

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 65

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ADMINISTRATIVE RULES; PROVIDING LEGISLATIVE INTENT; AMENDING  
2 SECTION 67-5203, IDAHO CODE, TO REVISE A PROVISION REGARDING A CUMU-  
3 LATIVE INDEX OF RULEMAKING; AMENDING SECTION 67-5205, IDAHO CODE, TO  
4 REVISE PROVISIONS REGARDING THE PUBLICATION AND AVAILABILITY OF CER-  
5 TAIN RULEMAKING DOCUMENTS, TO REMOVE AN OBSOLETE PROVISION, AND TO  
6 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5220, IDAHO CODE, TO  
7 REVISE PROVISIONS REGARDING THE AVAILABILITY OF CERTAIN INFORMATION  
8 AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5221, IDAHO  
9 CODE, TO REVISE A PROVISION REGARDING NOTICE POSTED ONLINE AND TO MAKE A  
10 TECHNICAL CORRECTION; AMENDING SECTION 67-5224, IDAHO CODE, TO REVISE  
11 PROVISIONS REGARDING PENDING RULES AND TO REMOVE AN OBSOLETE PROVISION;  
12 AMENDING SECTION 67-5226, IDAHO CODE, TO REVISE A PROVISION REGARDING  
13 TEMPORARY RULES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION  
14 67-5291, IDAHO CODE, TO REVISE PROVISIONS REGARDING APPROVAL AND REJEC-  
15 TION OF RULES AND TO PROVIDE THAT THE ADMINISTRATIVE RULES COORDINATOR  
16 SHALL HAVE CERTAIN RESPONSIBILITIES.  
17

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

19 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that  
20 all pending administrative rules must be affirmatively approved by both the  
21 House of Representatives and the Senate via a concurrent resolution and that  
22 inaction by either body shall not cause a pending rule to become effective.  
23 Any rejection of a pending rule or a temporary rule shall now be contained in  
24 either a House Resolution or a Senate Resolution. This act will also update,  
25 clarify, and remove outdated provisions regarding the rulemaking process.

26 SECTION 2. That Section 67-5203, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 67-5203. PUBLICATION OF ADMINISTRATIVE BULLETIN. (1) All documents  
29 required or authorized in this chapter or by other provision of law to be  
30 published shall initially be published electronically in the bulletin.  
31 The bulletin shall be published electronically by the administrative rules  
32 coordinator not less frequently than the first Wednesday of each calendar  
33 month, but not more frequently than every other week.

34 (2) The bulletin shall contain all previously unpublished documents  
35 filed with the coordinator in compliance with a publication schedule estab-  
36 lished by the coordinator.

37 (3) Each issue of the bulletin shall contain a table of contents. A cu-  
38 mulative index of all rulemakings shall be published ~~at least every three (3)~~  
39 ~~months on the coordinator's website.~~

40 (4) The following documents, if not required to be otherwise published,  
41 shall be published in the bulletin:

1 (a) All executive orders of the governor;

2 (b) Agency notices of intent to promulgate rules, notices of proposed  
3 rules, and the text of all proposed and pending rules, together with any  
4 explanatory material supplied by the agency;

5 (c) All agency documents required by law to be published in the bul-  
6 letin; and

7 (d) Any legislative documents affecting a final agency rule.

8 (5) The text of all documents published electronically in the bulletin  
9 shall be the official text of that document until the document has been pub-  
10 lished in the administrative code. Judicial notice shall be taken of all  
11 documents published electronically in the bulletin.

12 SECTION 3. That Section 67-5205, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 67-5205. ~~FORMAT -- COSTS -- DISTRIBUTION -- FUNDS.~~ (1) The coordinator  
15 shall publish the administrative code and the permanent supplements thereto  
16 shall be published, the administrative bulletin, and other rules-related  
17 documents in such a manner that every agency has an opportunity to procure at  
18 reasonable cost from the coordinator, individual electronic copies of the  
19 rules and statements of policy of such agency published by authority of this  
20 chapter access to them at no charge. No administrative rule or statement of  
21 policy published in the administrative code or the ~~permanent supplements~~  
22 administrative bulletin shall be reset or otherwise reprinted at public  
23 expense upon a format distinct from that of the administrative code without  
24 a certification by the coordinator that such special format is necessary for  
25 the effective performance by the agency of its functions.

