

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 629

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION
2 67-5201, IDAHO CODE, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS;
3 AMENDING SECTION 67-5206, IDAHO CODE, TO REVISE PROVISIONS REGARDING
4 RULEMAKING; AMENDING SECTION 67-5240, IDAHO CODE, TO PROVIDE THAT IS-
5 SUANCE OF ORDERS BY CERTAIN ENTITIES SHALL NOT RESULT IN A CONTESTED
6 CASE GOVERNED BY THE PROVISIONS OF SPECIFIED LAW; AMENDING SECTION
7 67-5252, IDAHO CODE, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES NO PARTY
8 SHALL HAVE THE RIGHT TO A DISQUALIFICATION WITHOUT CAUSE AND TO MAKE
9 TECHNICAL CORRECTIONS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY
10 THE ADDITION OF A NEW SECTION 67-5280, IDAHO CODE, TO PROVIDE FOR THE
11 OFFICE OF ADMINISTRATIVE HEARINGS AND TO PROVIDE FOR POWERS AND DU-
12 TIES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A
13 NEW SECTION 67-5281, IDAHO CODE, TO PROVIDE FOR THE CHIEF ADMINISTRA-
14 TIVE HEARING OFFICER; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
15 ADDITION OF A NEW SECTION 67-5282, IDAHO CODE, TO PROVIDE FOR DUTIES
16 AND PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE HEARING OFFICER;
17 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW
18 SECTION 67-5283, IDAHO CODE, TO PROVIDE FOR HEARING OFFICER QUALIFICA-
19 TIONS AND TO PROVIDE FOR POWERS AND DUTIES; AMENDING CHAPTER 52, TITLE
20 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5284, IDAHO CODE,
21 TO PROVIDE FOR THE COOPERATION OF AGENCIES; AMENDING CHAPTER 52, TITLE
22 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5285, IDAHO CODE,
23 TO PROVIDE FOR THE OFFICE OF ADMINISTRATIVE HEARINGS, TO PROVIDE FOR
24 COST ESTIMATES, AND TO PROVIDE FOR THE ASSESSMENT OF RECIPIENT AGEN-
25 CIES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A
26 NEW SECTION 67-5286, IDAHO CODE, TO PROVIDE FOR THE CONDUCT OF CONTESTED
27 CASE PROCEEDINGS, TO PROVIDE FOR THE SUBMISSION OF CERTAIN MATERIAL BY
28 THE DEPARTMENT OF HEALTH AND WELFARE TO THE CENTERS FOR MEDICARE AND
29 MEDICAID SERVICES, TO AUTHORIZE CERTAIN OVERSIGHT, AND TO PROVIDE FOR
30 EXTENSION OF COMMENCEMENT OF SPECIFIED CONTESTED CASE HEARINGS UNDER
31 A CERTAIN CONDITION; AMENDING SECTION 58-122, IDAHO CODE, TO PROVIDE
32 A CORRECT CODE REFERENCE; AND DECLARING AN EMERGENCY AND PROVIDING AN
33 EFFECTIVE DATE.
34

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

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

38 67-5201. DEFINITIONS. As used in this ~~act~~ chapter:

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

41 (2) "Agency" means each state board, commission, department or officer
42 authorized by law to make rules or to determine contested cases, but does not

1 include the legislative or judicial branches, executive officers listed in
 2 section 1, article IV~~7~~ of the constitution of the state of Idaho in the exer-
 3 cise of powers derived directly and exclusively from the constitution, the
 4 state militia or the state board of correction.

5 (3) "Agency action" means:

6 (a) The whole or part of a rule or order;

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

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

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

12 (5) "Bulletin" means the Idaho administrative bulletin established in
 13 this chapter.

14 (6) "Chief administrative hearing officer" means the administrator of
 15 the office of administrative hearings created pursuant to section 67-5280,
 16 Idaho Code.

17 (7) "Contested case" means a proceeding ~~which~~ that results in the is-
 18 suance of an order.

19 (78) "Coordinator" means the administrative rules coordinator pre-
 20 scribed in section 67-5202, Idaho Code.

21 (89) "Document" means any executive order, notice, rule or statement of
 22 policy of an agency.

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

25 (11) "Hearing officer" means the chief administrative hearing offi-
 26 cer and any hearing officers appointed by him pursuant to sections 67-5281
 27 through 67-5283, Idaho Code, or a person appointed by an agency or board to
 28 hear a contested case.

