that are intended to
27 guide agency actions affecting the rights or interests of persons outside
28 the agency. "Agency guidance" shall include memoranda, manuals, policy
29 statements, interpretations of law or rules, and other materials that are
30 of general applicability, whether prepared by the agency alone or jointly
31 with other persons. The indexing of a guidance document does not give that
32 document the force and effect of law or other precedential authority.

33 (5) If the index and order or document is publicly available on an
34 agency website, the obligation to provide copies is deemed satisfied.

35 SECTION 23. That Chapter 52, Title 67, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 67-5259, Idaho Code, and to read as follows:

38 67-5259. LICENSES. (1) If a licensee has made timely and sufficient
39 application for the renewal of a license or a new license for any activity
40 of a continuing nature, the existing license does not expire until the agency
41 takes final action on the application and, if the application is denied or
42 the terms of the new license are limited, until the last day for seeking re-
43 view of the agency order or a later date fixed by the reviewing court.

44 (2) Before an agency institutes proceedings to revoke, suspend, annul
45 or withdraw a license, the agency shall notify the licensee of: (a) the facts
46 or conduct that warrants the intended action; and (b) provide the licensee
47 with any options available to cure deficiencies. The agency shall also give

1 the licensee a reasonable opportunity to show compliance with all lawful re-
2 quirements for the retention of the license.

3 (3) A proceeding to revoke, suspend, annul or withdraw a license is a
4 contested case and shall be commenced in accordance with section 67-5243,
5 Idaho Code.

6 (4) If the agency finds that immediate danger to the public health or
7 safety requires emergency action in connection with continued use of the li-
8 cense by the licensee, an emergency order may be issued in accordance with
9 section 67-5247, Idaho Code, and shall be filed together with a request for a
10 contested case proceeding. The emergency order shall be reviewed in accor-
11 dance with the provisions of section 67-5247, Idaho Code, as part of the con-
12 tested case.

13 (5) A revocation, suspension, annulment, or withdrawal of a license
14 that is in conflict with the provisions of this section shall be null, void
15 and of no force and effect.

16 SECTION 24. That Chapter 52, Title 67, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 67-5260, Idaho Code, and to read as follows:

19 67-5260. RIGHT TO JUDICIAL REVIEW -- FINAL AGENCY ACTION REVIEW-
20 ABLE. (1) In this section and sections 67-5262 through 67-5267, Idaho Code,
21 "final agency action" means a final order or an agency action that imposes an
22 obligation, grants or denies a right, confers a benefit, or determines a le-
23 gal relationship. The term includes a disposition by agreement as provided
24 in section 67-5241, Idaho Code. The term does not include agency action that
25 is a failure to act unless in the form of a contested case order that is final.

26 (2) Except to the extent that a statute of this state other than this act
27 limits or precludes judicial review, a person who meets the requirements of
28 this section is entitled to judicial review of a final agency action.

29 (3) A person entitled to judicial review of a final agency action under
30 subsection (2) of this section is entitled to judicial review of an agency
31 action that is not final if postponement of judicial review would result in
32 an inadequate remedy or irreparable harm that outweighs the public benefit
33 derived from postponing judicial review.

34 (4) A court may compel an agency to take action that is unlawfully with-
35 held or unreasonably delayed.

36 SECTION 25. That Chapter 52, Title 67, Idaho Code, be, and the same is
37 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
38 ignated as Section 67-5262, Idaho Code, and to read as follows:

39 67-5262. TIME TO SEEK JUDICIAL REVIEW OF AGENCY ACTION -- LIMITA-
40 TIONS. (1) A petition for judicial review of a temporary or final rule may be
41 filed at any time, except as limited by section 67-5231, Idaho Code.

42 (2) A petition for judicial review of a final order must be filed within
43 twenty-eight (28) days of the service date of the final order, or, if recon-
44 sideration is sought, within twenty-eight (28) days after the service date
45 of the decision thereon. A cross-petition for judicial review may be filed
46 within fourteen (14) days after a party is served with a copy of the notice of
47 the petition for judicial review.

1 (3) A petition for judicial review of a final agency action other than
2 a rule or final order must be filed within twenty-eight (28) days of the
3 agency action, except as provided by other provision of law. The time for
4 filing a petition for review shall be extended during the pendency of the
5 petitioner's timely attempts to exhaust administrative remedies, if the
6 attempts are clearly not frivolous or repetitious. A cross-petition for ju-
7 dicial review may be filed within fourteen (14) days after a party is served
8 with a copy of the notice of the petition for judicial review.

9 (4) The time for seeking judicial review under this section is tolled
10 during any time a party pursues an administrative remedy before the agency,
11 which remedy must be exhausted as a condition of judicial review.

12 (5) A party may not petition for judicial review while seeking recon-
13 sideration under section 67-5256, Idaho Code. During the time a petition for
14 reconsideration is pending before an agency, the time for seeking judicial
15 review in subsection (1) of this section is tolled.

16 SECTION 26. That Chapter 52, Title 67, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 67-5263, Idaho Code, and to read as follows:

19 67-5263. STAYS PENDING APPEAL. A petition for judicial review does not
20 automatically stay an agency decision. A challenging party may petition
21 the reviewing court for a stay on the same basis as stays are granted under
22 the Idaho rules of civil procedure, and the reviewing court may grant a stay
23 regardless of whether the challenging party first sought a stay from the
24 agency.

25 SECTION 27. That Chapter 52, Title 67, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 67-5264, Idaho Code, and to read as follows:

28 67-5264. STANDING. A person has standing to obtain judicial review of
29 a final agency action if the person:

30 (1) Is a party in a contested case proceeding who has standing to obtain
31 judicial review of a final order in the contested case;

32 (2) Is a party to a declaratory ruling which is a final agency action
33 under section 67-5268, Idaho Code; or

34 (3) Otherwise satisfies applicable Idaho law conferring standing.

35 SECTION 28. That Chapter 52, Title 67, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 67-5265, Idaho Code, and to read as follows:

38 67-5265. EXHAUSTION OF ADMINISTRATIVE REMEDIES. (1) Subject to sub-
39 section (3) of this section, or law of this state other than this act, that
40 provides that a person need not exhaust administrative remedies, a person
41 may file a request for judicial review under this act only after exhausting
42 all administrative remedies available within the agency whose action is be-
43 ing challenged and within any other agency authorized to exercise adminis-
44 trative review.

1 (2) Filing a request for reconsideration or a stay of proceedings is not
2 a prerequisite for seeking judicial review.

3 (3) The court may relieve a requester of the requirement to exhaust any
4 or all administrative remedies to the extent the administrative remedies are
5 inadequate or the requirement would result in irreparable harm.

6 SECTION 29. That Chapter 52, Title 67, Idaho Code, be, and the same is
7 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
8 ignated as Section 67-5266, Idaho Code, and to read as follows:

9 67-5266. RECORD ON JUDICIAL REVIEW -- EXCEPTIONS. (1) If the hearing
10 officer was required by the provisions of this act to maintain a record dur-
11 ing the proceeding that gave rise to the action under review, the court re-
12 view is confined to that record and to matters arising from that record.

13 (2) In any case to which subsection (1) of this section does not apply,
14 the record for review consists of the unprivileged materials that the hear-
15 ing officer or agency decision-maker directly or indirectly considered or
16 that were submitted for consideration by any person in connection with the
17 action under review, including information that is adverse to the agency's
18 position. If the agency action was ministerial or was taken on the basis of a
19 minimal or no administrative record, the court may receive evidence relating
20 to the agency's basis for taking the action.

21 (3) In any case to which subsection (1) of this section does not apply,
22 if a challenging party makes a substantial showing of need, the court may al-
23 low discovery or other evidentiary proceedings and consider evidence out-
24 side the record to:

25 (a) Ensure that the record is complete as required by this act and other
26 applicable law;

27 (b) Adjudicate allegations of procedural error not disclosed by the
28 record; or

29 (c) Prevent manifest injustice.

30 (4) Notwithstanding the provisions of subsection (1) of this section,
31 if, before the date set for hearing, application is made to the court for
32 leave to present additional evidence and it is shown to the satisfaction of
33 the court that the additional evidence is material, relates to the validity
34 of the action, and that there were good reasons for failure to present it in
35 the proceeding before the hearing officer, the court may remand the matter
36 to the hearing officer with directions that the hearing officer receive ad-
37 ditional evidence and conduct additional fact-finding. The hearing officer
38 may modify his action by reason of the additional evidence and shall file any
39 modifications, new findings, or decisions with the reviewing court.

40 SECTION 30. That Chapter 52, Title 67, Idaho Code, be, and the same is
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
42 ignated as Section 67-5267, Idaho Code, and to read as follows:

43 67-5267. STANDARD OF REVIEW. Except as provided by law of this state
44 other than this act, in judicial review of a final agency order, the follow-
45 ing rules apply:

46 (1) When the agency was required by the provisions of this chapter or by
47 other provisions of law to issue a final agency order, the court shall affirm

1 the final agency order unless the court finds that the findings, inferences,
2 conclusions, or decisions are:

- 3 (a) In violation of constitutional or statutory provisions;
4 (b) In excess of statutory authority;
5 (c) Made upon unlawful procedure;
6 (d) Not supported by substantial evidence on the record as a whole; or
7 (e) Arbitrary, capricious, or an abuse of discretion.
8 (2) The court shall affirm, modify or set aside the final agency order,
9 in whole or in part, and may remand for further proceedings as necessary.

10 SECTION 31. That Section 67-5255, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 67-5255~~68~~. DECLARATORY RULINGS BY AGENCIES. (1) Any person may
13 ~~petition request~~ an agency for a declaratory ruling as to the applicability
14 of any order issued by the agency under a set of given or stipulated facts.

15 (2) ~~A petition for a declaratory ruling does not preclude an agency from~~
16 ~~initiating a contested case in the matter.~~

17 ~~(3)~~ A declaratory ruling issued by an agency under this section is a fi-
18 nal agency action.

19 SECTION 32. That Section 67-5272, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 67-5272~~69~~. VENUE -- FORM OF ACTION. (1) Except when required by other
22 provision of law, proceedings for judicial review or declaratory judgment
23 regarding final agency actions are instituted by filing a petition in the
24 district court of the county in which:

- 25 (a) the hearing was held; or
26 (b) the final agency action was taken; or
27 (c) the aggrieved party resides or operates its principal place of
28 business in Idaho; or
29 (d) the real property or personal property that was the subject of the
30 agency decision is located.

31 (2) When two (2) or more petitions for judicial review of the same
32 agency action are filed in different counties or are assigned to different
33 district judges in the same county, upon motion filed by any party to any
34 of the proceedings for judicial review of the same agency action, the sep-
35 arate consideration of the petitions in different counties or by different
36 district judges shall be stayed. The administrative judge in the judicial
37 district in which the first petition was filed, after appropriate consul-
38 tation with the affected district judges and the affected administrative
39 judges, shall then order consolidation of the judicial review of the peti-
40 tions before one (1) district judge in one (1) county in which a petition for
41 judicial review was properly filed, at which time the stay shall be lifted.

42 SECTION 33. That Chapter 52, Title 67, Idaho Code, be, and the same is
43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
44 ignated as Section 67-5270, Idaho Code, and to read as follows:

1 67-5270. CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS -- POWERS AND
2 DUTIES. (1) There is hereby created in the department of self-governing
3 agencies the office of administrative hearings.