26 (2) ~~The prices to be charged for~~ When otherwise unavailable, individ-  
27 ual electronic copies of and subscriptions to the ~~administrative code, the~~  
28 ~~permanent supplements thereto and the bulletin, and for rules and statements~~  
29 ~~of policy, which prices may be fixed without reference to the restrictions~~  
30 ~~placed upon and fixed for the sale of other publications of the state shall be~~  
31 ~~set by rules promulgated may be provided by the coordinator. The coordina-~~  
32 ~~tor may set prices at a reasonable cost without reference to the restrictions~~  
33 ~~placed upon the sale of other publications of the state.~~

34 ~~(3)~~ The coordinator shall provide to the legislature free electronic  
35 copies of all rules subject to review by the legislature pursuant to section  
36 67-5291, Idaho Code, and may distribute other free electronic copies for of-  
37 ficial use.

38 ~~(4)~~ Without limiting the generality of the provisions of subsection ~~(2)~~  
39 ~~of this section, the rules of the coordinator may provide for volume dis-~~  
40 ~~counts to be available to established law book publishers who agree to in-~~  
41 ~~corporate fully administrative rules, the permanent supplements thereto and~~  
42 ~~the bulletin into their general scheme of promotion and distribution, and~~  
43 ~~may provide for the free reciprocal exchange of publications between this~~  
44 ~~state and other states and foreign jurisdictions. The provisions of this~~  
45 ~~section include the authority to exchange, display, access and publish texts~~  
46 ~~through electronic media.~~

47 ~~(5)~~ There is hereby created in the state treasury the administrative  
48 code fund. All moneys received from the production of rules, the sale of  
49 the administrative code, the permanent supplements thereto, or the bul-

1 letin, and for providing electronic access, shall be deposited in the fund.  
 2 All agencies ~~which~~ that have any material published electronically in the  
 3 bulletin, administrative code or supplements thereto, or newspapers, are  
 4 hereby authorized and directed to pay out of their appropriations to the  
 5 coordinator their respective shares of the costs of such publication and  
 6 distribution of such material. All moneys placed in the fund may be appro-  
 7 priated to the coordinator for the administration of the provisions of this  
 8 chapter, and for the publication and distribution of the bulletin, adminis-  
 9 trative code or supplements thereto, as authorized in this chapter.

10 The coordinator shall charge an annual fee to each participating agency  
 11 for each page published electronically in the administrative code, not to  
 12 exceed fifty-six dollars (\$56.00) per page. In addition, the coordinator  
 13 shall charge a fee to each participating agency for each page published  
 14 electronically in the bulletin, not to exceed sixty-one dollars (\$61.00)  
 15 per page. A fee per page may be charged even though less than a full page of  
 16 publication is required, and each participating agency shall promptly pay  
 17 into the administrative code fund such charge.

18 SECTION 4. That Section 67-5220, Idaho Code, be, and the same is hereby  
 19 amended to read as follows:

20 67-5220. NOTICE OF INTENT TO PROMULGATE RULES -- NEGOTIATED RULEMAK-  
 21 ING. (1) Prior to the adoption, amendment or repeal of a rule, an agency  
 22 shall determine whether negotiated rulemaking is feasible. The agency's  
 23 determination of whether negotiated rulemaking is feasible is not subject  
 24 to judicial review. If the agency determines that negotiated rulemaking is  
 25 feasible, it shall publish in the bulletin a notice of intent to promulgate a  
 26 rule. The notice shall contain a brief, nontechnical statement of the sub-  
 27 ject matter to be addressed in the proposed rulemaking, and shall include the  
 28 purpose of the rule, the statutory authority for the rulemaking, citation to  
 29 a specific federal statute or regulation if that is the basis of authority  
 30 or requirement for the rulemaking, and the principal issues involved. The  
 31 notice shall also state that interested persons have the opportunity to  
 32 participate with the agency in negotiated rulemaking as provided in this  
 33 section and shall identify an individual to whom comments on the proposal may  
 34 be sent. If the agency determines that negotiated rulemaking is not feasi-  
 35 ble, it shall explain why negotiated rulemaking is not feasible in a notice  
 36 of proposed rulemaking published pursuant to section 67-5221, Idaho Code,  
 37 and shall proceed with rulemaking as provided pursuant to this chapter. Each  
 38 agency that has a website shall cause the notice of intent to promulgate  
 39 rules to be placed onto or accessible from the home page of the agency's web-  
 40 site.

