

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 9

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION
2 39-107, IDAHO CODE, TO REVISE A PROVISION REGARDING CONTESTED CASE
3 RULES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-314,
4 IDAHO CODE, TO REVISE A PROVISION REGARDING PROCEDURES FOR DISCIPLINARY
5 PROCEEDINGS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
6 54-2412, IDAHO CODE, TO REVISE A PROVISION REGARDING PROCEDURES FOR
7 DISCIPLINARY PROCEEDINGS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
8 SECTION 54-2819, IDAHO CODE, TO REVISE A PROVISION REGARDING PROCE-
9 DURES FOR DISCIPLINARY PROCEEDINGS AND TO MAKE TECHNICAL CORRECTIONS;
10 AMENDING SECTION 54-5315, IDAHO CODE, TO REVISE A PROVISION REGARDING
11 PROCEDURES FOR DISCIPLINARY PROCEEDINGS AND TO MAKE TECHNICAL CORREC-
12 TIONS; AMENDING SECTION 67-5201, IDAHO CODE, TO REVISE DEFINITIONS,
13 TO DEFINE TERMS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
14 67-5206, IDAHO CODE, TO REVISE A PROVISION REGARDING PROMULGATION OF
15 RULES IMPLEMENTING THE ADMINISTRATIVE PROCEDURE ACT, TO PROVIDE FOR
16 RULEMAKING AUTHORITY, AND TO MAKE A TECHNICAL CORRECTION; AMENDING SEC-
17 TION 67-5232, IDAHO CODE, TO REVISE A PROVISION REGARDING DECLARATORY
18 RULINGS BY AGENCIES AND TO PROVIDE THAT AN AGENCY SHALL INDEX ALL CUR-
19 RENTLY EFFECTIVE DECLARATORY ORDERS; REPEALING SECTION 67-5241, IDAHO
20 CODE, RELATING TO INFORMAL DISPOSITION; AMENDING CHAPTER 52, TITLE
21 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5241, IDAHO CODE,
22 TO ESTABLISH PROVISIONS REGARDING INFORMAL DISPOSITION OF A CONTESTED
23 CASE; AMENDING SECTION 67-5242, IDAHO CODE, TO ESTABLISH PROVISIONS
24 REGARDING PROCEDURE AT A CONTESTED CASE HEARING, TO REVISE PROVISIONS
25 REGARDING PROCEDURE AT A CONTESTED CASE HEARING, TO REMOVE PROVISIONS
26 REGARDING PROCEDURE AT A CONTESTED CASE HEARING, AND TO MAKE TECHNICAL
27 CORRECTIONS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION
28 OF A NEW SECTION 67-5242A, IDAHO CODE, TO ESTABLISH PROVISIONS REGARD-
29 ING A DEFAULTING PARTY AND A DEFAULT ORDER; AMENDING SECTION 67-5244,
30 IDAHO CODE, TO REVISE A PROVISION REGARDING A REVIEW OF RECOMMENDED
31 ORDERS; AMENDING SECTION 67-5245, IDAHO CODE, TO REVISE A PROVISION
32 REGARDING A REVIEW OF PRELIMINARY ORDERS AND TO MAKE TECHNICAL COR-
33 RECTIONS; AMENDING SECTION 67-5247, IDAHO CODE, TO PROVIDE FOR HOW
34 LONG AN EMERGENCY ORDER SHALL BE EFFECTIVE; AMENDING SECTION 67-5249,
35 IDAHO CODE, TO PROVIDE THAT A PRESIDING OFFICER SHALL CREATE A HEARING
36 RECORD, TO REVISE PROVISIONS REGARDING AN AGENCY RECORD, AND TO MAKE
37 TECHNICAL CORRECTIONS; AMENDING SECTION 67-5250, IDAHO CODE, TO REVISE
38 PROVISIONS REGARDING THE INDEXING OF PRECEDENTIAL AGENCY ORDERS, TO
39 PROVIDE THAT ALL FINAL WRITTEN ORDERS AND GUIDANCE DOCUMENTS INDEXED BY
40 AN AGENCY SHALL BE POSTED ON THE AGENCY'S WEBSITE, AND TO MAKE A TECH-
41 NICAL CORRECTION; AMENDING SECTION 67-5251, IDAHO CODE, TO ESTABLISH
42 PROVISIONS REGARDING EVIDENCE IN A CONTESTED CASE, TO REVISE A PRO-
43 VISION REGARDING EVIDENCE IN A CONTESTED CASE, AND TO MAKE TECHNICAL
44 CORRECTIONS; AMENDING SECTION 67-5252, IDAHO CODE, TO REVISE TERMINOL-
45