4 (2) The office of administrative hearings shall:

5 (a) Conduct all contested case proceedings as provided in this act;

6 (b) Subject to section 67-5242(3), Idaho Code, conduct such hearings,
7 mediations and arbitrations not required by this chapter if requested
8 by agencies at such monetary rates as established by the office; and

9 (c) Promulgate rules pursuant to the procedures set forth in this chap-
10 ter to implement provisions relating to duties and actions authorized
11 under this chapter.

12 (3) The office of administrative hearings shall be subject to audit in
13 the same manner as other agencies of the state.

14 SECTION 34. That Chapter 52, Title 67, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 67-5271, Idaho Code, and to read as follows:

17 67-5271. CHIEF ADMINISTRATIVE HEARING OFFICER -- APPOINTMENT -- QUAL-
18 IFICATIONS -- POWERS AND DUTIES -- REMOVAL. (1) A chief administrative hear-
19 ing officer shall be appointed on a nonpartisan basis by the governor, and
20 confirmed by the senate, to serve a six (6) year term. A person may serve mul-
21 tiple terms. Provided however, there is no right to reappointment.

22 (2) A chief administrative hearing officer shall:

23 (a) Conduct contested case proceedings as provided for in this act;

24 (b) Devote full time to the duties of the office, shall not engage in
25 the practice of law and shall not hold any other public or private sector
26 position except for volunteer positions which are not inconsistent with
27 his duties as the chief hearing officer;

28 (c) Serve as the administrator of the office;

29 (d) Subject to applicable law and regulation, appoint, supervise and
30 remove hearing officers and staff as he deems appropriate, and as is
31 consistent with budgetary authorization and the duties and standards
32 required of such positions;

33 (e) Promulgate rules adopting a code of conduct for the chief adminis-
34 trative hearing officer and all hearing officers, and monitor hearing
35 officer compliance with such code of conduct;

36 (f) Protect and ensure the decisional independence of hearing offi-
37 cers;

38 (g) Make training available to hearing officers;

39 (h) Monitor the quality of all contested case proceedings, and any
40 other hearings, mediations and arbitrations conducted by the office of
41 administrative hearings;

42 (i) Submit a written report on the activities of the office, the quality
43 of its work, its compliance with the code of conduct, and such other mat-
44 ters as he deems appropriate for the immediately preceding fiscal year
45 to the governor, the judiciary, rules and administration committee of
46 the house of representatives, the judiciary and rules committee of the
47 senate and to the advisory council to the office of administrative hear-
48 ings on or before the first day of each legislative session;

1 (j) As he deems appropriate, create specialized subject matter divi-
2 sions within the office;

3 (k) At his discretion, when cost effective and necessary for expedi-
4 tious and equitable process, retain independent contractor hearing of-
5 ficers at such compensation rates as he shall determine necessary and
6 reasonable within budgetary authorization;

7 (l) Hire and manage hearing officers and such support staff as may be
8 reasonably necessary for operations of the office of administrative
9 hearings, including staff support for the advisory council to the of-
10 fice of administrative hearings;

11 (m) Purchase or lease necessary office space, furnishings, equipment
12 and supplies for the proper functioning of the office of administrative
13 hearings;

14 (n) Contract with agencies to conduct such hearings, mediations and ar-
15 bitrations permitted under section 67-5270 (2) (b), Idaho Code; and

16 (o) Have not served in the executive branch of Idaho government for a
17 period of two (2) continuous years preceding his appointment.

18 (3) The chief administrative hearing officer shall receive the same
19 compensation and benefits as a member of the Idaho industrial commission.

20 (4) A chief administrative hearing officer may be removed from office
21 only:

22 (a) By the governor with consent of the senate; or

23 (b) By the governor upon conviction of a felony, or disbarment or sus-
24 pension by the Idaho state bar.

25 SECTION 35. That Chapter 52, Title 67, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 67-5272, Idaho Code, and to read as follows:

28 67-5272. HEARING OFFICER QUALIFICATIONS -- POWERS -- DUTIES. The
29 chief administrative hearing officer and all hearing officers shall:

30 (1) Comply with the code of conduct adopted pursuant to rule.

31 (2) Take an oath of office before beginning their duties.

32 (3) Devote full time to the duties of the office, shall not engage in the
33 practice of law and shall not hold any other public position, except volun-
34 teer positions which are not inconsistent with the duties of a hearing offi-
35 cer as set forth in this section. This provision does not apply to contract
36 hearing officers, except to the extent that such employment or volunteer po-
37 sition creates a conflict of interest.

38 (4) Meet the following qualifications on the effective date of their
39 appointments:

40 (a) Be at least thirty (30) years of age;

41 (b) Be a citizen of the United States;

42 (c) Have been a legal resident of the state of Idaho for at least two (2)
43 continuous years immediately preceding such appointment;

44 (d) Have been in good standing as an active or judicial member of the
45 Idaho state bar for at least two (2) continuous years immediately pre-
46 ceding such appointment; and

47 (e) Have held a license to practice law or held a judicial office in one
48 (1) or more jurisdictions for at least five (5) continuous years immedi-
49 ately preceding such appointment.

1 For purposes of this subsection, the following terms have the following
2 meanings:

3 (a) "Active," "judicial" and "good standing" have the same definitions
4 as those terms are given by rule 301 of the Idaho bar commission rules or
5 any successors to those rules; and

6 (b) "Jurisdiction" means a state or territory of the United States, the
7 District of Columbia or any branch of the United States military.

8 (5) Have the power in contested case proceedings pursuant to this act
9 to issue subpoenas, administer oaths, control the course of the proceedings,
10 order or encourage the use of alternative dispute resolution when appropri-
11 ate, enter such awards for costs and attorney's fees as authorized by law and
12 perform other necessary and appropriate acts in the performance of their du-
13 ties.

14 (6) Conduct such contested case proceedings pursuant to this chapter,
15 duly promulgated rules, guidelines and practices, as well as other hearings,
16 mediations and arbitration as may be assigned by the chief administrative
17 hearing officer, and perform such other duties as may be assigned by the
18 chief administrative hearing officer.

19 SECTION 36. That Chapter 52, Title 67, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 67-5273, Idaho Code, and to read as follows:

22 67-5273. CHIEF HEARING OFFICER AND HEARING OFFICER COMPENSATION AND
23 CLASSIFICATION. Administrative hearing officers shall receive compensation
24 and benefits as determined by the chief administrative hearing officer.
25 Compensation of a hearing officer shall not be reduced during his term of
26 office. The chief hearing officer and hearing officers are nonclassified
27 employees.

28 SECTION 37. That Chapter 52, Title 67, Idaho Code, be, and the same is
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
30 ignated as Section 67-5274, Idaho Code, and to read as follows:

31 67-5274. DISQUALIFICATION. (1) A hearing officer is subject to dis-
32 qualification for bias, prejudice, financial interest, ex parte communica-
33 tions as provided in section 67-5248, Idaho Code, or any other factor that
34 would cause a reasonable person to question the impartiality of the hearing
35 officer. A hearing officer, after making a reasonable inquiry, shall dis-
36 close to the parties any known facts related to grounds for disqualification
37 that are material to the impartiality of the hearing officer in the proceed-
38 ing.

39 (2) A party may request the disqualification of a hearing officer
40 promptly after notice that the person will preside or, if later, promptly on
41 discovering facts establishing a ground for disqualification. The request
42 must state with particularity the ground on which it is claimed that a fair
43 and impartial hearing cannot be accorded or the applicable rule or canon
44 of practice or ethics that requires disqualification. The request may be
45 denied if the party fails to exercise due diligence in requesting disquali-
46 fication after discovering a ground for disqualification.

1 (3) A hearing officer whose disqualification is requested shall decide
2 whether to grant the request and shall state in a record the facts and reasons
3 for the decision. The decision to deny disqualification is not subject to
4 interlocutory judicial review.

5 (4) If a substitute hearing officer is required, the substitute must be
6 appointed by the office of administrative hearings.

7 SECTION 38. That Chapter 52, Title 67, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
9 ignated as Section 67-5275, Idaho Code, and to read as follows:

10 67-5275. ADVISORY COUNCIL TO THE OFFICE OF ADMINISTRATIVE HEAR-
11 INGS. (1) There is hereby created the advisory council to the office of
12 administrative hearings, referred to as "the council" in this section.

13 (2) The council shall consist of nine (9) members that may not include
14 the chief administrative hearing officer or any hearing officers or staff of
15 the office of administrative hearings. Members shall include the following:

16 (a) The chairman and most senior minority party member of the senate ju-
17 diciary and rules committee;

18 (b) The chairman and most senior minority party member of the house ju-
19 diciary, rules and administration committee;

20 (c) The attorney general or a deputy attorney general designated by the
21 attorney general;

22 (d) Two (2) state agency directors or their designees appointed by the
23 governor. Provided however, a designee of an agency director must be an
24 employee of the agency and may not be a deputy attorney general. Pro-
25 vided further, only those agencies subject to application of the con-
26 tested case provisions of this act shall be eligible for appointment;

27 (e) One (1) member of the public appointed by the governor, who is not
28 a member of the Idaho state bar and who has no employment, independent
29 contractor or financial relationship with the office of administrative
30 hearings or other branch of state government or a political subdivision
31 thereof;

32 (f) One (1) member of the Idaho state bar appointed by the president of
33 the Idaho state bar board of commissioners.

34 (3) The terms of the attorney general or his designee, the agency di-
35 rectors or their designees, the public member and the Idaho state bar member
36 shall be four (4) years commencing July 1, 2018. A designee may be replaced
37 by the designating authority at any time. A vacancy shall exist with respect
38 to any member who no longer holds the position required to be a member and,
39 with respect to a public member, who no longer meets the qualifications for
40 being a public member. Members may serve more than one (1) term.

41 (4) Members shall serve without honorarium or compensation of any kind,
42 but shall be reimbursed for actual and necessary expenses, subject to the
43 limits provided in section 67-2008, Idaho Code.

44 (5) Action by the council shall be by a majority of those voting, and a
45 quorum shall consist of a majority of the members.

46 (6) Members shall elect a chair and vice chair, who shall serve two (2)
47 year terms. The vice chair shall serve in place of the chair when the chair is
48 absent or the position otherwise becomes vacant. In the event of a vacancy in
49 the office of chair or vice chair, the office shall be filled at the next reg-

1 ularly scheduled meeting of the board, and the new officeholder shall com-
2 plete the term of the officer being replaced.

3 (7) The council's duties shall be as follows:

4 (a) Make recommendations to the chief administrative hearing officer
5 about:

6 (i) Issues and procedures within the office of administrative
7 hearings;

8 (ii) Rules, policies, guidelines and practices being considered
9 for promulgation or adoption by the office of administrative hear-
10 ings;

11 (iii) The annual report pursuant to section 67-5271, Idaho Code;

12 (iv) Hearing officer training; and

13 (v) Such other matters as the council deems appropriate to the
14 equitable and efficient operation of the office of administrative
15 hearings;

16 (b) Make recommendations to the governor, the chief administrative
17 hearing officer and the legislature as it deems appropriate; and

18 (c) Meet at least annually at such times and places as the council de-
19 termines. The meetings shall be considered public meetings subject to
20 the open meetings law and there shall be a record of any meeting, which
21 shall be subject to disclosure.

22 SECTION 39. That Chapter 52, Title 67, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 67-5276, Idaho Code, and to read as follows:

25 67-5276. COOPERATION OF AGENCIES. (1) Every agency shall cooperate
26 with the office of administrative hearings in the discharge of its duties.