29 (102) "License" means the whole or part of any agency permit, certifi-
 30 cate, approval, registration, charter, or similar form of authorization re-
 31 quired by law, but does not include a license required solely for revenue
 32 purposes.

33 (113) "Official text" means the text of a document issued, prescribed,
 34 or promulgated by an agency in accordance with this chapter~~7~~ and is the only
 35 legally enforceable text of such document. Judicial notice shall be taken
 36 of all documents issued, prescribed, or promulgated in accordance with this
 37 chapter.

38 (124) "Order" means an agency action of particular applicability that
 39 determines the legal rights, duties, privileges, immunities, or other legal
 40 interests of one (1) or more specific persons.

41 (135) "Party" means each person or agency named or admitted as a party~~7~~
 42 or properly seeking and entitled as of right to be admitted as a party.

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

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

49 (168) "Proposed rule" means a rule published in the bulletin as provided
 50 in section 67-5221, Idaho Code.

1 (179) "Provision of law" means the whole or a part of the state or fed-
2 eral constitution, or of any state or federal:

3 (a) Statute; or

4 (b) Rule or decision of court.

5 (~~1820~~) "Publish" means to bring before the public by publication in the
6 bulletin or administrative code, by electronic means or as otherwise specif-
7 ically provided by law.

8 (~~1921~~) "Rule" means the whole or a part of an agency statement of general
9 applicability that has been promulgated in compliance with the provisions of
10 this chapter and that implements, interprets, or prescribes:

11 (a) Law or policy; or

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

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

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

20 (iii) Intra-agency memoranda; or

21 (iv) Any written statements given by an agency ~~which~~ that pertain
22 to an interpretation of a rule or to the documentation of compli-
23 ance with a rule.

24 (~~202~~) "Rulemaking" means the process for formulation, adoption, amend-
25 ment or repeal of a rule.

26 (~~213~~) "Standard" means a manual, guideline, criterion, specification,
27 requirement, measurement or other authoritative principle providing a model
28 or pattern in comparison with which the correctness or appropriateness of
29 specified actions, practices or procedures may be determined.

30 (~~224~~) "Submitted for review" means that a rule has been provided to the
31 legislature for review at a regular or special legislative session as pro-
32 vided in section 67-5291, Idaho Code.

33 (~~235~~) "Temporary rule" means a rule authorized by the governor to be-
34 come effective before it has been submitted to the legislature for review
35 and ~~which~~ that expires by its own terms or by operation of law no later than
36 the conclusion of the next succeeding regular legislative session unless
37 extended or replaced by a final rule as provided in section 67-5226, Idaho
38 Code.

39 SECTION 2. That Section 67-5206, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE
42 ACT. (1) In accordance with the rulemaking requirements of this chapter, the
43 administrative rules coordinator shall promulgate rules implementing the
44 provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules
45 shall:

46 (a) ~~e~~Establish a uniform numbering system applicable to rules adopted
47 by all agencies;

48 (b) ~~e~~Establish a uniform style and format applicable to rules adopted
49 by all agencies;

1 (c) ~~e~~Establish a publication schedule for the bulletin and the adminis-
 2 trative code, including deadlines for the submission of documents to be
 3 included within each publication;

4 (d) ~~e~~Establish a uniform indexing system for agency orders; and

5 (e) ~~i~~Include such other rules as the coordinator deems necessary to im-
 6 plement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho
 7 Code, and this section.

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

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

15 (a) ~~t~~The form and content for petitions requesting an opportunity for
 16 an oral presentation in a substantive rulemaking;

17 (b) ~~p~~Procedures for the creation of a record of comments received at any
 18 oral presentation;

19 (c) ~~t~~The standards by which exemptions from regular rulemaking re-
 20 quirements will be authorized to correct typographical errors, tran-
 21 scription errors, or clerical errors;

22 (d) ~~t~~The form and content for a petition for the adoption of rules and
 23 the procedure for its submission, consideration and disposition;

24 (e) ~~p~~Procedures to facilitate negotiated rulemaking;

25 (f) ~~t~~The form and content of a petition for a declaratory ruling on the
 26 applicability of statutes or regulations; and

27 (g) ~~s~~Such other provisions as may be necessary or useful.