41 (2) The notice of intent to promulgate a rule is intended to facili-  
 42 tate negotiated rulemaking, a process in which all interested persons and  
 43 the agency seek consensus on the content of a rule. Agencies shall proceed  
 44 through such informal rulemaking whenever it is feasible to do so in order to  
 45 improve the substance of proposed rules by drawing upon shared information,  
 46 knowledge, expertise and technical abilities possessed by interested per-  
 47 sons and to expedite formal rulemaking.

48 (3) To facilitate the achievement of the purposes of this section,  
 49 agencies shall, at a minimum:

- 1 (a) Provide a reasonable period of time for interested persons to re-  
 2 spond to the notice of intent to promulgate rules;
- 3 (b) Provide notice of meetings to interested persons who responded to  
 4 the notice of intent to promulgate rules;
- 5 (c) ~~Upon request, m~~Make available to persons attending the meetings  
 6 all information that is considered by the agency in connection with the  
 7 formulation of the proposed rule and that is not exempt from disclosure  
 8 pursuant to chapter 1, title 74, Idaho Code;
- 9 (d) Consider the recommendations of interested persons concerning the  
 10 subject of the proposed rule;
- 11 (e) Establish, maintain and timely update the negotiated rulemaking  
 12 schedule and a list of written comments and other documents and informa-  
 13 tion pertinent to the proposed rule ~~and make that information available~~  
 14 ~~to persons attending the negotiated rulemaking meeting;~~
- 15 (f) Prepare a written summary of unresolved issues, key information  
 16 considered and conclusions reached during and as a result of the ne-  
 17 gotiated rulemaking; ~~and make that summary available to persons who~~  
 18 ~~attended the negotiated rulemaking meetings~~
- 19 (g) Make available, pursuant to the provisions of this section, the  
 20 schedules, notices, drafts, and summaries, and all other pertinent in-  
 21 formation, to interested persons and those attending the meetings by  
 22 placing them onto and making them accessible from the home page of the  
 23 promulgating agency's website.

24 SECTION 5. That Section 67-5221, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26 67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adop-  
 27 tion, amendment, or repeal of a rule, the agency shall publish notice of pro-  
 28 posed rulemaking in the bulletin. The notice of proposed rulemaking shall  
 29 include:

- 30 (a) The specific statutory authority for the rulemaking, including a  
 31 citation to the specific section of the Idaho Code that has occasioned  
 32 the rulemaking, or the federal statute or regulation if that is the ba-  
 33 sis of authority or requirement for the rulemaking;
- 34 (b) A statement in nontechnical language of the substance of the pro-  
 35 posed rule, including a specific description of any fee or charge im-  
 36 posed or increased;
- 37 (c) Except as otherwise required in paragraph (d) of this subsection,  
 38 a specific description, if applicable, of any negative fiscal impact on  
 39 the state general fund greater than ten thousand dollars (\$10,000) dur-  
 40 ing the fiscal year when the pending rule will become effective; pro-  
 41 vided however, that notwithstanding section 67-5231, Idaho Code, the  
 42 absence or accuracy of a fiscal impact statement provided pursuant to  
 43 this paragraph shall not affect the validity or the enforceability of  
 44 the rule;
- 45 (d) If a notice of proposed rulemaking of the Idaho state tax commis-  
 46 sion, a specific description of any negative or positive fiscal impact  
 47 greater than ten thousand dollars (\$10,000) during the fiscal year when  
 48 the pending rule will become effective; provided however, notwith-  
 49 standing section 67-5231, Idaho Code, the absence or accuracy of a

1 fiscal impact statement provided pursuant to this paragraph shall not  
2 affect the validity or the enforceability of the rule;

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

4 (f) The location, date, and time of any public hearings the agency in-  
5 tends to hold on the proposed rule;

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

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

11 (i) The deadline for public comments on the proposed rule; and

12 (j) If negotiated rulemaking was not conducted, an explanation of the  
13 agency's determination that negotiated rulemaking was not feasible.