27 (2) No agency or state officer shall attempt to influence the selection
28 of a hearing officer for a contested case proceeding or any other matter, ex-
29 cept mediations, and the chief administrative hearing officer shall not per-
30 mit any such influence, but agencies and state officers may inform the office
31 of administrative hearings in writing of their views regarding:

32 (a) Expertise needed or desired with respect to types of potential con-
33 tested cases;

34 (b) Proposed rules under consideration for adoption by the office of
35 administrative hearings; and

36 (c) Legislation under consideration or being proposed by the office of
37 administrative hearings.

38 Nothing in this section shall be deemed to prohibit an agency director, the
39 attorney general or a designee of either of them from carrying out their
40 duties as a member of the advisory council to the office of administrative
41 hearings.

42 (3) Upon filing of a request for contested case proceeding, and at the
43 time a contested case proceeding is considered initiated in the office of
44 administrative hearings, the agency shall take no further action with re-
45 spect to such matter except as otherwise authorized by this act or pursuant
46 to other law.

1 SECTION 40. That Chapter 52, Title 67, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 67-5277, Idaho Code, and to read as follows:

4 67-5277. OFFICE OF ADMINISTRATIVE HEARINGS -- COST ESTIMATES -- AS-
5 SESSMENT OF RECIPIENT AGENCIES. (1) The office of administrative hearings
6 shall prepare an estimate of costs for state budgeting purposes for services
7 provided by the office of administrative hearings. The office of adminis-
8 trative hearings shall notify the division of financial management of such
9 estimated costs by October 1. The division of financial management shall no-
10 tify all state agencies of these cost estimates for the next fiscal year on or
11 before November 1. The division of financial management and the legislative
12 services office shall allow state agencies to modify their budget requests
13 in response to such estimates.

14 (2) The office of administrative hearings shall assess each recipient
15 agency the amounts allocated for services provided. Amounts so assessed
16 shall be separately accounted for and can be expended only after legislative
17 appropriation. Such amount shall be paid by each state entity in the suc-
18 ceeding fiscal year to the indirect cost recovery fund. Before June 30 of
19 each fiscal year, the state controller shall transfer an amount equal to such
20 deposits to the state general fund.

21 SECTION 41. That Section 67-2601, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 67-2601. DEPARTMENT CREATED -- ORGANIZATION -- BUREAU OF OCCUPATIONAL
24 LICENSES CREATED. (1) There is hereby created the department of self-govern-
25 ing agencies. The department shall, for the purposes of section 20, article
26 IV, of the constitution of the state of Idaho, be an executive department of
27 the state government.

28 (2) The department shall consist of the following:

29 (a) Agricultural commodity commissions: Idaho apple commission, as
30 provided by chapter 36, title 22, Idaho Code; Idaho bean commission,
31 as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as
32 provided by chapter 29, title 25, Idaho Code; Idaho cherry commission,
33 as provided by chapter 37, title 22, Idaho Code; Idaho dairy products
34 commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea
35 and lentil commission, as provided by chapter 35, title 22, Idaho Code;
36 Idaho potato commission, as provided by chapter 12, title 22, Idaho
37 Code; the Idaho wheat commission, as provided by chapter 33, title 22,
38 Idaho Code; ~~the Idaho aquaculture commission, as provided by chapter~~
39 ~~44, title 22, Idaho Code;~~ and the Idaho alfalfa and clover seed commis-
40 sion, as provided in chapter 42, title 22, Idaho Code.

41 (b) Professional and occupational licensing boards: Idaho state board
42 of accountancy, as provided by chapter 2, title 54, Idaho Code; board
43 of acupuncture, as provided by chapter 47, title 54, Idaho Code; board
44 of architectural examiners, as provided by chapter 3, title 54, Idaho
45 Code; state athletic commission, as provided by chapter 4, title 54,
46 Idaho Code; board of barber examiners, as provided by chapter 5, ti-
47 tle 54, Idaho Code; board of commissioners of the Idaho state bar,
48 as provided by chapter 4, title 3, Idaho Code; board of chiropractic

1 physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board
2 of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho
3 state licensing board of professional counselors and marriage and fam-
4 ily therapists, as provided by chapter 34, title 54, Idaho Code; state
5 board of dentistry, as provided by chapter 9, title 54, Idaho Code;
6 state board of denturistry, as provided by chapter 33, title 54, Idaho
7 Code; Idaho board of licensure of professional engineers and profes-
8 sional land surveyors, as provided by chapter 12, title 54, Idaho Code;
9 state board of registration for professional geologists, as provided by
10 chapter 28, title 54, Idaho Code; speech and hearing services licensure
11 board, as provided by chapter 29, title 54, Idaho Code; Idaho physical
12 therapy licensure board, as provided by chapter 22, title 54, Idaho
13 Code; Idaho state board of landscape architects, as provided by chapter
14 30, title 54, Idaho Code; liquefied petroleum gas safety board, as pro-
15 vided by chapter 53, title 54, Idaho Code; state board of medicine, as
16 provided by chapter 18, title 54, Idaho Code; state board of morticians,
17 as provided by chapter 11, title 54, Idaho Code; board of naturopathic
18 medical examiners, as provided by chapter 51, title 54, Idaho Code;
19 board of nursing, as provided by chapter 14, title 54, Idaho Code; board
20 of examiners of nursing home administrators, as provided by chapter 16,
21 title 54, Idaho Code; state board of optometry, as provided by chapter
22 15, title 54, Idaho Code; Idaho outfitters and guides licensing board,
23 as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as
24 provided by chapter 17, title 54, Idaho Code; state board of podiatry,
25 as provided by chapter 6, title 54, Idaho Code; Idaho state board of psy-
26 chologist examiners, as provided by chapter 23, title 54, Idaho Code;
27 Idaho real estate commission, as provided by chapter 20, title 54, Idaho
28 Code; real estate appraiser board, as provided by chapter 41, title 54,
29 Idaho Code; board of social work examiners, as provided by chapter 32,
30 title 54, Idaho Code; the board of veterinary medicine, as provided by
31 chapter 21, title 54, Idaho Code; the board of examiners of residen-
32 tial care facility administrators, as provided by chapter 42, title
33 54, Idaho Code; the certified shorthand reporters board, as provided
34 by chapter 31, title 54, Idaho Code; the driving businesses licensure
35 board, as provided by chapter 54, title 54, Idaho Code; the board of
36 drinking water and wastewater professionals, as provided by chapter 24,
37 title 54, Idaho Code; and the board of midwifery, as provided by chapter
38 55, title 54, Idaho Code.

39 (c) The board of examiners, pursuant to section 67-2001, Idaho Code.

40 (d) The division of building safety: building code board, chapter 41,
41 title 39, Idaho Code; electrical board, chapter 10, title 54, Idaho
42 Code; public works contractors license board, chapter 19, title 54,
43 Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public
44 works construction management, chapter 45, title 54, Idaho Code; the
45 heating, ventilation and air conditioning board, chapter 50, title 54,
46 Idaho Code; and factory built structures advisory board, chapter 43,
47 title 39, Idaho Code.

48 (e) The division of veterans services to be headed by a division ad-
49 ministrator who shall be a nonclassified employee exempt from the pro-
50 visions of chapter 53, title 67, Idaho Code. The administrator of the

1 division shall administer the provisions of chapter 2, title 65, Idaho
2 Code, and chapter 9, title 66, Idaho Code, with the advice of the vet-
3 erans affairs commission established under chapter 2, title 65, Idaho
4 Code, and shall perform such additional duties as are imposed upon him
5 by law.

6 (f) The board of library commissioners, pursuant to section 33-2502,
7 Idaho Code.

8 (g) The Idaho state historical society, pursuant to section 67-4123,
9 Idaho Code.

10 (h) The state public defense commission, pursuant to section 19-849,
11 Idaho Code.

12 (i) The office of administrative hearings, pursuant to section
13 67-5270, Idaho Code.

14 (3) The bureau of occupational licenses is hereby created within the
15 department of self-governing agencies.

16 SECTION 42. That Section 67-5303, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state
19 of Idaho and all employees in such departments, except those employees
20 specifically defined as nonclassified, shall be classified employees, who
21 are subject to this chapter and to the system of personnel administration
22 which it prescribes. Nonclassified employees shall be:

23 (a) Members of the state legislature and all other officers of the state
24 of Idaho elected by popular vote, and persons appointed to fill vacancies in
25 elective offices, and employees of the state legislature.

26 (b) Members of statutory boards and commissions and heads of depart-
27 ments appointed by and serving at the pleasure of the governor, deputy direc-
28 tors appointed by the director and members of advisory boards and councils
29 appointed by the departments.

30 (c) All employees and officers in the office, and at the residence, of
31 the governor; and all employees and officers in the offices of the lieutenant
32 governor, secretary of state, attorney general, state treasurer, state con-
33 troller, and state superintendent of public instruction who are appointed on
34 and after the effective date of this chapter.

35 (d) Except as otherwise provided by law, not more than one (1) declared
36 position for each board or commission and/or head of a participating depart-
37 ment, in addition to those declared to be nonclassified by other provisions
38 of law.

39 (e) Part-time professional consultants who are paid on a fee basis for
40 any form of legal, medical or other professional service, and who are not en-
41 gaged in the performance of administrative duties for the state.

42 (f) Judges, temporary referees, receivers and jurors.

43 (g) All employees of the Idaho supreme court, Idaho court of appeals and
44 district courts.

45 (h) All employees of the Idaho state bar.

46 (i) Assistant attorneys general attached to the office of the attorney
47 general.

48 (j) Officers, members of the teaching staffs of state educational in-
49 stitutions, the professional staff of the Idaho department of education

1 administered by the board of regents and the board of education, and the
2 professional staffs of the Idaho division of career technical education
3 and vocational rehabilitation administered by the state board for career
4 technical education. "Teaching staff" includes teachers, coaches, resident
5 directors, librarians and those principally engaged in academic research.
6 The word "officer" means presidents, vice presidents, deans, directors, or
7 employees in positions designated by the state board who receive an annual
8 salary of not less than step "A" of the pay grade equivalent to three hundred
9 fifty-five (355) Hay points in the state compensation schedule. A nonclas-
10 sified employee who is designated as an "officer" on July 5, 1991, but does
11 not meet the requirements of this subsection, may make a one (1) time irrev-
12 ocable election to remain nonclassified. Such an election must be made not
13 later than August 2, 1991. When such positions become vacant, these posi-
14 tions will be reviewed and designated as either classified or nonclassified
15 in accordance with this subsection.

16 (k) Employees of the military division.

17 (l) Patients, inmates or students employed in a state institution.

18 (m) Persons employed in positions established under federal grants,
19 which, by law, restrict employment eligibility to specific individuals or
20 groups on the basis of nonmerit selection requirements. Such employees
21 shall be termed "project exempt" and the tenure of their employment shall
22 be limited to the length of the project grant, or twenty-four (24) months,
23 or four thousand one hundred sixty (4,160) hours of credited state service,
24 whichever is of the shortest duration. No person hired on a project-exempt
25 appointment shall be employed in any position allocated to the classified
26 service.

27 (n) Temporary employees.