28 (4) In accordance with the ~~rule making~~ rulemaking requirements of this
 29 chapter, the attorney general shall promulgate rules implementing the pro-
 30 visions of sections 67-5240 through 67-5255, Idaho Code. The rules shall
 31 specify:

32 (a) ~~f~~Form and content to be employed in giving notice of a contested
 33 case;

34 (b) ~~p~~Procedures and standards required for intervention in a contested
 35 case;

36 (c) ~~p~~Procedures for prehearing conferences;

37 (d) ~~f~~Format for pleadings, briefs, and motions;

38 (e) ~~t~~The method by which service shall be made;

39 (f) ~~p~~Procedures for the issuance of subpoenas, discovery orders, and
 40 protective orders if authorized by other provisions of law;

41 (g) ~~q~~Qualifications for persons seeking to act as a hearing officer;

42 (h) ~~q~~Qualifications for persons seeking to act as a representative for
 43 parties to contested cases;

44 (i) ~~p~~Procedures to facilitate informal settlement of matters; and

45 (j) ~~p~~Procedures for placing ex parte contacts on the record; and

46 (k) ~~s~~such other provisions as may be necessary or useful.

47 (5) (a) After July 1, 1993, the rules promulgated by the attorney gen-
 48 eral under this section shall apply to all agencies that do not affirma-
 49 tively promulgate alternative procedures after the promulgation of the
 50 rules by the attorney general. The rules promulgated by the attorney

1 general shall supersede the procedural rules of any agency in effect on
 2 June 30, 1993, unless that agency promulgates its own procedures as pro-
 3 vided in paragraph (b) of this subsection.

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

8 (6) With respect to contested cases and other proceedings conducted by
 9 the office of administrative hearings as authorized by this chapter, rules
 10 promulgated by the attorney general or any agency pursuant to subsection (4)
 11 of this section shall remain in full force and effect, except with respect
 12 to hearing officer qualifications, until such time as the office of admin-
 13 istrative hearings promulgates replacement rules, and thereafter such rules
 14 of the office of administrative hearings shall govern unless otherwise re-
 15 quired by governing federal law.

16 SECTION 3. That Section 67-5240, Idaho Code, be, and the same is hereby
 17 amended to read as follows:

18 67-5240. CONTESTED CASES. A proceeding by an agency, other than the
 19 public utilities commission, ~~or~~ the industrial commission, ~~that~~ the Idaho
 20 personnel commission, and the Idaho transportation department's driver's
 21 license suspension contested case hearings, which may result in the issuance
 22 of an order, is a contested case and is governed by the provisions of this
 23 chapter, except as provided by other provisions of law.

24 SECTION 4. That Section 67-5252, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 67-5252. PRESIDING OFFICER -- DISQUALIFICATION. (1) Except as pro-
 27 vided in subsection (4) of this section, any party shall have the right to one
 28 (1) disqualification without cause of any person serving or designated to
 29 serve as presiding officer, and any party shall have a right to move to dis-
 30 qualify for bias, prejudice, interest, substantial prior involvement in the
 31 matter other than as a presiding officer, status as an employee of the agency
 32 hearing the contested case, lack of professional knowledge in the subject
 33 matter of the contested case, or any other cause provided in this chapter or
 34 any cause for which a judge is or may be disqualified.

35 (2) Any party may petition for the disqualification of a person serving
 36 or designated to serve as presiding officer:

37 (a) ~~w~~Within fourteen (14) days after receipt of notice indicating that
 38 the person will preside at the contested case; or

39 (b) ~~p~~Promptly upon discovering facts establishing grounds for disqual-
 40 ification, whichever is later.

41 Any party may assert a blanket disqualification for cause of all employees of
 42 the agency hearing the contested case, other than the agency head, without
 43 awaiting designation of a presiding officer.

44 (3) A person whose disqualification for cause is requested shall deter-
 45 mine in writing whether to grant the petition, stating facts and reasons for
 46 the determination.

1 (4) ~~Where~~ When disqualification of the agency head or a member of the
2 agency head would result in an inability to decide a contested case, the ac-
3 tions of the agency head shall be treated as a conflict of interest under the
4 provisions of section 74-404, Idaho Code.

5 (5) ~~Where~~ When a decision is required to be rendered within fourteen
6 (14) weeks of the date of a request for a hearing by state or federal statutes
7 or rules and regulations, or when the presiding officer is the chief admin-
8 istrative hearing officer or appointed by the chief administrative hearing
9 officer as defined in section 67-5201, Idaho Code, no party shall have the
10 right to a disqualification without cause.