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

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

26 (b) The coordinator shall cause the notice required in ~~subsection (2)~~  
27 ~~paragraph~~ (a) of this subsection to be published in at least the ac-  
28 cepting newspaper of largest paid circulation that is published in each  
29 county in Idaho or, if no newspaper is published in the county, then in  
30 an accepting newspaper of largest paid circulation published in Idaho  
31 and circulated in the county. The newspaper of largest circulation  
32 shall be established by the sworn statement of average annual paid week-  
33 day issue circulation that has been filed by a newspaper with the United  
34 States post office for the calendar year immediately preceding the cal-  
35 endar year during which the advertisement in this section is required to  
36 be published.

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

41 SECTION 6. That Section 67-5224, Idaho Code, be, and the same is hereby  
42 amended to read as follows:

43 67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the  
44 adoption, amendment, or repeal of a rule, the agency shall consider fully all  
45 written and oral submissions respecting the proposed rule.

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

1 (a) Reasons for adopting the rule;

2 (b) A statement of any change between the text of the proposed rule and  
3 the text of the pending rule with an explanation of the reasons for any  
4 changes;

5 (c) The date on which the pending rule will become final and effective,  
6 as provided in subsection (5) of this section, and a statement that the  
7 pending rule may be rejected by ~~concurrent~~ a house resolution or a sen-  
8 ate resolution of the legislature;

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

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

17 (f) Except as otherwise required in paragraph (g) of this subsection,  
18 a specific description, if applicable, of any negative fiscal impact on  
19 the state general fund greater than ten thousand dollars (\$10,000) dur-  
20 ing the fiscal year when the pending rule will become effective; pro-  
21 vided however, that notwithstanding section 67-5231, Idaho Code, the  
22 absence or accuracy of a fiscal impact statement provided pursuant to  
23 this paragraph shall not affect the validity or the enforceability of  
24 the rule; or

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

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

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

39 (5) (a) ~~Except as set forth in sections 67-5226 and 67-5228, Idaho Code,~~  
40 ~~a pending rule shall become final and effective upon the conclusion of~~  
41 ~~the legislative session at which the rule was submitted to the legisla-~~  
42 ~~ture for review, or as provided in the rule, but no pending rule adopted~~  
43 ~~by an agency shall become final and effective before the conclusion of~~  
44 ~~the regular or special legislative session at which the rule was sub-~~  
45 ~~mitted for review. A rule which is final and effective may be applied~~  
46 ~~retroactively, as provided in the rule.~~

47 (b) When the legislature approves a pending rule pursuant to section  
48 67-5291, Idaho Code, the rule shall become final and effective upon  
49 adoption of the concurrent resolution or such other date specified in  
50 the concurrent resolution.

1 (c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,  
 2 no pending rule or portion thereof ~~imposing a fee or charge of any kind~~  
 3 shall become final and effective until it has been approved by concur-  
 4 rent resolution. Any rejection of a pending rule or portion thereof  
 5 shall be contained in either a house resolution or a senate resolution.

6 (6) ~~Each agency shall provide the administrative rules coordinator~~  
 7 ~~with a description of any pending rule or portion thereof imposing a new fee~~  
 8 ~~or charge or increasing an existing fee or charge, along with a citation of~~  
 9 ~~the specific statute authorizing the imposition or increase of the fee or~~  
 10 ~~charge. The administrative rules coordinator shall provide the legislature~~  
 11 ~~with a compilation of the descriptions provided by the agencies.~~

12 (7) At the conclusion of the legislative session or as soon thereafter  
 13 as is practicable, the coordinator shall publish the date upon which the  
 14 legislature adjourned sine die and rules became effective and a list of  
 15 final rules becoming effective on a different date, as provided in section  
 16 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided  
 17 in section 67-5226(3), Idaho Code.