28 (o) All employees and officers of the following named commodity commis-
29 sions, and all employees and officers of any commodity commission created
30 hereafter: the Idaho potato commission, as provided in chapter 12, title
31 22, Idaho Code; the Idaho honey commission, as provided in chapter 28, ti-
32 tle 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, ti-
33 tle 22, Idaho Code; the Idaho hop grower's commission, as provided in chapter
34 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chap-
35 ter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as pro-
36 vided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as
37 provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission,
38 as provided in chapter 37, title 22, Idaho Code; the Idaho mint ~~grower's~~ com-
39 mission, as provided in chapter 38, title 22, Idaho Code; the Idaho sheep and
40 goat health board, as provided in chapter 1, title 25, Idaho Code; the state
41 brand inspector, and all district supervisors, as provided in chapter 11,
42 title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, ti-
43 tle 25, Idaho Code; and the Idaho dairy products commission, as provided in
44 chapter 31, title 25, Idaho Code.

45 (p) All inspectors of the fresh fruit and vegetable inspection service
46 of the Idaho department of agriculture, except those positions involved in
47 the management of the program.

48 (q) All employees of correctional industries within the department of
49 correction.

1 (r) All deputy administrators and wardens employed by the department of
 2 correction. Deputy administrators are defined as only the deputy adminis-
 3 trators working directly for the nonclassified division administrators un-
 4 der the director of the department of correction.

5 (s) All public information positions, with the exception of secretar-
 6 ial positions, in any department.

7 (t) Any division administrator.

8 (u) Any regional administrator or division administrator in the de-
 9 partment of environmental quality.

10 (v) All employees of the division of financial management, all employ-
 11 ees of the ~~stem~~ STEM action center, all employees of the office of species
 12 conservation, all employees of the office of drug policy and all employees of
 13 the office of energy resources.

14 (w) All employees of the Idaho food quality assurance institute.

15 (x) The state appellate public defender, deputy state appellate public
 16 defenders and all other employees of the office of the state appellate public
 17 defender.

18 (y) All quality assurance specialists or medical investigators of the
 19 Idaho board of medicine.

20 (z) All pest survey and detection employees and their supervisors hired
 21 specifically to carry out activities under the Idaho plant pest act, chapter
 22 20, title 22, Idaho Code, including but not limited to pest survey, detec-
 23 tion and eradication, except those positions involved in the management of
 24 the program.

25 (aa) Chief administrative hearing officers and hearing officers in
 26 the office of administrative hearings as provided for in sections 67-5270
 27 through 67-5276, Idaho Code.

28 SECTION 43. That Section 26-31-208, Idaho Code, be, and the same is
 29 hereby amended to read as follows:

30 26-31-208. RECORDS -- REPORTS -- RENEWAL AND REINSTATEMENT OF LI-
 31 CENSE. (1) Every licensee under this part shall maintain records in the
 32 United States, including financial records in conformity with generally
 33 accepted accounting principles, in a manner that will enable the director
 34 to determine whether the licensee is complying with the provisions of this
 35 part. The recordkeeping system of the licensee shall be sufficient if it
 36 makes the required information reasonably available to the director. The
 37 records need not be kept in the place of business where residential mortgage
 38 loans are made, if the director is given free access to the records wherever
 39 located. The records pertaining to any loan need not be preserved for more
 40 than three (3) years after making the final entry relating to the loan.

41 (2) Every mortgage broker or mortgage lender licensed under this part
 42 that employs or contracts with a mortgage loan originator licensed under
 43 part 3 of this chapter, for the purpose of conducting mortgage loan origina-
 44 tion activities in Idaho, shall:

45 (a) Notify the director through the NMLSR, or as otherwise prescribed
 46 by the director, of the employment of, or contractual relationship
 47 with, a mortgage loan originator licensee within thirty (30) days of
 48 such employment or contract;

1 (b) Notify the director through the NMLSR, or as otherwise prescribed
2 by the director, of the termination of employment of, or contractual re-
3 lationship with, a mortgage loan originator licensee within thirty (30)
4 days of such termination; and

5 (c) Maintain any records relating to the employment of, or contractual
6 relationship with, a mortgage loan originator licensee, for a period
7 not to exceed three (3) years.

8 (3) On or before December 31 of each year, every mortgage broker and
9 mortgage lender licensee under this part shall pay through the NMLSR, or
10 as otherwise prescribed by the director, a nonrefundable annual license
11 renewal fee of one hundred fifty dollars (\$150), and file with the director
12 through the NMLSR, or as otherwise prescribed by the director, a renewal
13 application containing such information as the director may require.
14 Notwithstanding the provisions of section 67-52549, Idaho Code, a license
15 issued under this part automatically expires if not timely renewed accord-
16 ing to the requirements of this section. Notwithstanding the provisions of
17 section 67-52549, Idaho Code, branch licenses issued under this part also
18 expire upon the expiration, relinquishment or revocation of a license issued
19 under this part to a licensee's designated home office.

20 (4) The director may reinstate an expired license during the time pe-
21 riod of January 1 through February 28, immediately following license expira-
22 tion if the director finds that the applicant meets the requirements for li-
23 censure under this part after submission to the director of:

24 (a) A complete application for renewal;

25 (b) The fees required to apply for license renewal unless previously
26 paid for the period for which the license renewal applies; and

27 (c) A reinstatement fee of two hundred dollars (\$200).

28 (5) Within forty-five (45) days of the end of each calendar quarter,
29 each mortgage broker and mortgage lender licensee under this part shall sub-
30 mit quarterly mortgage call reports through the NMLSR, which shall be in such
31 form and shall contain such information as the director may require.

32 (6) Within forty-five (45) days of the end of each calendar year, each
33 mortgage broker and mortgage lender licensee under this part shall submit
34 an annual report of financial condition through the NMLSR, which shall be in
35 such form and shall contain such information as the director may require.

36 SECTION 44. That Section 26-31-309, Idaho Code, be, and the same is
37 hereby amended to read as follows:

38 26-31-309. LICENSE RENEWAL AND REINSTATEMENT REQUIREMENTS. (1) The
39 minimum standards for license renewal for mortgage loan originators li-
40 censed under this part shall include the following:

41 (a) The mortgage loan originator continues to meet the minimum stan-
42 dards for license issuance pursuant to section 26-31-306, Idaho Code;

43 (b) The mortgage loan originator has satisfied the annual continuing
44 education requirements pursuant to section 26-31-310, Idaho Code; and

45 (c) The mortgage loan originator has filed with the director through
46 the NMLSR, on or before December 31 of each year, a renewal application
47 containing such information as the director may require, accompanied
48 by a nonrefundable annual license renewal fee of one hundred dollars
49 (\$100).

1 (2) If a mortgage loan originator fails to timely satisfy the provi-
 2 sions of subsection (1) of this section, notwithstanding the provisions of
 3 section 67-52549, Idaho Code, then his license automatically and immedi-
 4 ately expires.

5 (3) The director may reinstate an expired license during the time pe-
 6 riod of January 1 through February 28, immediately following license expi-
 7 ration if the director finds that the former licensee meets the requirements
 8 for licensure under this part after submission to the director of:

9 (a) A complete application for renewal;

10 (b) The fees required to apply for license renewal unless previously
 11 paid for the period for which the license renewal applies; and

12 (c) A reinstatement fee of one hundred dollars (\$100).

13 SECTION 45. That Section 28-46-302, Idaho Code, be, and the same is
 14 hereby amended to read as follows:

15 28-46-302. LICENSE TO MAKE REGULATED CONSUMER LOANS. (1) The adminis-
 16 trator shall receive and act on all applications for a license to do busi-
 17 ness as a regulated lender. Applications shall be filed in the manner pre-
 18 scribed by the administrator, shall contain such information as the admin-
 19 istrator may reasonably require, shall be updated as necessary to keep the
 20 information current, and shall be accompanied by an application fee of three
 21 hundred fifty dollars (\$350). When an application for licensure is denied
 22 or withdrawn, the administrator shall retain all fees paid by the applicant.
 23 The administrator may deny an application for a license if the administrator
 24 finds that:

25 (a) The financial responsibility, character, and fitness of the appli-
 26 cant, and of the officers and directors thereof (if the applicant is a
 27 corporation) are not such as to warrant belief that the business will be
 28 operated honestly and fairly within the purposes of this act;

29 (b) The applicant does not maintain at least thirty thousand dollars
 30 (\$30,000) in liquid assets, as determined in accordance with generally
 31 accepted accounting principles, available for the purpose of making
 32 loans under this chapter;

33 (c) The applicant has had a license, substantially equivalent to a
 34 license under this chapter and issued by any state, denied, revoked or
 35 suspended under the law of such state;

36 (d) The applicant has filed an application for a license which is false
 37 or misleading with respect to any material fact;

38 (e) The application does not contain all of the information required by
 39 the administrator; or

40 (f) The application is not accompanied by an application fee of three
 41 hundred fifty dollars (\$350).

42 (2) A licensee under this chapter shall meet the requirements of sub-
 43 section (1) of this section at all times while licensed pursuant to this
 44 chapter. The administrator is empowered to conduct investigations as he may
 45 deem necessary, to enable him to determine the existence of the requirements
 46 set out in subsection (1) of this section.

47 (3) Upon written request, the applicant is entitled to a hearing on the
 48 question of his qualifications for a license if:

1 (a) The administrator has notified the applicant in writing that his
2 application has been denied, or objections filed; or

3 (b) The administrator has not issued a license within sixty (60) days
4 after the application for the license was filed.

5 If a hearing is held, the applicant and those filing objections shall
6 reimburse, pro rata, the administrator for his reasonable and necessary ex-
7 penses incurred as a result of the hearing. A request for a hearing may not be
8 made more than fifteen (15) days after the administrator has mailed a writing
9 to the applicant notifying him that the application has been denied and stat-
10 ing in substance the administrator's finding supporting denial of the appli-
11 cation or that objections have been filed and the substance thereof.

12 (4) The administrator may issue additional licenses to the same li-
13 censee upon application by the licensee, in the manner prescribed by the
14 administrator, and payment of the required application fee. A separate
15 license shall be required for each place of business. Each license shall
16 remain in full force and effect unless the licensee does not satisfy the
17 renewal requirements of subsection (8) of this section, or the license is
18 relinquished, suspended or revoked.

19 (5) No licensee shall change the location of any place of business, or
20 consolidate, or close any locations, without giving the administrator at
21 least fifteen (15) days' prior written notice.

22 (6) A licensee shall not engage in the business of making regulated con-
23 sumer loans at any place of business for which he does not hold a license nor
24 shall he engage in business under any other name than that in the license.

25 (7) A license application shall be deemed withdrawn and void if an ap-
26 plicant submits an incomplete license application and, after receipt of a
27 written notice of the application deficiency, fails to provide the direc-
28 tor with information necessary to complete the application within sixty (60)
29 days of receipt of the deficiency notice. A written deficiency notice shall
30 be deemed received by a license applicant when:

31 (a) Placed in regular U.S. mail by the director or his agent using an
32 address provided by the applicant on the license application; or

33 (b) E-mailed to the applicant using an e-mail address provided by the
34 applicant on the license application; or

35 (c) Posted by the director or his agent on the NMLSR if the license ap-
36 plication was submitted through the NMLSR.

37 (8) On or before May 31 of each year, every licensee under this chap-
38 ter shall pay a nonrefundable annual license renewal fee of one hundred fifty
39 dollars (\$150) per licensed location, and shall file with the administrator
40 a renewal form containing such information as the administrator may require.
41 Notwithstanding the provisions of section 67-52549, Idaho Code, a license
42 issued under this part automatically expires if not timely renewed according
43 to the requirements of this section. Notwithstanding the provisions of sec-
44 tion 67-52549, Idaho Code, branch licenses issued under this part also ex-
45 pire upon the expiration, relinquishment or revocation of a license issued
46 under this part to a licensee's designated home office.