11 SECTION 5. That Chapter 52, Title 67, Idaho Code, be, and the same is
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
13 ignated as Section 67-5280, Idaho Code, and to read as follows:

14 67-5280. CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS -- POWERS AND
15 DUTIES. (1) There is hereby created in the department of self-governing
16 agencies the office of administrative hearings.

17 (2) For agencies not excluded in this section, the office of adminis-
18 trative hearings shall:

19 (a) Unless otherwise specified by law, conduct all contested case pro-
20 ceedings that arise from an appeal of an agency order;

21 (b) Conduct such adjudicatory hearings, mediations, and arbitrations
22 not required by this chapter that are requested by agencies and agreed
23 to by the office of administrative hearings at such monetary rates as
24 established by the office of administrative hearings; and

25 (c) Promulgate rules consistent with state and federal law to implement
26 provisions relating to its duties and actions authorized by this chap-
27 ter.

28 (3) The office of administrative hearings shall not hear and shall not
29 have authority over or oversight of any action by the department of water re-
30 sources or the water resource board.

31 (4) The office of administrative hearings shall be subject to audit in
32 the same manner as other agencies of the state.

33 SECTION 6. That Chapter 52, Title 67, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 67-5281, Idaho Code, and to read as follows:

36 67-5281. CHIEF ADMINISTRATIVE HEARING OFFICER -- APPOINTMENT -- QUAL-
37 IFICATIONS -- REMOVAL -- SALARY. (1) A chief administrative hearing officer
38 shall be appointed by the governor and confirmed by the senate to serve a four
39 (4) year term. A person may be reappointed to serve additional terms. Pro-
40 vided, however, there is no right to reappointment.

41 (2) The chief administrative hearing officer must meet the following
42 qualifications on the effective date of his appointment:

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

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

45 (c) Have held a license to practice law or held a judicial office in one
46 (1) or more jurisdictions of the United States for at least five (5) con-
47 tinuous years immediately preceding such appointment; and

1 (d) Be or become an active member of the Idaho state bar within one (1)
2 year of appointment and remain an active member in good standing there-
3 after.

4 (3) If the chief administrative hearing officer resigns, dies, or is
5 removed from office as provided in this section, the governor shall appoint a
6 person who meets the qualifications established in this section, subject to
7 confirmation by the senate, to fill the unexpired term.

8 (4) The chief administrative hearing officer may be removed from office
9 by the governor for failing to retain those qualifications of his office es-
10 tablished in subsection (2) of this section, for engaging in prohibited con-
11 duct established in section 67-5282 (2), Idaho Code, or for good cause shown.
12 Before such removal, the governor shall give the chief administrative hear-
13 ing officer a written copy of the charges against him, provide him an oppor-
14 tunity to submit a response no fewer than fourteen (14) calendars days there-
15 after, and may provide him such other process as the governor deems appropri-
16 ate. If the chief administrative hearing officer is removed, the governor
17 shall provide the house of representatives and the senate written notice of
18 the removal, the effective date of removal, and the reason or reasons there-
19 for.

20 SECTION 7. That Chapter 52, Title 67, Idaho Code, be, and the same is
21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
22 ignated as Section 67-5282, Idaho Code, and to read as follows:

23 67-5282. DUTIES AND PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE
24 HEARING OFFICER. (1) The chief administrative hearing officer shall:

25 (a) Serve as the administrator of the office of administrative hear-
26 ings;

27 (b) Conduct such contested case proceedings and such other proceedings
28 as are conducted by the office of administrative hearings in accordance
29 with section 67-5280 (2) (a) and (b), Idaho Code;

30 (c) Devote full-time to the office of administrative hearings and his
31 obligations as chief administrative hearing officer;

32 (d) Subject to applicable law and regulation, appoint, supervise, and
33 remove hearing officers and staff as he deems appropriate to the proper
34 functioning of the office of administrative hearings, determine the
35 duties of such appointees as he deems appropriate, and, from among the
36 hearing officers employed by the office of administrative hearings,
37 designate a deputy chief administrative hearing officer to act in place
38 of the chief administrative hearing officer when the chief administra-
39 tive hearing officer is unable to perform his duties;

40 (e) Promulgate rules to implement the provisions of sections 67-5280
41 through 67-5286, Idaho Code;