18 SECTION 7. That Section 67-5226, Idaho Code, be, and the same is hereby  
 19 amended to read as follows:

20 67-5226. TEMPORARY RULES. (1) If the governor finds that:

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

22 (b) Compliance with deadlines in amendments to governing law or federal  
 23 programs; or

24 (c) Conferring a benefit;

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

32 (2) A rule adopted pursuant to subsection (1) of this section ~~which~~ that  
 33 imposes a fee or charge may become effective under this section before it has  
 34 been approved by concurrent resolution only if the governor finds that the  
 35 fee or charge is necessary to avoid immediate danger which justifies the im-  
 36 position of the fee or charge.

37 (3) In no case shall a rule adopted pursuant to this section remain in  
 38 effect beyond the conclusion of the next succeeding regular session of the  
 39 legislature unless the rule is approved by concurrent resolution, in which  
 40 case the rule may remain in effect until the time specified in the resolution  
 41 or until the rule has been replaced by a final rule which has become effective  
 42 as provided in section 67-5224(5), Idaho Code. Any rejection of a temporary  
 43 rule or portion thereof shall be contained in either a house resolution or a  
 44 senate resolution.

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

47 (5) Temporary rules are not subject to the requirements of section  
 48 67-5223, Idaho Code, provided that the administrative rules coordinator

1 sends a copy of the temporary rules to the director of the legislative ser-  
2 vices office.

3 (6) Concurrently with the promulgation of a rule under this section, or  
4 as soon as reasonably possible thereafter, an agency shall commence the pro-  
5 mulgation of a proposed rule in accordance with the rulemaking requirements  
6 of this chapter, unless the temporary rule adopted by the agency will expire  
7 by its own terms or by operation of law before the proposed rule could become  
8 final.

9 SECTION 8. That Section 67-5291, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 67-5291. LEGISLATIVE REVIEW OF RULES. (1) The standing committees of  
12 the legislature may review temporary, pending and final rules which have  
13 been published in the bulletin or in the administrative code. If reviewed,  
14 the standing committee which reviewed the rules shall report to the member-  
15 ship of the body its findings and recommendations concerning its review of  
16 the rules. If ordered by the presiding officer, the report of the committee  
17 shall be printed in the journal. A concurrent resolution may be adopted  
18 approving the rule, in whole or in part, or a house resolution or senate  
19 resolution may be adopted rejecting the rule where it is determined that the  
20 rule, or part of the rule, is not consistent with the legislative intent of  
21 the statute that the rule was written to interpret, prescribe, implement or  
22 enforce, or where it is determined that any rule, or part of a rule, previ-  
23 ously promulgated and reviewed by the legislature shall be deemed not to be  
24 consistent with the legislative intent of the statute the rule was written to  
25 interpret, prescribe, implement or enforce. The rejection of a rule, or part  
26 of a rule, by the legislature via ~~concurrent~~ house resolution or senate res-  
27 olution shall prevent the agency's intended action from remaining in effect  
28 beyond the date of the legislative action. It shall be the responsibility of  
29 the ~~secretary of state coordinator~~ to immediately notify the affected agency  
30 of the filing and effective date of any concurrent resolution enacted to  
31 approve or house resolution or senate resolution enacted to reject, in whole  
32 or in part, an agency rule and to ~~transmit a copy of the concurrent resolu-~~  
33 ~~tion to the director of the agency for promulgation.~~ The agency coordinator  
34 shall be responsible for implementing legislative intent as expressed in the  
35 ~~concurrent~~ resolution, including, as appropriate, the reinstatement of the  
36 prior rule, if any, in the case of legislative rejection of a new rule. If  
37 a rule, or part of a rule, has been rejected by the legislature, the ~~agency~~  
38 coordinator shall publish notice of such rejection in the bulletin. Ex-  
39 cept as provided in section 67-5226, Idaho Code, with respect to temporary  
40 rules, every rule promulgated within the authority conferred by law, and in  
41 accordance with the provisions of chapter 52, title 67, Idaho Code, and made  
42 effective pursuant to section 67-5224(5), Idaho Code, shall remain in full  
43 force and effect until the same is rejected by ~~concurrent~~ house resolution or  
44 senate resolution, or until it expires as provided in section 67-5292, Idaho  
45 Code, or by its own terms.

46 (2) For purposes of this section, "part of a rule" means a provision in a  
47 rule that is designated either numerically or alphabetically or the entirety  
48 of any new or amended language contained therein.