47 (9) For a period of time not to exceed sixty (60) days following license
48 expiration, the director may reinstate an expired license if he finds that
49 the applicant meets the requirements for licensure under this part and the
50 applicant has submitted to the director:

- 1 (a) A complete application for renewal;
- 2 (b) The fees required to apply for license renewal unless previously
- 3 paid for the period for which the license renewal applies; and
- 4 (c) A reinstatement fee of two hundred dollars (\$200).

5 SECTION 46. That Section 28-46-404, Idaho Code, be, and the same is
6 hereby amended to read as follows:

7 28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application
8 for a license shall be in writing and under oath to the administrator, in a
9 form prescribed by the administrator, and shall include at least the follow-
10 ing:

- 11 (a) The legal name, residence and business address of the applicant
12 and, if the applicant is an entity, of every member, partner, director,
13 senior officer or twenty-five percent (25%) or more equity owner of the
14 applicant;
- 15 (b) The location at which the principal place of business of the appli-
16 cant is located; and
- 17 (c) Other data and information the administrator may require with re-
18 spect to the applicant, and if the applicant is an entity, such data and
19 information of its members, partners, directors, senior officers, or
20 twenty-five percent (25%) or more equity owners of the applicant.

21 (2) Each application for a license shall be accompanied by an applica-
22 tion fee in the amount of three hundred fifty dollars (\$350). Such fee shall
23 not be subject to refund.

24 (3) The fee set forth in subsection (2) of this section shall be re-
25 quired for each location for which an application is submitted.

26 (4) Within sixty (60) days of the filing of an application in a form
27 prescribed by the administrator, accompanied by the fee required in subsec-
28 tion (2) of this section, the administrator shall investigate to ascertain
29 whether the qualifications prescribed by subsection (1) of section 28-46-
30 403, Idaho Code, have been satisfied. If the administrator finds that the
31 qualifications have been satisfied and approves the documents, the adminis-
32 trator shall issue to the applicant a license to engage in the payday loan
33 business.

34 (5) Notwithstanding the provisions of section 67-52549, Idaho Code,
35 a license issued pursuant to this part automatically expires if not timely
36 renewed according to the requirements of subsection (7) of this section,
37 or the license is relinquished, suspended or revoked pursuant to this act.
38 Notwithstanding the provisions of section 67-52549, Idaho Code, branch
39 licenses issued under this part also expire upon the expiration, relin-
40 quishment or revocation of a license issued under this part to a licensee's
41 designated home office.

42 (6) A license application shall be deemed withdrawn and void if an ap-
43 plicant submits an incomplete license application and, after receipt of a
44 written notice of the application deficiency, fails to provide the direc-
45 tor with information necessary to complete the application within sixty (60)
46 days of receipt of the deficiency notice. A written deficiency notice shall
47 be deemed received by a license applicant when:

- 48 (a) Placed in regular U.S. mail by the director or his agent using an
49 address provided by the applicant on the license application; or

1 (b) E-mailed to the applicant using an e-mail address provided by the
2 applicant on the license application; or

3 (c) Posted by the director or his agent on the NMLSR if the license ap-
4 plication was submitted through the NMLSR.

5 (7) On or before May 31 of each year, every licensee under this part 4
6 shall pay a nonrefundable annual license renewal fee of one hundred fifty
7 dollars (\$150) per licensed location, and shall file with the administrator
8 a renewal form containing such information as the administrator may require.

9 (8) For a period of time not to exceed sixty (60) days following license
10 expiration, the director may reinstate an expired license if he finds that
11 the applicant meets the requirements for licensure under this part and the
12 applicant has submitted to the director:

13 (a) A complete application for renewal;

14 (b) The fees required to apply for license renewal unless previously
15 paid for the period for which the license renewal applies; and

16 (c) A reinstatement fee of two hundred dollars (\$200).

17 SECTION 47. That Section 33-5209C, Idaho Code, be, and the same is
18 hereby amended to read as follows:

19 33-5209C. ENFORCEMENT -- REVOCATION -- APPEAL. (1) An authorized
20 chartering entity shall continually monitor the performance and legal com-
21 pliance of the public charter schools it oversees, including collecting and
22 analyzing data to support ongoing evaluation according to the performance
23 certificate. Every authorized chartering entity shall have the authority
24 to conduct or require oversight activities that enable the authorized char-
25 tering entity to fulfill its responsibilities pursuant to the provisions
26 of this chapter, including conducting appropriate inquiries and investiga-
27 tions, ~~so~~ as long as those activities are consistent with the intent of this
28 chapter, adhere to the terms of the performance certificate and do not unduly
29 inhibit the autonomy granted to public charter schools.

30 (2) Each authorized chartering entity shall annually publish and make
31 available to the public a performance report for each public charter school
32 it oversees, in accordance with the performance framework set forth in the
33 performance certificate and section 33-5209A, Idaho Code. The authorized
34 chartering entity may require each public charter school it oversees to sub-
35 mit an annual report to assist the authorized chartering entity in gather-
36 ing complete information about each school consistent with the performance
37 framework. Each public charter school shall publish its annual performance
38 report on the school's website.

39 (3) If an authorized chartering entity has reason to believe that a
40 public charter school cannot remain fiscally sound for the remainder of its
41 certificate term, it shall provide the state department of education with
42 written notification of such concern. Upon receiving such notification,
43 the state department of education shall have the authority to modify the
44 percentage of the total appropriation to be paid to the public charter school
45 pursuant to the provisions of section 33-1009(1), Idaho Code, such that
46 equal percentages are paid on each of the prescribed dates.

47 (4) If an authorized chartering entity has reason to believe that a
48 charter holder or public charter school has violated any provision of law, it

1 shall notify the charter holder and the entity responsible for administering
2 said law of the possible violation.

3 (5) If an authorized chartering entity revokes or does not renew a char-
4 ter, the authorized chartering entity shall clearly state, in a resolution
5 of its governing board, the reasons for the revocation or nonrenewal.

6 (6) Within fourteen (14) days of taking action to renew, not renew or
7 revoke a charter, the authorized chartering entity shall report to the state
8 board of education the action taken and shall provide a copy of the report to
9 the charter holder at the same time that the report is submitted to the state
10 board of education. The report shall include a copy of the authorized char-
11 tering entity's resolution setting forth the action taken and reasons for
12 the decision and assurances as to compliance with all of the requirements set
13 forth in this chapter.

14 (7) A charter may be revoked by the authorized chartering entity if the
15 public charter school has failed to meet any of the specific, written con-
16 ditions for necessary improvements established pursuant to the provisions
17 of section 33-5209B(1), Idaho Code, by the dates specified. Revocation may
18 not occur until the charter holder has been afforded a public hearing, un-
19 less the authorized chartering entity determines that the continued opera-
20 tion of the public charter school presents an imminent public safety issue,
21 in which case the charter may be revoked immediately. Public hearings shall
22 be conducted by the authorized chartering entity or such other person or per-
23 sons appointed by the authorized chartering entity to conduct public hear-
24 ings and receive evidence as a contested case in accordance with the provi-
25 sions of ~~section 67-5242~~ chapter 52, title 67, Idaho Code. Notice and oppor-
26 tunity to reply shall include, at a minimum, written notice setting out the
27 basis for consideration of revocation, a period of not less than thirty (30)
28 days within which the charter holder can reply in writing, and a public hear-
29 ing within thirty (30) days of the receipt of the written reply.

30 (8) A decision to revoke or nonrenew a charter or to deny a revision of
31 a charter may be appealed directly to the state board of education. With re-
32 spect to such appeal, the state board of education shall substantially fol-
33 low the procedure as provided in section 33-5207(5)(b), Idaho Code. In the
34 event the state board of education reverses a decision of revocation or non-
35 renewal, the charter holder subject to such action shall then be placed under
36 the chartering authority of the public charter school commission.

37 SECTION 48. That Section 40-709A, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 40-709A. PETITION FOR HIGHWAY MAINTENANCE. (1) Any county or highway
40 district may petition the Idaho transportation board to take action, as pro-
41 vided in this section, to provide for the maintenance of a highway or portion
42 thereof under the jurisdiction of a county or highway district.

43 (2) The petition and supporting materials shall establish the follow-
44 ing facts:

45 (a) That the subject highway or relevant portion thereof provides the
46 only practical access to a city, town or other developed area;

47 (b) That the county or highway district with jurisdiction over the sub-
48 ject highway, or relevant portion thereof, is obligated to maintain the
49 highway or relevant portion thereof;

1 (c) That said county or highway district historically has provided
2 maintenance to the subject highway or relevant portion thereof suffi-
3 cient to allow safe motorist access to the city, town or other developed
4 area; and

5 (d) Said county or highway district is now failing to provide main-
6 tenance sufficient to allow safe motorist access to the city, town or
7 other developed area.

8 The petition shall not be based on failure to improve the highway or to ex-
9 pand maintenance beyond what historically has been provided. The petition
10 shall also document the petitioner's efforts to communicate its concerns to
11 the subject county or highway district and explain why the issue could not be
12 resolved. The petitioner shall provide notice to the subject county or high-
13 way district, including a copy of the petition and all supporting materials.

14 (3) The Idaho transportation department shall publish notice of the
15 petition as set forth in section 40-206, Idaho Code, and shall provide the
16 subject county or highway district a reasonable opportunity to respond to
17 the petition, to take corrective action, to explain any extenuating cir-
18 cumstances or to otherwise address the concerns presented in the petition.
19 Based on all information available to it, including such independent inves-
20 tigation as it deems appropriate, the Idaho transportation department shall
21 make a recommendation for action to the Idaho transportation board.

22 (4) The Idaho transportation board shall review the petition and the
23 recommendation of the Idaho transportation department.

24 (5) If the Idaho transportation board determines that the petition is
25 without merit, it may deny the petition without hearing and issue written
26 findings and conclusions stating its reasons therefor.

27 (6) If the Idaho transportation board determines that the petition may
28 have merit, it shall hold a hearing on the matter and allow all affected enti-
29 ties and interested persons an opportunity to be heard.

30 (7) Following the hearing provided in subsection (6) of this section,
31 the Idaho transportation board shall either grant or deny the petition and
32 issue findings and conclusions stating its reasons therefor. The petition
33 shall be granted only upon a finding that the public safety, health or wel-
34 fare would be endangered because the subject county or highway district is
35 inappropriately and unreasonably failing to maintain a highway or portion
36 thereof that it is obligated to maintain and that the facts set out in subsec-
37 tion (2) (a), (b), (c) and (d) of this section have been established. In de-
38 termining the reasonableness of the subject county or highway district's ac-
39 tions with respect to the highway, the Idaho transportation board shall take
40 into account the authority of the county or highway district to temporarily
41 close a highway, the availability of funding and other considerations ad-
42 dressed in sections 40-1311 and 40-1315, Idaho Code. The Idaho transporta-
43 tion board shall not approve a petition with respect to a highway or portion
44 thereof that has been vacated or is subject to an ongoing vacation or valida-
45 tion proceeding.