1 OGY; AMENDING SECTION 67-5281, IDAHO CODE, TO REVISE TERMINOLOGY AND TO
 2 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5282, IDAHO CODE, TO
 3 REVISE TERMINOLOGY AND TO REVISE PROVISIONS REGARDING DUTIES AND PRO-
 4 HIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE LAW JUDGE; AMENDING SECTION
 5 67-5283, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL COR-
 6 RECTION; AMENDING SECTION 67-5284, IDAHO CODE, TO REVISE TERMINOLOGY;
 7 AMENDING SECTION 67-5286, IDAHO CODE, TO REVISE A PROVISION REGARDING
 8 DEPARTMENT OF HEALTH AND WELFARE CONTESTED CASE PROCEEDINGS AND TO
 9 REMOVE PROVISIONS REGARDING CONTESTED CASE PROCEEDINGS; PROVIDING SEV-
 10 ERABILITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

12 SECTION 1. That Section 39-107, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 39-107. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS --
 15 SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES.

16 (1) (a) The board of environmental quality shall consist of seven (7)
 17 members who shall be appointed by the governor, with the advice and con-
 18 sent of the senate. The members shall serve at the pleasure of the gov-
 19 ernor. Each member of the board shall be a citizen of the United States,
 20 a resident of the state of Idaho, and a qualified elector and shall be
 21 appointed to assure appropriate geographic representation of the state
 22 of Idaho. Not more than four (4) members of the board shall be from any
 23 one (1) political party. Two (2) members of the board shall be chosen
 24 with due regard to their knowledge of and interest in solid waste; two
 25 (2) members shall be chosen for their knowledge of and interest in air
 26 quality; two (2) members shall be chosen for their knowledge of and in-
 27 terest in water quality; and one (1) member shall be chosen with due re-
 28 gard for his knowledge of and interest in air, water and solid waste is-
 29 sues. At least four (4) of the board members shall represent the pub-
 30 lic's interest and not derive any significant portion of their income
 31 from persons subject to air quality permits or enforcement orders.

32 (b) The members of the board of environmental quality shall be ap-
 33 pointed for a term of four (4) years. In appointing members whose terms
 34 begin in 2000, the governor shall designate three (3) members to be ap-
 35 pointed for a term of three (3) years, two (2) members appointed for a
 36 term of four (4) years, and two (2) members appointed for a term of two
 37 (2) years. Successors to the members appointed for a term of less than
 38 four (4) years shall be appointed for a term of four (4) years there-
 39 after.

40 (2) The board annually shall elect a chairman, a vice chairman, and a
 41 secretary and shall hold such meetings as may be necessary for the orderly
 42 conduct of its business, and such meetings shall be held from time to time on
 43 seventy-two (72) hours' notice of the chairman or a majority of the members.
 44 Five (5) members shall be necessary to constitute a quorum at any regular or
 45 special meeting, and the action of the majority of members present shall be
 46 the action of the board. The members of the board shall be compensated as
 47 provided in section 59-509(h), Idaho Code.

