

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 100

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ADMINISTRATIVE RULES; PROVIDING LEGISLATIVE INTENT; AMENDING  
2 SECTION 67-5224, IDAHO CODE, TO REVISE PROVISIONS REGARDING PENDING  
3 RULES; AMENDING SECTION 67-5226, IDAHO CODE, TO REVISE A PROVISION RE-  
4 GARDING TEMPORARY RULES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING  
5 SECTION 67-5291, IDAHO CODE, TO REVISE PROVISIONS REGARDING LEGISLA-  
6 TIVE REVIEW OF RULES.  
7

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

9 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that  
10 all pending administrative rules must be affirmatively approved by both the  
11 House of Representatives and the Senate via a concurrent resolution and that  
12 inaction by either body shall not cause a pending rule to become effective.

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

15 67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the  
16 adoption, amendment, or repeal of a rule, the agency shall consider fully all  
17 written and oral submissions respecting the proposed rule.

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

22 (a) Reasons for adopting the rule;

23 (b) A statement of any change between the text of the proposed rule and  
24 the text of the pending rule with an explanation of the reasons for any  
25 changes;

26 (c) The date on which the pending rule will become final and effective,  
27 as provided in subsection (5) of this section, and a statement that the  
28 pending rule ~~may~~ must be ~~rejected~~ approved by concurrent resolution of  
29 the legislature;

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

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

38 (f) Except as otherwise required in paragraph (g) of this subsection,  
39 a specific description, if applicable, of any negative fiscal impact on  
40 the state general fund greater than ten thousand dollars (\$10,000) dur-  
41 ing the fiscal year when the pending rule will become effective; pro-

1 vided however, that notwithstanding section 67-5231, Idaho Code, the  
2 absence or accuracy of a fiscal impact statement provided pursuant to  
3 this paragraph shall not affect the validity or the enforceability of  
4 the rule; or

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

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

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

19 (5) (a) ~~Except as set forth in sections 67-5226 and 67-5228, Idaho Code,~~  
20 ~~a pending rule shall become final and effective upon the conclusion of~~  
21 ~~the legislative session at which the rule was submitted to the legisla-~~  
22 ~~ture for review, or as provided in the rule, but no pending rule adopted~~  
23 ~~by an agency shall become final and effective before the conclusion of~~  
24 ~~the regular or special legislative session at which the rule was sub-~~  
25 ~~mitted for review. A rule which is final and effective may be applied~~  
26 ~~retroactively, as provided in the rule.~~

27 (b) When the legislature approves a pending rule pursuant to section  
28 67-5291, Idaho Code, the rule shall become final and effective upon  
29 adoption of the concurrent resolution or such other date specified in  
30 the concurrent resolution.

31 (c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,  
32 no pending rule or portion thereof ~~imposing a fee or charge of any kind~~  
33 shall become final and effective until it has been approved by a concur-  
34 rent resolution that originated in a standing committee of the house or  
35 senate that reviewed the rule.

36 (6) Each agency shall provide the administrative rules coordinator  
37 with a description of any pending rule or portion thereof imposing a new fee  
38 or charge or increasing an existing fee or charge, along with a citation of  
39 the specific statute authorizing the imposition or increase of the fee or  
40 charge. The administrative rules coordinator shall provide the legislature  
41 with a compilation of the descriptions provided by the agencies.

42 (7) At the conclusion of the legislative session or as soon thereafter  
43 as is practicable, the coordinator shall publish the date upon which the  
44 legislature adjourned sine die and rules became effective and a list of  
45 final rules becoming effective on a different date, as provided in section  
46 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided  
47 in section 67-5226(3), Idaho Code.

48 SECTION 3. That Section 67-5226, Idaho Code, be, and the same is hereby  
49 amended to read as follows:

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

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

3 (b) Compliance with deadlines in amendments to governing law or federal  
4 programs; or

5 (c) Conferring a benefit;

6 requires a rule to become effective before it has been submitted to the leg-  
7 islature for review, the agency may proceed with such notice as is practi-  
8 cable and adopt a temporary rule, except as otherwise provided in section  
9 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immedi-  
10 ately effective. The agency shall incorporate the required finding and a  
11 concise statement of its supporting reasons in each rule adopted in reliance  
12 upon the provisions of this subsection.

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

18 (3) In no case shall a rule adopted pursuant to this section remain in  
19 effect beyond the conclusion of the next succeeding regular session of the  
20 legislature unless the rule is approved by concurrent resolution that orig-  
21 inated in a standing committee of the house or senate that reviewed the rule,  
22 in which case the rule may remain in effect until the time specified in the  
23 resolution or until the rule has been replaced by a final rule which has be-  
24 come effective as provided in section 67-5224(5), Idaho Code.

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

27 (5) Temporary rules are not subject to the requirements of section  
28 67-5223, Idaho Code, provided that the administrative rules coordinator  
29 sends a copy of the temporary rules to the director of the legislative ser-  
30 vices office.

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

37 SECTION 4. That Section 67-5291, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 67-5291. LEGISLATIVE REVIEW OF RULES. (1) The standing committees of  
40 the legislature may review temporary, pending and final rules which have  
41 been published in the bulletin or in the administrative code. If reviewed,  
42 the standing committee which reviewed the rules shall report to the member-  
43 ship of the body its findings and recommendations concerning its review of  
44 the rules. If ordered by the presiding officer, the report of the committee  
45 shall be printed in the journal. A concurrent resolution may be adopted  
46 approving the rule, in whole or in part, ~~or rejecting the~~ and any rule not  
47 included in such concurrent resolution shall not be approved where it is  
48 determined that the rule, or part of the rule, is not consistent with the  
49 legislative intent of the statute that the rule was written to interpret,

1 prescribe, implement or enforce, or where it is determined that any rule, or  
2 part of a rule, previously promulgated and reviewed by the legislature shall  
3 be deemed not to be consistent with the legislative intent of the statute the  
4 rule was written to interpret, prescribe, implement or enforce. ~~The rejec-~~  
5 ~~tion of Failure to approve~~ a rule, or part of a rule, by the legislature via  
6 concurrent resolution shall prevent the agency's intended action from re-  
7 maining in effect beyond the date of the legislative action. It shall be the  
8 responsibility of the secretary of state to immediately notify the affected  
9 agency of the filing and effective date of any concurrent resolution enacted  
10 to approve ~~or reject~~, in whole or in part, an agency rule and to transmit a  
11 copy of the concurrent resolution to the director of the agency for promulga-  
12 tion. The agency shall be responsible for implementing legislative intent  
13 as expressed in the concurrent resolution, including, as appropriate, the  
14 reinstatement of the prior rule, if any, in the case of ~~legislative rejection~~  
15 ~~of failure to approve~~ a new rule via concurrent resolution. If a rule, or  
16 part of a rule, has not been rejected approved by the legislature, the agency  
17 shall publish notice of such ~~rejection~~ failure to approve in the bulletin.  
18 Except as provided in section 67-5226, Idaho Code, with respect to temporary  
19 rules, every rule promulgated within the authority conferred by law, and  
20 in accordance with the provisions of chapter 52, title 67, Idaho Code, and  
21 made effective pursuant to section 67-5224(5), Idaho Code, shall remain in  
22 full force and effect until the same is rejected by concurrent resolution,  
23 or until it expires as provided in section 67-5292, Idaho Code, or by its own  
24 terms.

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