46 (8) If the petition is granted, the transportation department may un-
47 dertake itself the maintenance of the highway or portion thereof or it may
48 contract with another political subdivision to undertake the maintenance.
49 In either case, the transportation department shall certify to the state
50 controller the actual cost of maintenance undertaken by the transportation

1 department or by the contracted political subdivision. The state controller
2 shall pay into the state highway account of the Idaho transportation depart-
3 ment, or directly to the contracted political subdivision, the actual costs
4 incurred as certified by the transportation department. Such funds shall be
5 deducted from the funds that would otherwise have been allocated pursuant to
6 section 40-709, Idaho Code, to the county or highway district that failed to
7 provide adequate maintenance.

8 (9) Political subdivisions that acquire funds for roadwork of any type,
9 either pursuant to this section or by separate voluntary agreement with an-
10 other political subdivision or the state, are hereby authorized to expend
11 such funds outside of their jurisdictional boundaries notwithstanding any
12 other provision of law.

13 (10) A county or highway district that has been the subject of a peti-
14 tion granted pursuant to this section may request a termination or modifi-
15 cation of the arrangement authorized by the Idaho transportation department
16 for maintenance by the Idaho transportation department or another entity. A
17 request for termination shall be accompanied by appropriate documentation
18 showing that the requesting entity is prepared to resume its maintenance re-
19 sponsibility for the highway. The Idaho transportation board shall consider
20 the request for termination or modification, taking into account the infor-
21 mation presented by the requesting entity and any other information avail-
22 able to the Idaho transportation board. If the Idaho transportation board
23 determines that the concerns giving rise to the petition have been addressed
24 and the entity is committed to resume maintenance of the highway, the Idaho
25 transportation board shall terminate its prior action and allow the entity
26 to resume responsibility for maintenance of the highway upon the beginning
27 of the next fiscal year. The Idaho transportation board may also modify the
28 existing arrangement for funding of maintenance.

29 (11) A decision by the Idaho transportation board granting or denying a
30 petition or request under this section is a final agency action for purposes
31 of section ~~67-5270(2)~~60, Idaho Code.

32 SECTION 49. That Section 41-227, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 41-227. EXAMINATION REPORT. (1) The director or his examiner shall
35 make a full and true written report of every examination made by him under
36 this chapter, and shall verify the report by his oath.

37 (2) The report shall comprise only facts appearing upon the books, pa-
38 pers, records or documents of the person being examined, or ascertained from
39 testimony of individuals under oath concerning the affairs of such person,
40 together with such conclusions and recommendations as may reasonably be war-
41 ranted from such facts.

42 (3) Prior to a hearing and prior to any modifications the report shall
43 be subject to disclosure according to chapter 1, title 74, Idaho Code.

44 (4) No later than sixty (60) days following completion of the examina-
45 tion, the examiner in charge shall file with the department a verified writ-
46 ten report of examination under oath. Upon receipt of the verified report,
47 the department shall transmit the report to the company examined, together
48 with a notice which shall afford the company examined a reasonable opportu-

1 nity of not more than thirty (30) days to make a written submission or rebut-
2 tal with respect to any matters contained in the examination report.

3 (5) Within thirty (30) days of the end of the period allowed for the re-
4 ceipt of written submissions or rebuttals, the director shall fully consider
5 and review the report, together with any written submissions or rebuttals
6 and any relevant portions of the examiner's work papers, and enter an order:

7 (a) Adopting the examination report as filed or with modifications or
8 corrections. If the examination report reveals that the company is op-
9 erating in violation of any law, regulation or prior order of the direc-
10 tor, the director may order the company to take any action the director
11 considers necessary and appropriate to cure such violation;

12 (b) Rejecting the examination report with directions to the examiners
13 to reopen the examination for purposes of obtaining additional data,
14 documentation or information, and refiling pursuant to subsection (24)
15 of this section; or

16 (c) Calling for an investigatory hearing with no less than twenty (20)
17 days' notice to the company for purposes of obtaining additional docu-
18 mentation, data, information and testimony.

19 (6) (a) All orders entered pursuant to subsection (5) (a) of this sec-
20 tion shall be accompanied by findings and conclusions resulting from
21 the director's consideration and review of the examination report, rel-
22 evant examiner work papers and any written submissions or rebuttals.
23 Any such order shall be considered a final order and may be appealed
24 pursuant to sections ~~67-527060~~ through ~~67-527969~~, Idaho Code, and shall
25 be served upon the company by certified mail, together with a copy of the
26 adopted examination report. Within thirty (30) days of the issuance of
27 the adopted report, the company shall file affidavits executed by each
28 of its directors stating under oath that they have received a copy of the
29 adopted report and related orders.

30 (b) Any hearing conducted under subsection (5) (c) of this section by
31 the director or authorized representative, shall be conducted in accor-
32 dance with the provisions of chapter 52, title 67, Idaho Code, as a non-
33 adversarial confidential investigatory proceeding as necessary for the
34 resolution of any inconsistencies, discrepancies or disputed issues
35 apparent upon the face of the filed examination report or raised by, or
36 as a result of, the director's review of relevant work papers or by the
37 written submission or rebuttal of the company. Within twenty (20) days
38 of the conclusion of any such hearing, the director shall enter an order
39 pursuant to the provisions of subsection (5) (a) of this section.

40 (c) The director shall not appoint a contract examiner or an employee of
41 the department as an authorized representative to conduct the hearing.
42 Nothing contained in this section shall require the department to dis-
43 close any information or records which would indicate or show the con-
44 tent of any investigation or activity of a criminal justice agency, ex-
45 cept to the extent that the director relied upon information furnished
46 to the director by such criminal justice agency in making his decision.

47 (7) The report when so verified and filed shall be admissible in evi-
48 dence in any action or proceeding brought by the director against the person
49 examined, or against its officers, employees or agents, and shall be pre-
50 sumptive evidence of the material facts stated therein. The director or his

1 examiners may at any time testify and offer other proper evidence as to in-
2 formation secured or matters discovered during the course of an examination,
3 whether or not a written report of the examination has been either made, fur-
4 nished or filed in the department.

5 (8) After an order is entered under the provisions of subsection (5) (a)
6 of this section, the director may publish the report or the results of the
7 examination as contained therein which report or results are a public record
8 and shall be exempt from the exemptions from disclosure provided in chapter
9 1, title 74, Idaho Code.

10 (9) Nothing contained in this chapter shall prevent or be construed
11 as prohibiting the director from disclosing the content of an examination
12 report, preliminary examination report or results, or any matter relating
13 thereto, to the insurance department of this or any other state or country,
14 or to law enforcement officials of this or any other state or agency of the
15 federal government at any time, so long as the agency or office receiving the
16 report or matters relating thereto agrees in writing to hold it confidential
17 and in a manner consistent with this chapter.

18 (10) All working papers, recorded information, documents and copies
19 thereof produced by, obtained by or disclosed to the director or any other
20 person in the course of an examination made under the provisions of this
21 chapter shall be made available to the person or company which was the sub-
22 ject of the examination in proceedings pursuant to chapter 52, title 67,
23 Idaho Code, but shall otherwise be held by the director as a record not re-
24 quired to be made public pursuant to exemptions from disclosure provided in
25 chapter 1, title 74, Idaho Code.

26 SECTION 50. That Section 47-328, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 47-328. RULES FOR COMMISSION -- ADMINISTRATIVE PROCEDURES. (1) The
29 commission shall have authority to hear rulemaking proceedings, complaints
30 filed with it pursuant to this chapter and appeals from the oil and gas ad-
31 ministrators' decision on an application filed pursuant to this chapter, and
32 any other matter the commission decides should be heard by the commission.
33 The commission may act on its own motion. The commission may prescribe rules
34 governing the procedure before it, subject to the provisions of the adminis-
35 trative procedure act, chapter 52, title 67, Idaho Code. Provided however,
36 that no rulemaking except for that done under section 67-5226, Idaho Code,
37 may be conducted for twelve (12) months beginning on July 1, 2017.

38 (2) In all cases where a complaint is made by the commission or any per-
39 son that any provision of this act or any rule or order of the commission
40 is being violated, the commission shall serve notice of any hearing to be
41 held on such application or complaint to the interested persons by certified
42 mail, return receipt requested, or in the same manner as is provided in the
43 rules of civil procedure for the service of summons in civil actions. Where
44 the interested person is unknown or cannot be located, the commission shall
45 serve notice by publishing at least one (1) notice of the hearing to such per-
46 son in a newspaper of general circulation in the county where the affected
47 tract is located. Such notice must be sent, delivered or published, as ap-
48 propriate, at least five (5) business days before the date of the hearing.

1 (3) Except as provided in section 47-316(1) (a), Idaho Code, and sub-
2 section (2) of this section, any request for an order related to oil and gas
3 activities within the commission's jurisdiction, other than a civil penalty
4 proceeding pursuant to section 47-329, Idaho Code, or other enforcement ac-
5 tion by the department of lands or the commission, shall be made by applica-
6 tion to the department of lands and processed as provided in this section.

7 (a) The department shall notify the applicant within five (5) business
8 days of receipt of an application if additional information is required
9 for the department to evaluate the application.

10 (b) For applications involving an order regarding unit operations or
11 integration of a drilling unit, the applicant shall send a copy of the
12 application and supporting documents to all known and located uncom-
13 mitted owners, to all working interest owners within the unit, and to
14 the respective city or county where the proposed unit is located. The
15 mailing shall be sent by certified mail within seven (7) calendar days
16 of filing the application and include notice of the hearing date on
17 which the oil and gas administrator will consider the application. ~~The~~
18 ~~application may be.~~ For any uncommitted owners and working interest
19 owners who cannot be located, an applicant shall publish notice of any
20 application for an order, notice of hearing and response deadline once
21 in a newspaper of general circulation in the county in which the af-
22 fected property is located and request the department publish notice on
23 its website within seven (7) calendar days of filing of the application.
24 Only an uncommitted owner in the affected unit may file an objection or
25 other response to the application, and the uncommitted owner shall file
26 at least fourteen (14) calendar days before the hearing date provided in
27 the notice.

28 (c) For applications not involving paragraph (b) of this subsection,
29 the department and any uncommitted owner within the area defined in the
30 application may file objections or other responses to the application
31 and shall file at least fourteen (14) calendar days before the hearing
32 date provided in the notice.

33 (d) ~~The director~~ oil and gas administrator shall hear the application
34 and make a decision on the application's merits. ~~The director~~ oil and
35 gas administrator shall set regular hearing dates. Applications shall
36 be filed at least forty-five (45) calendar days before a desired hear-
37 ing date. Untimely applications shall be continued until the next hear-
38 ing. ~~The director~~ oil and gas administrator may for good cause continue
39 any hearing. ~~The director~~ oil and gas administrator may appoint a hear-
40 ing officer, who shall have the power and authority to conduct hearings.
41 Discovery is not permitted. The department may appear and testify at
42 the hearing. When applications are uncontested, the applicant may re-
43 quest, and ~~the director~~ oil and gas administrator may allow, approval
44 without a hearing based on review of the merits of a verified applica-
45 tion and the supporting exhibits.

46 (e) The oil and gas administrator shall issue a written decision on any
47 such application within thirty (30) calendar days of the hearing. ~~The~~
48 ~~director's~~ oil and gas administrator's decision shall not be subject to
49 any motion for reconsideration or further review, except for appeal to
50 the commission provided in subsection (~~d~~4) of this section.