1 (3) The board, in furtherance of its duties under this act and under its
2 rules, shall have the power to administer oaths, to certify to official acts,
3 and to issue subpoenas for the attendance of witnesses and the production of
4 papers, books, accounts, documents and testimony. The board may, if a wit-
5 ness refuses to attend or testify or to produce any papers required by such
6 subpoenas, report to the district court in and for the county in which the
7 proceeding is pending, by petition, setting forth that due notice has been
8 given of the time and place of attendance of said witnesses or the production
9 of said papers, that the witness has been properly summoned, and that the
10 witness has failed and refused to attend or produce the papers required by
11 this subpoena before the board or has refused to answer questions propounded
12 to him in the course of said proceedings, and the board may ask an order of
13 said court compelling the witness to attend and testify and produce said pa-
14 pers before the board. The court, upon the petition of the board, shall enter
15 an order directing the witness to appear before the court at a time and place
16 to be fixed by the court in such order, the time to be not more than ten (10)
17 days from the date of the order, and then and there shall show cause why he
18 has not attended and testified or produced said papers before the board. A
19 copy of said order shall be served upon said witness. If it shall appear to
20 the court that said subpoena was regularly issued by the board and regularly
21 served, the court shall thereupon order that said witness appear before the
22 board at the time and place fixed in said order and testify or produce the re-
23 quired papers. Upon failure to obey said order, said witness shall be dealt
24 with for contempt of court.

25 (4) The director, his designee, or any party to the action may, in an in-
26 vestigation or hearing before the board, cause the deposition or interroga-
27 tory of witnesses or parties residing within or without the state to be taken
28 in the manner prescribed by law for like depositions and interrogatories in
29 civil actions in the district court of this state and to that end may compel
30 the attendance of said witnesses and production of books, documents, papers
31 and accounts.

32 (5) Any person aggrieved by an action or inaction of the department
33 shall be afforded an opportunity for a fair hearing upon request therefor
34 in writing pursuant to chapter 52, title 67, Idaho Code, and the rules pro-
35 mulgated thereunder. In those cases where the board has been granted the
36 authority to hold such a hearing pursuant to a provision of the Idaho Code,
37 the hearing may be conducted by the board at a regular or special meeting,
38 or the board may designate hearing officers, who shall have the power and
39 authority to conduct hearings in the name of the board at any time and place.
40 In any hearing, a member of the board or a hearing officer designated by it
41 shall have the power to administer oaths, examine witnesses, and issue in
42 the name of the board subpoenas requiring the testimony of witnesses and the
43 production of evidence relevant to any matter in the hearing.

44 (6) Any person adversely affected by a final determination of the board
45 may secure judicial review by filing a petition for review as prescribed un-
46 der the provisions of chapter 52, title 67, Idaho Code. The petition for re-
47 view shall be served ~~upon~~ on the chairman of the board, the director of the
48 department, and ~~upon~~ the attorney general of the state of Idaho. Such ser-
49 vice shall be jurisdictional and the provisions of this section shall be the
50 exclusive procedure for appeal.

1 (7) The board, by the affirmative vote of at least four (4) of its mem-
 2 bers, may adopt, amend or repeal the rules, codes, and standards of the de-
 3 partment that are necessary and feasible in order to carry out the purposes
 4 and provisions of this act and to enforce the laws of this state. The rules
 5 and orders so adopted and established shall have the force and effect of law
 6 and may deal with any matters deemed necessary and feasible for protecting
 7 the environment of the state.

8 (8) All rulemaking proceedings and hearings of the board shall be gov-
 9 erned by the provisions of chapter 52, title 67, Idaho Code.

10 (9) The board shall adopt contested case rules consistent with the
 11 rules of administrative procedure ~~adopted by the attorney general under~~
 12 pursuant to section 67-5206(1), Idaho Code, the provisions of this act and
 13 other statutory authority of the department.

14 (10) All rules, permits and other actions heretofore adopted, issued
 15 or taken by the board of health and welfare pertaining to the environmental
 16 protection functions administered by the division of environmental quality
 17 shall remain in full force and effect until superseded.