42 (f) Establish a hearing officer code of conduct that shall, among other
43 things, provide for independent and unbiased decision-making by hear-
44 ing officers both as perceived and in fact and provide for a system to
45 monitor compliance with, and sanction violations of, the hearing offi-
46 cer code of conduct;

47 (g) Protect and ensure the decisional independence of hearing offi-
48 cers;

1 (h) Implement a system for monitoring the quality of contested case
 2 proceedings and such other proceedings as are conducted by the office of
 3 administrative hearings in accordance with section 67-5280(2)(a) and
 4 (b), Idaho Code;

5 (i) At his discretion, unless otherwise prohibited by state or federal
 6 law, retain independent contractor hearing officers at reasonable and
 7 consistent rates of compensation; provided that an independent con-
 8 tractor hearing officer with specialized expertise may be compensated
 9 at a higher rate if such expertise is necessary to the proper adjudica-
 10 tion of the case and such higher rate of compensation is necessary in
 11 order to obtain such expertise; and

12 (j) Contract with agencies to conduct such adjudicatory hearings, me-
 13 diations, and arbitrations authorized by section 67-5280(2)(b), Idaho
 14 Code.

15 (2) The chief administrative hearing officer shall not:

16 (a) Engage in the practice of law outside of his role in the office of
 17 administrative hearings;

18 (b) Hold, or be a candidate for, any federal, state, county, municipal,
 19 district, or other elective office;

20 (c) Serve as the agent, representative, officer, political treasurer,
 21 or employee, whether for profit or otherwise, of any political party,
 22 political committee, or candidate, whether as defined in either chapter
 23 1, title 34, or chapter 66, title 67, Idaho Code, or otherwise; and

24 (d) Hold any other public or private-sector position, whether for
 25 profit or otherwise, except for volunteer positions that are not incon-
 26 sistent with his duties as chief administrative hearing officer.

27 SECTION 8. That Chapter 52, Title 67, Idaho Code, be, and the same is
 28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 29 ignated as Section 67-5283, Idaho Code, and to read as follows:

30 67-5283. HEARING OFFICER QUALIFICATIONS -- POWERS -- DUTIES. (1) The
 31 chief administrative hearing officer and hearing officers appointed by the
 32 chief administrative hearing officer shall:

33 (a) On the effective date of their appointments and throughout their
 34 tenure, meet and retain all of the qualifications specified in section
 35 67-5281(2), Idaho Code;

36 (b) Take the oath of office as prescribed in chapter 4, title 59, Idaho
 37 Code;

38 (c) Comply with the hearing officer code of conduct;

39 (d) Not engage in the conduct prohibited in section 67-5282(2), Idaho
 40 Code. Provided, however, to the extent that it does not create a con-
 41 flict of interest, the code of conduct may be waived for some or all of
 42 these prohibitions for contractor hearing officers; and

43 (e) Be deemed the presiding officers of contested case proceedings and
 44 other proceedings conducted by the office of administrative hearings
 45 and assigned to them and have the power to issue subpoenas, administer
 46 oaths, control the course of the proceedings, order the use of alter-
 47 native dispute resolution with the parties' consent, enter such awards
 48 for costs and attorney's fees as authorized by law, and perform other

1 necessary and appropriate acts in the performance of their duties with
2 respect to such cases.

3 (2) (a) Independent contractors may be hired as hearing officers with-
4 out the limitation on outside work or outside practice of law, provided
5 that:

6 (i) A disclosure is filed with the chief administrative hear-
7 ing officer that states in what other outside work the independent
8 contractor is engaged;

9 (ii) The independent contractor does not engage in outside work
10 presenting a conflict of interest; and

11 (iii) The independent contractor discloses such other information
12 as required by the code of conduct.

13 (b) If a failure to comply with the requirements of this subsection by
14 an independent contractor is brought to the attention of the chief ad-
15 ministrative hearing officer within thirty (30) days of the issuance of
16 the independent contractor hearing officer's order, the chief admin-
17 istrative hearing officer shall declare such order void and of no ef-
18 fect within fourteen (14) days. The chief administrative hearing offi-
19 cer shall be permitted to issue a stay while he investigates the issue of
20 failure to comply if the order involves a financial transaction.