1 (4) The oil and gas administrator's decision on an application or a re-
2 quest for an order may be appealed to the commission by the applicant or any
3 owner who filed an objection or other response to the application within the
4 time required. An appeal must be filed with the oil and gas administrator
5 within fourteen (14) calendar days of the date of issuance of the oil and
6 gas administrator's written decision. The date of issuance shall be three
7 (3) calendar days after the oil and gas administrator deposits the decision
8 in the U.S. mail, or the date on which he remits a decision electronically.
9 Such appeal shall include the reasons and authority for the appeal and shall
10 identify any facts in the record supporting the appeal. Any person appeal-
11 ing shall serve a copy of the appeal materials on any other person who par-
12 ticipated in the proceedings, by certified mail, or by personal service. Any
13 person who participated in the proceeding may file a response to the appeal
14 within five (5) business days of service of a copy of the appeal materials.
15 The appellant shall provide the oil and gas administrator with proof of ser-
16 vice of the appeal materials on other persons as required in this section.
17 The commission shall make a decision based on the record as set forth in the
18 written submittals of only the appellant and any other participating quali-
19 fied person, the oil and gas administrator's decision, and any oral argument
20 taken by the commission at an appeal hearing.

21 (5) Appeals to the commission shall be heard at the next regularly
22 scheduled commission hearing, or at a special meeting of the commission if
23 determined by the commission. In no case will a hearing be later than thirty
24 (30) calendar days after the filing of an appeal. The commission may take
25 argument from, but not new testimony of, the appellant and other qualified
26 participating persons at the hearing. The commission shall make a deci-
27 sion on the appeal at the hearing and issue a written order within five (5)
28 business days of the hearing. The prevailing party shall draft a proposed
29 written order and submit it within two (2) business days. The final order of
30 the commission shall not be subject to any motion for reconsideration.

31 (6) If no appeal is filed with the commission within the required time,
32 the decision of the oil and gas administrator shall become the final order.

33 (7) Judicial review of actions taken by the commission shall be gov-
34 erned by the provisions of chapter 52, title 67, Idaho Code.

35 (8) For an application or request for an order submitted under subsec-
36 tion (e~~3~~) of this section, only a person qualified under subsection (d~~4~~) of
37 this section who has completed the appeal procedures set forth in this sec-
38 tion shall be considered to have exhausted administrative remedies as re-
39 quired in section 67-527~~1~~65, Idaho Code.

40 (9) Each order shall include a reasoned statement in support of the
41 decision, including a concise statement of facts supporting any findings,
42 a statement of available procedures and time limits for appeals. Findings
43 must be based exclusively on materials in the record. The applicant and any
44 participating qualified person shall be served with a copy of the order. The
45 order shall include or be accompanied by a certificate of service.

46 (j~~10~~) Every application shall be signed by the applicant or his repre-
47 sentative, and his address shall be stated thereon. The signature of the ap-
48 plicant or his representative constitutes a certificate by him that he has
49 read the application and that to the best of his knowledge, information and
50 belief there is good ground to support the same. Each application shall be

1 of such form and content and accompanied by the number of copies required by
 2 rule of the commission. Each application shall be accompanied by a fee as es-
 3 tablished in statute or rule.

4 SECTION 51. That Section 50-222, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legisla-
 7 ture hereby declares and determines that it is the policy of the state of
 8 Idaho that cities of the state should be able to annex lands which are reason-
 9 ably necessary to assure the orderly development of Idaho's cities in order
 10 to allow efficient and economically viable provision of tax-supported and
 11 fee-supported municipal services, to enable the orderly development of pri-
 12 vate lands which benefit from the cost-effective availability of municipal
 13 services in urbanizing areas and to equitably allocate the costs of public
 14 services in management of development on the urban fringe.

15 (2) General authority. Cities have the authority to annex land into a
 16 city upon compliance with the procedures required in this section. In any
 17 annexation proceeding, all portions of highways lying wholly or partially
 18 within an area to be annexed shall be included within the area annexed unless
 19 expressly agreed between the annexing city and the governing board of the
 20 highway agency providing road maintenance at the time of annexation. Pro-
 21 vided further, that said city council shall not have the power to declare
 22 such land, lots or blocks a part of said city if they will be connected to such
 23 city only by a shoestring or strip of land which comprises a railroad or high-
 24 way right-of-way.

25 (3) Annexation classifications. Annexations shall be classified and
 26 processed according to the standards for each respective category set forth
 27 herein. The three (3) categories of annexation are:

28 (a) Category A: Annexations wherein:

29 (i) All private landowners have consented to annexation. Annex-
 30 ation where all landowners have consented may extend beyond the
 31 city area of impact provided that the land is contiguous to the
 32 city and that the comprehensive plan includes the area of annexa-
 33 tion;

34 (ii) Any residential enclaved lands of less than one hundred (100)
 35 privately-owned parcels, irrespective of surface area, which are
 36 surrounded on all sides by land within a city or which are bounded
 37 on all sides by lands within a city and by the boundary of the
 38 city's area of impact; or

39 (iii) The lands are those for which owner approval must be given
 40 pursuant to subsection (5) (b) (v) of this section.

41 (b) Category B: Annexations wherein:

42 (i) The subject lands contain less than one hundred (100) sepa-
 43 rate private ownerships and platted lots of record and where not
 44 all such landowners have consented to annexation; or

45 (ii) The subject lands contain more than one hundred (100) sep-
 46 arate private ownerships and platted lots of record and where
 47 landowners owning more than fifty percent (50%) of the area of the
 48 subject private lands have consented to annexation prior to the
 49 commencement of the annexation process; or

1 (iii) The lands are the subject of a development moratorium or a
2 water or sewer connection restriction imposed by state or local
3 health or environmental agencies; provided such lands shall not be
4 counted for purposes of determining the number of separate private
5 ownerships and platted lots of record aggregated to determine the
6 appropriate category.

7 (c) Category C: Annexations wherein the subject lands contain more
8 than one hundred (100) separate private ownerships and platted lots of
9 record and where landowners owning more than fifty percent (50%) of the
10 area of the subject private lands have not consented to annexation prior
11 to commencement of the annexation process.

12 (4) (a) Evidence of consent to annexation. For purposes of this sec-
13 tion, and unless excepted in paragraph (b) of this subsection (4),
14 consent to annex shall be valid only when evidenced by written instru-
15 ment consenting to annexation executed by the owner or the owner's
16 authorized agent. Written consent to annex lands must be recorded in
17 the county recorder's office to be binding upon subsequent purchasers,
18 heirs, or assigns of lands addressed in the consent. Lands need not be
19 contiguous or adjacent to the city limits at the time the landowner con-
20 sents to annexation for the property to be subject to a valid consent to
21 annex; provided however, no annexation of lands shall occur, irrespec-
22 tive of consent, until such land becomes contiguous or adjacent to such
23 city.

24 (b) Exceptions to the requirement of written consent to annexation.
25 The following exceptions apply to the requirement of written consent to
26 annexation provided for in subsection (4) (a) of this section:

27 (i) Enclaved lands: In category A annexations, no consent is nec-
28 essary for enclaved lands meeting the requirements of subsection
29 (3) (a) (ii) of this section;

30 (ii) Implied consent: In category B and C annexations, valid con-
31 sent to annex is implied for the area of all lands connected to a
32 water or wastewater collection system operated by the city if the
33 connection was requested in writing by the owner, or the owner's
34 authorized agent, or completed before July 1, 2008.

35 (5) Annexation procedures. Annexation of lands into a city shall fol-
36 low the procedures applicable to the category of lands as established by this
37 section. The implementation of any annexation proposal wherein the city
38 council determines that annexation is appropriate shall be concluded with
39 the passage of an ordinance of annexation.

40 (a) Procedures for category A annexations: Lands lying contiguous or
41 adjacent to any city in the state of Idaho may be annexed by the city
42 if the proposed annexation meets the requirements of category A. Upon
43 determining that a proposed annexation meets such requirements, a city
44 may initiate the planning and zoning procedures set forth in chapter 65,
45 title 67, Idaho Code, to establish the comprehensive planning policies,
46 where necessary, and zoning classification of the lands to be annexed.

47 (b) Procedures for category B annexations: A city may annex lands that
48 would qualify under the requirements of category B annexation if the
49 following requirements are met:

1 (i) The lands are contiguous or adjacent to the city and lie
2 within the city's area of city impact;

3 (ii) The land is laid off into lots or blocks containing not more
4 than five (5) acres of land each, whether the same shall have been
5 or shall be laid off, subdivided or platted in accordance with any
6 statute of this state or otherwise, or whenever the owner or pro-
7 prietor or any person by or with his authority has sold or begun to
8 sell off such contiguous or adjacent lands by metes and bounds in
9 tracts not exceeding five (5) acres, or whenever the land is sur-
10 rounded by the city. Splits of ownership which occurred prior to
11 January 1, 1975, and which were the result of placement of public
12 utilities, public roads or highways, or railroad lines through the
13 property shall not be considered as evidence of an intent to de-
14 velop such land and shall not be sufficient evidence that the land
15 has been laid off or subdivided in lots or blocks. A single sale
16 after January 1, 1975, of five (5) acres or less to a family mem-
17 ber of the owner for the purpose of constructing a residence shall
18 not constitute a sale within the meaning of this section. For pur-
19 poses of this section, "family member" means a natural person or
20 the spouse of a natural person who is related to the owner by blood,
21 adoption or marriage within the first degree of consanguinity;

22 (iii) Preparation and publication of a written annexation plan,
23 appropriate to the scale of the annexation contemplated, which in-
24 cludes, at a minimum, the following elements:

25 (A) The manner of providing tax-supported municipal ser-
26 vices to the lands proposed to be annexed;

27 (B) The changes in taxation and other costs, using examples,
28 which would result if the subject lands were to be annexed;

29 (C) The means of providing fee-supported municipal ser-
30 vices, if any, to the lands proposed to be annexed;

31 (D) A brief analysis of the potential effects of annexation
32 upon other units of local government which currently provide
33 tax-supported or fee-supported services to the lands pro-
34 posed to be annexed; and

35 (E) The proposed future land use plan and zoning designation
36 or designations, subject to public hearing, for the lands
37 proposed to be annexed;

38 (iv) Compliance with the notice and hearing procedures governing
39 a zoning district boundary change as set forth in section 67-6511,
40 Idaho Code, on the question of whether the property should be
41 annexed and, if annexed, the zoning designation to be applied
42 thereto; provided however, the initial notice of public hearing
43 concerning the question of annexation and zoning shall be pub-
44 lished in the official newspaper of the city and mailed by first
45 class mail to every property owner with lands included in such
46 annexation proposal not less than twenty-eight (28) days prior
47 to the initial public hearing. All public hearing notices shall
48 establish a time and procedure by which comments concerning the
49 proposed annexation may be received in writing and heard and,
50 additionally, public hearing notices delivered by mail shall in-

1 clude a one (1) page summary of the contents of the city's proposed
2 annexation plan and shall provide information regarding where the
3 annexation plan may be obtained without charge by any property
4 owner whose property would be subject to the annexation proposal.

5 (v) In addition to the standards set forth elsewhere in this sec-
6 tion, annexation of the following lands must meet the following
7 requirements:

8 (A) Property, owned by a county or any entity within the
9 county, that is used as a fairgrounds area under the pro-
10 visions of chapter 8, title 31, Idaho Code, or chapter 2,
11 title 22, Idaho Code, must have the consent of a majority of
12 the board of county commissioners of the county in which the
13 property lies; and

14 (B) Property, owned by a nongovernmental entity, that is
15 used to provide outdoor recreational activities to the pub-
16 lic and that has been designated as a planned unit develop-
17 ment of fifty (50) acres or more and does not require or uti-
18 lize any city services must have the express written permis-
19 sion of the nongovernmental entity owner.