18 (11) The board of environmental quality shall be the successor to all
 19 rights, powers and duties of the board of health and welfare regarding all
 20 rulemaking proceedings, administrative proceedings, contested cases, civil
 21 actions, contracts, delegations, authority and other matters pertaining to
 22 environmental protection functions administered by the division of environ-
 23 mental quality.

24 (12) Upon creation of the board of environmental quality, all pending
 25 business before the board of health and welfare relating to environmental
 26 protection functions administered by the division of environmental quality
 27 shall be transferred to and determined by the board of environmental qual-
 28 ity.

29 SECTION 2. That Section 54-314, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 54-314. DISCIPLINE -- INJUNCTION. (1) The board shall have the author-
 32 ity to sanction any license issued pursuant to the provisions of this chapter
 33 for any of the following:

34 (a) Fraud or deception in applying for, procuring or renewing a license
 35 under this chapter;

36 (b) Fraud or deceit in the practice of architecture or in procuring any
 37 contract in the practice of architecture;

38 (c) Incompetence or gross negligence or recklessness in the practice of
 39 architecture;

40 (d) A conviction, finding of guilt, receipt of a withheld judgment or
 41 suspended sentence in this or any other state, territory, country or ju-
 42 risdiction for a felony or a misdemeanor, which misdemeanor involved
 43 a violation of the provisions of this chapter, a willful violation of
 44 state or local building codes, or a violation of other laws relating to
 45 the public health and safety and ~~that were~~ was committed in the course of
 46 practicing architecture;

47 (e) Affixing his signature to, or impressing his seal ~~upon~~ on, any
 48 plans, drawings, specifications or other instruments of service that
 49 have not been prepared by him, or under his responsible control, or per-

1 mitting his name to be used for the purpose of assisting any person who
2 is not a licensed architect to evade the provisions of this chapter;

3 (f) Receiving rebates, commissions, grants of money or other favors in
4 connection with the work, without the knowledge of the party for whom
5 he is working, or having a pecuniary interest in the performance of the
6 contract for the work designed, planned or supervised by him without the
7 knowledge and consent of the owner;

8 (g) Unethical or unprofessional conduct as defined by the rules of the
9 board or the code of ethics established by the rules of the board;

10 (h) Practicing architecture or representing oneself as a licensed ar-
11 chitect when unlicensed, in violation of licensing laws of the juris-
12 diction in which the conduct took place;

13 (i) Having had any professional or occupational license revoked, sus-
14 pended or otherwise disciplined in Idaho or any other state, territory,
15 country or jurisdiction;

16 (j) Failing to maintain the requirements for a license, including not
17 fulfilling the continuing education requirement for license renewal
18 established by the board in rule;

19 (k) Failing to comply with a board order; or

20 (l) Violating any of the provisions of this chapter or any of the rules
21 promulgated by the board under the authority of this chapter.

22 (2) Sanctions that the board may impose include one (1) or more of the
23 following:

24 (a) Refusal to grant or renew a license;

25 (b) Revocation of a license;

26 (c) Suspension of a license for a period not to exceed two (2) years;

27 (d) Restriction of a license to prohibit the offender from performing
28 certain acts or from engaging in the practice of architecture in a par-
29 ticular manner for a period not to exceed two (2) years;

30 (e) Placement of the offender on probation and supervision by the board
31 for a period not to exceed two (2) years; and

32 (f) Imposition of an administrative fine not to exceed two thousand
33 dollars (\$2,000) per violation.

34 (3) The procedures for disciplinary proceedings shall be in compliance
35 with the Idaho administrative procedure act ~~and, the Idaho rules of the of-
36 fice of the attorney general administrative procedure,~~ and the division of
37 occupational and professional licenses.