21 (3) Those individuals serving as hearing officers in the office of
22 the attorney general for department of health and welfare contested case
23 hearings on December 31, 2023, shall have the option to be appointed hearing
24 officers when the office of administrative hearings begins conducting such
25 hearings on January 1, 2024, as provided by section 67-5286, Idaho Code, if
26 they meet the hearing officer qualifications requirements set forth in this
27 section and if such hearing officer positions are available in the office of
28 administrative hearings on an employment or independent contractor basis.

29 SECTION 9. That Chapter 52, Title 67, Idaho Code, be, and the same is
30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
31 ignated as Section 67-5284, Idaho Code, and to read as follows:

32 67-5284. COOPERATION OF AGENCIES. No agency or state officer, other
33 than the chief administrative hearing officer, shall attempt to influence
34 the selection of a hearing officer for a contested case proceeding or any
35 other matter, except mediations, and the chief administrative hearing offi-
36 cer shall not permit any such influence; provided that agencies and state of-
37 ficers may inform the office of administrative hearings in writing of their
38 views regarding:

39 (1) Expertise needed or desired with respect to types of potential con-
40 tested cases;

41 (2) Proposed rules under consideration for adoption by the office of
42 administrative hearings;

43 (3) Legislation or rules under consideration or being proposed by the
44 office of administrative hearings;

45 (4) Legislation or rules under consideration or being proposed by such
46 agencies or state officers; and

47 (5) Alleged violations of the code of conduct.

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 67-5285, Idaho Code, and to read as follows:

4 67-5285. 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 August 29 of each fiscal year. The division of financial
10 management shall notify all state agencies of these cost estimates for the
11 next fiscal year on or before October 1 of each fiscal year. The division of
12 financial management and the legislative services office shall allow state
13 agencies to modify their budget requests 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 11. That Chapter 52, Title 67, Idaho Code, be, and the same is
22 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
23 ignated as Section 67-5286, Idaho Code, and to read as follows:

24 67-5286. CONDUCT OF CONTESTED CASE PROCEEDINGS. (1) Notwithstanding
25 any other provision of this chapter, the office of administrative hearings
26 shall not conduct contested case proceedings until January 1, 2023. Con-
27 tested case proceedings commenced prior to that date shall proceed under the
28 law as it existed as of June 30, 2022, unless the hearing for such contested
29 case did not commence prior to January 1, 2023. Provided, however, the of-
30 fice of administrative hearings shall not conduct department of health and
31 welfare contested case hearings until January 1, 2024, and such hearings
32 commenced prior to that date shall be completed by the department of health
33 and welfare.

34 (2) The department of health and welfare shall expeditiously submit to
35 the centers for medicare and medicaid services (CMS) all that may be required
36 for CMS to approve the conduct of department of health and welfare contested
37 case hearings by the office of administrative hearings commencing on Jan-
38 uary 1, 2024, as provided for in subsections (1) and (3) of this section, in-
39 cluding but not limited to state plan amendments, waivers, and memorandums
40 of agreement. The governor, by and through the director of the department
41 of health and welfare, shall retain the authority to exercise appropriate
42 oversight of hearings necessary to comply with requirements described in 42
43 U.S.C. 1396a and related regulations.

44 (3) The governor may, after notice to the chief administrative hearing
45 officer, extend the date on which the office of administrative hearings is
46 to commence conducting department of health and welfare contested case hear-
47 ings as provided for in subsection (1) of this section until CMS has approved
48 the conduct of hearings by the office of administrative hearings.

1 SECTION 12. That Section 58-122, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 58-122. CONTESTED CASES -- PROCEDURE. It shall be the duty of the
4 director of the department of lands in any or all contested cases, at the
5 direction of the board, to appoint hearing officers, receive evidence,
6 issue subpoenas and to hold contested case hearings in accordance with sec-
7 tions 67-5240 through 67-5271, Idaho Code, when hearings are necessary and
8 witnesses may be required to be examined. Provided however, that when the
9 state board of land commissioners is exercising its duties and authorities
10 concerning the direction, control or disposition of the public lands of the
11 state pursuant to sections 7 and 8, article IX, of the constitution of the
12 state of Idaho, such actions shall not be considered to be contested cases
13 as defined in ~~subsection (6) of~~ section 67-5201, Idaho Code, and section
14 67-5240, Idaho Code, unless the board, in its discretion, determines that a
15 contested case hearing would be of assistance to the board in the exercise of
16 its duties and authorities.

17 SECTION 13. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after
19 July 1, 2022.