20 (vi) After considering the written and oral comments of property
21 owners whose land would be annexed and other affected persons,
22 the city council may proceed with the enactment of an ordinance
23 of annexation and zoning. In the course of the consideration of
24 any such ordinance, the city must make express findings, to be set
25 forth in the minutes of the city council meeting at which the an-
26 nexation is approved, as follows:

27 (A) The land to be annexed meets the applicable requirements
28 of this section and does not fall within the exceptions or
29 conditional exceptions contained in this section;

30 (B) The annexation would be consistent with the public pur-
31 poses addressed in the annexation plan prepared by the city;

32 (C) The annexation is reasonably necessary for the orderly
33 development of the city;

34 (vii) Notwithstanding any other provision of this section, rail-
35 road right-of-way property may be annexed pursuant to this sec-
36 tion only when property within the city adjoins or will adjoin both
37 sides of the right-of-way.

38 (c) Procedures for category C annexations: A city may annex lands that
39 would qualify under the requirements of category C annexation if the
40 following requirements are met:

41 (i) Compliance with the procedures governing category B annexa-
42 tions; and

43 (ii) Evidence of consent to annexation based upon the following
44 procedures:

45 (A) Following completion of all procedures required for
46 consideration of a category B annexation, but prior to en-
47 actment of an annexation ordinance and upon an affirmative
48 action by the city council, the city shall mail notice to
49 all private landowners owning lands within the area to be
50 annexed, exclusive of the owners of lands that are subject

1 to a consent to annex which complies with subsection (4) (a)
2 of this section defining consent. Such notice shall invite
3 property owners to give written consent to the annexation,
4 include a description of how that consent can be made and
5 where it can be filed, and inform the landowners where the
6 entire record of the subject annexation may be examined.
7 Such mailed notice shall also include a legal description of
8 the lands proposed for annexation and a simple map depicting
9 the location of the subject lands.

10 (B) Each landowner desiring to consent to the proposed an-
11 nexation must submit the consent in writing to the city clerk
12 by a date specified in the notice, which date shall not be
13 later than forty-five (45) days after the date of the mailing
14 of such notice.

15 (C) After the date specified in the notice for receipt of
16 written consent, the city clerk shall compile and present
17 to the city council a report setting forth: (i) the total
18 physical area sought to be annexed, and (ii) the total phys-
19 ical area of the lands, as expressed in acres or square feet,
20 whose owners have newly consented in writing to the annexa-
21 tion, plus the area of all lands subject to a prior consent to
22 annex which complies with subsection (4) (a) of this section
23 defining consent. The clerk shall immediately report the
24 results to the city council.

25 (D) Upon receiving such report, the city council shall re-
26 view the results and may thereafter confirm whether consent
27 was received from the owners of a majority of the land. The
28 results of the report shall be reflected in the minutes of
29 the city council. If the report as accepted by the city coun-
30 cil confirms that owners of a majority of the land area have
31 consented to annexation, the city council may enact an ordi-
32 nance of annexation, which thereafter shall be published and
33 become effective according to the terms of the ordinance.
34 If the report confirms that owners of a majority of the land
35 area have not consented to the annexation, the category C
36 annexation shall not be authorized.

37 (6) The decision of a city council to annex and zone lands as a category
38 B or category C annexation shall be subject to judicial review in accordance
39 with the procedures provided in chapter 52, title 67, Idaho Code, and pur-
40 suant to the standards set forth in section ~~67-527967~~, Idaho Code. Any such
41 appeal shall be filed by an affected person in the appropriate district court
42 no later than twenty-eight (28) days after the date of publication of the an-
43 nexation ordinance. All cases in which there may arise a question of the va-
44 lidity of any annexation under this section shall be advanced as a matter of
45 immediate public interest and concern, and shall be heard by the district
46 court at the earliest practicable time.

47 (7) Annexation of noncontiguous municipal airfield. A city may annex
48 land that is not contiguous to the city and is occupied by a municipally owned
49 or operated airport or landing field. However, a city may not annex any other

1 land adjacent to such noncontiguous facilities which is not otherwise annex-
2 able pursuant to this section.

3 SECTION 52. That Section 54-2509, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 54-2509. PENALTY FOR VIOLATIONS OF LAW -- POWER OF COMMISSION. (1) Any
6 person holding a race meet, and any other person required by this act or the
7 rules of the commission to be licensed, participating, directly or indi-
8 rectly, in a race meet, without first being licensed by the commission, and
9 any person violating any of the terms or provisions of this act is guilty of a
10 misdemeanor.

11 (a) There shall be an absolute prohibition of the use of live lures in
12 the state of Idaho for the training of or racing of racing dogs. Any
13 violation of the provisions of this section shall be a felony punish-
14 able by a fine not exceeding twenty-five thousand dollars (\$25,000),
15 or by a prison term not to exceed seven (7) years, or by both such fine
16 and imprisonment. In addition the state racing commission shall not
17 license any breeder, trainer or kennel whose dogs have been trained or
18 raced with the use of live lures. The Idaho state racing commission
19 shall adopt rules that will provide for the humane treatment of the dogs
20 involved in any aspect of training for or engaging in dog racing.

21 (2) The commission shall have the power to exclude from any and all race
22 courses in this state any person who the commission deems detrimental to the
23 best interests of racing, or any person who violates any of the provisions of
24 this act or any rule or order of the commission.

25 (3) It shall be lawful to conduct race meets on or at a race track, or
26 otherwise, at any time during the week.

27 (4) Any person maintaining a license issued by the commission, who vio-
28 lates the provisions of this act or the rules of the commission, may have such
29 license suspended or revoked. In addition to such suspension or revocation
30 the commission may levy a monetary penalty commensurate with the gravity of
31 the offense, not to exceed two thousand five hundred dollars (\$2,500). The
32 commission, by rule shall provide a summary procedure for such determination
33 at the track, the penalty amount for specified violations, and shall provide
34 for an appeal of any summary decision to the commission. At-the-track sum-
35 mary proceedings shall not be subject to the provisions of chapter 52, ti-
36 tle 67, Idaho Code. Hearings and appeals before the commission as allowed by
37 this act or the rules of the commission shall be subject to chapter 52, ti-
38 tle 67, Idaho Code, except the provisions of section ~~67-5254(2)~~ 59(1), Idaho
39 Code, which is inconsistent with the unique requirements of racing.

40 (5) All law enforcement officers in this state shall assist in the en-
41 forcement of this act and the rules of the commission.

42 SECTION 53. That Section 58-122, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 58-122. CONTESTED CASES -- PROCEDURE. It shall be the duty of the
45 director of the department of lands in any or all contested cases, at the
46 direction of the board, to appoint hearing officers, receive evidence, issue
47 subpoenas and to hold contested case hearings in accordance with sections

1 67-52402 through 67-527169, Idaho Code, when hearings are necessary and
 2 witnesses may be required to be examined. Provided however, that when the
 3 state board of land commissioners is exercising its duties and authorities
 4 concerning the direction, control or disposition of the public lands of the
 5 state pursuant to sections 7 and 8, article IX, of the constitution of the
 6 state of Idaho, such actions shall not be considered to be contested cases
 7 as defined in subsection (~~67~~) of section 67-5201, Idaho Code, and section
 8 67-52403, Idaho Code, unless the board, in its discretion, determines that
 9 a contested case hearing would be of assistance to the board in the exercise
 10 of its duties and authorities.

11 SECTION 54. That Section 67-2317, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 67-2317. HEARING AND DECISION OF DISPUTED ISSUES. Upon the failure
 14 or refusal of the official or agency in charge of any state public building
 15 to comply with the recommendations of the administrator of the division
 16 of building safety, the administrator may hold a hearing, pursuant to the
 17 provisions for contested cases under the administrative procedure act, as
 18 provided in sections 67-52401 et seq., Idaho Code.

19 The administrator is empowered to conduct such hearing and render a de-
 20 cision. The administrator shall transmit a copy of the decision to the offi-
 21 cial or agency in direct control of the public building and to the governor.

22 SECTION 55. That Section 67-5206, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE
 25 ACT. (1) In accordance with the rulemaking requirements of this chapter, the
 26 administrative rules coordinator shall promulgate rules implementing the
 27 provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules
 28 shall:

- 29 (a) establish a uniform numbering system applicable to rules adopted by
- 30 all agencies;
- 31 (b) establish a uniform style and format applicable to rules adopted by
- 32 all agencies;
- 33 (c) establish a publication schedule for the bulletin and the adminis-
- 34 trative code, including deadlines for the submission of documents to be
- 35 included within each publication;
- 36 (d) establish a uniform indexing system for agency orders; and
- 37 (e) include such other rules as the coordinator deems necessary to im-
- 38 plement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho
- 39 Code, and this section.

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

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

- 1 (a) the form and content for petitions requesting an opportunity for an
2 oral presentation in a substantive rulemaking;
3 (b) procedures for the creation of a record of comments received at any
4 oral presentation;
5 (c) the standards by which exemptions from regular rulemaking require-
6 ments will be authorized to correct typographical errors, transcrip-
7 tion errors, or clerical errors;
8 (d) the form and content for a petition for the adoption of rules and the
9 procedure for its submission, consideration and disposition;
10 (e) procedures to facilitate negotiated rulemaking;
11 (f) the form and content of a petition for a declaratory ruling on the
12 applicability of statutes or regulations; and
13 (g) such other provisions as may be necessary or useful.

14 (4) In accordance with the ~~rule-making~~ rulemaking requirements of this
15 chapter, the attorney general shall promulgate rules implementing the pro-
16 visions of sections 67-5240~~1~~ through 67-5255~~9~~, Idaho Code. The rules shall
17 specify:

- 18 (a) form and content to be employed in giving notice of a contested
19 case;
20 (b) procedures and standards required for intervention in a contested
21 case;
22 (c) procedures for prehearing conferences;
23 (d) format for pleadings, briefs, and motions;
24 (e) the method by which service shall be made;
25 (f) procedures for the issuance of subpoenas, discovery orders, and
26 protective orders if authorized by other provisions of law;
27 (g) qualifications for persons seeking to act as a hearing officer;
28 (h) qualifications for persons seeking to act as a representative for
29 parties to contested cases;
30 (i) procedures to facilitate informal settlement of matters;
31 (j) procedures for placing ex parte contacts on the record; and
32 (k) such other provisions as may be necessary or useful.

33 (5) (a) After July 1, 1993, the rules promulgated by the attorney gen-
34 eral under this section shall apply to all agencies that do not affirma-
35 tively promulgate alternative procedures after the promulgation of the
36 rules by the attorney general. The rules promulgated by the attorney
37 general shall supersede the procedural rules of any agency in effect on
38 June 30, 1993, unless that agency promulgates its own procedures as pro-
39 vided in paragraph (b) of this subsection.

40 (b) After July 1, 1993, an agency that promulgates its own procedures
41 shall include in the rule adopting its own procedures a finding that
42 states the reasons why the relevant portion of the attorney general's
43 rules were inapplicable to the agency under the circumstances.

44 SECTION 56. Sections 33 through 42 of this act shall be in full force
45 and effect on and after July 1, 2018. Section 38 of this act shall be null,
46 void and of no force and effect on and after July 1, 2023. Sections 1 through
47 32 and sections 43 through 55 shall be in full force and effect on and after
48 January 1, 2019.