38 (4) The board or any resident citizen may maintain an action in equity
39 in the name of the state of Idaho to enjoin perpetually any person, firm, com-
40 pany, corporation or partnership from persisting in the doing of any acts
41 constituting a violation of this chapter. Such action shall be brought in
42 the district court of the county in which said act or acts or some of them are
43 claimed to have been or are being committed, by filing a complaint setting
44 forth the acts. The court, or a judge thereof at chambers, if satisfied from
45 the complaint or by affidavits that the acts complained of have been or are
46 being committed and will probably be persisted in, may issue a temporary writ
47 enjoining the defendant from the commission of any such act or acts pending
48 final disposition of the case. The case shall proceed as in other cases for
49 injunction. If at the trial the commission of the act or acts by the defen-
50 dant is established, and the court further finds that it is probable that

1 the defendant will continue therein or in similar violations, the court, or
 2 a judge thereof at chambers, shall enter a decree perpetually enjoining the
 3 defendant from thereafter committing said or similar acts.

4 SECTION 3. That Section 54-2412, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 54-2412. REVOCATION OR SUSPENSION OF LICENSE -- POWERS OF BOARD --
 7 PROCEDURES FOR DISCIPLINARY PROCEEDINGS. (1) The board shall have the power
 8 to revoke, suspend, refuse to issue, refuse to renew, or otherwise limit any
 9 license or certificate issued pursuant to the provisions of this chapter for
 10 any of the following:

- 11 (a) Procuring a license or registration by knowingly making a false
 12 statement, submitting false information, or refusing to provide com-
 13 plete information in response to a question in an application for
 14 licensure or through any form of fraud or misrepresentation;
 15 (b) Being convicted of a felony;
 16 (c) Misrepresentation, ~~or~~ fraudulent representation in the perfor-
 17 mance of any duty, conduct or activity regulated under this chapter;
 18 (d) Violating the provisions of this chapter or any rules of the board
 19 or any code of conduct or ethical standards adopted by the board;
 20 (e) Being negligent or incompetent; or
 21 (f) Failing to provide appropriate and personal supervision, if act-
 22 ing as the designated responsible charge operator, to any person gain-
 23 ing experience under the provisions of this chapter.

24 (2) The board shall have the power to administer oaths, take deposi-
 25 tions of witnesses within or without the state in the manner provided by law
 26 in civil cases, and ~~shall have power throughout,~~ within the state of Idaho,
 27 to require the attendance of such witnesses and the production of such books,
 28 records and papers as it may desire, relevant to any hearing before it of
 29 any matter ~~which~~ it has authority to investigate, and for that purpose the
 30 board may issue a subpoena for any witness or a subpoena duces tecum to com-
 31 pel the production of books, records or papers, ~~directed to the sheriff of~~
 32 any county of the state of Idaho where such witness resides or may be found,
 33 which subpoena shall be served and returned in the same manner as a subpoena
 34 in a criminal case.

35 (3) The procedures for disciplinary proceedings shall be in compliance
 36 with the Idaho administrative procedure act ~~and,~~ the Idaho rules of ~~the of-~~
 37 ~~fice of the attorney general~~ administrative procedure, and the division of
 38 occupational and professional licenses.

39 SECTION 4. That Section 54-2819, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 54-2819. DISCIPLINE. (1) Grounds for discipline. The board shall have
 42 the power to deny any application for or renewal of a certificate of regis-
 43 tration or to revoke, suspend or otherwise discipline any registrant or reg-
 44 istration issued pursuant to this chapter and to limit or restrict the prac-
 45 tice of any registrant upon a determination by the board that the person:

1 (a) Made, or caused to be made, a false, fraudulent or forged statement,
2 document, credentials or representation in procuring or attempting to
3 procure a certificate of registration to practice geology; ~~or~~

4 (b) Practiced geology under a false or assumed name; ~~or~~

5 (c) Was convicted, found guilty, received a withheld judgment or sus-
6 pended sentence in this or any other state of action constituting a
7 crime that is deemed relevant in accordance with section 67-9411(1),
8 Idaho Code; ~~or~~

9 (d) Violated the provisions of this chapter or rules, standards of con-
10 duct and practice, or any ethical codes as may be adopted by the board;
11 ~~or~~

12 (e) Is or has been grossly negligent, incompetent, or reckless in the
13 practice of geology; or

14 (f) Has had a license, certificate, or registration to practice as a
15 professional geologist suspended or revoked in any jurisdiction. A
16 certified copy of the order of suspension or revocation shall be prima
17 facie evidence of such suspension or revocation.

18 (2) Proceedings. Every person subject to disciplinary proceedings
19 shall be afforded an opportunity for hearing after reasonable notice.

20 (a) All proceedings hereunder shall be in accordance with chapter 52,
21 title 67, Idaho Code, and the Idaho rules of administrative procedure ~~of~~
22 ~~the attorney general (IDAPA 04.11.01)~~, as provided in section 67-5206,
23 Idaho Code.

24 (b) Hearings shall be conducted by the board or by persons appointed by
25 the board to conduct hearings and receive evidence.

26 (3) Probation. Any order of the board entered under this section may be
27 withheld or suspended for a probationary period to be fixed by the board ~~upon~~
28 on such terms and conditions as may be appropriate in order to regulate, mon-
29 itor or supervise the practice of geology by the registrant subject to such
30 order for the prescribed probationary period.

31 (4) Subsequent review. Any order of the board entered under this sec-
32 tion may be withdrawn, reversed, modified or amended upon a showing by the
33 person subject to the order that the grounds for discipline no longer ex-
34 ist or that he is rehabilitated, qualified and competent to practice profes-
35 sional geology and that he is not likely to violate the provisions of this
36 section or rules adopted hereunder in the future.

37 (5) Costs and fees. The board may, pursuant to an order of discipline
38 or as a condition to withdrawal, reversal, modification or amendment of the
39 order, require the person to pay all or part of the costs and fees incurred by
40 the board in proceedings upon which the order was entered.

41 (6) Administrative fines. The board may, pursuant to an order of disci-
42 pline, require the payment of an administrative fine not to exceed one thou-
43 sand dollars (\$1,000) for each violation of the provisions of this section or
44 rules adopted hereunder.

45 SECTION 5. That Section 54-5315, Idaho Code, be, and the same is hereby
46 amended to read as follows:

47 54-5315. REVOCATION OR SUSPENSION OF LICENSE -- PROCEDURES FOR DISCI-
48 PLINARY PROCEEDINGS. (1) The board shall have the power to refuse to issue a
49 license, or revoke, suspend, refuse to renew, or otherwise sanction any li-

1 cense issued pursuant to the provisions of this chapter for any of the fol-
2 lowing:

3 (a) Procuring a license or registration by knowingly making a false
4 statement, submitting false information, refusing to provide complete
5 information in response to a question in an application for a license or
6 through any form of fraud or misrepresentation;

7 (b) Being convicted of a felony;

8 (c) Misrepresentation or fraudulent representation in the performance
9 of any duty, conduct or activity regulated under this chapter;

10 (d) Violating the provisions of this chapter or any rules of the board
11 or any code of conduct or ethical standards adopted by the board;

12 (e) Being incompetent; or

13 (f) Failing to provide appropriate and personal supervision, if act-
14 ing as the designated supervisor, to any person gaining experience un-
15 der the provisions of this chapter.

16 (2) The board shall have the power to administer oaths, take deposi-
17 tions of witnesses within or without the state in the manner provided by law
18 in civil cases, and ~~shall have power throughout,~~ within the state of Idaho,
19 to require the attendance of such witnesses and the production of such books,
20 records and papers as it may desire, relevant to any hearing before it of
21 any matter ~~which~~ it has authority to investigate, and for that purpose the
22 board may issue a subpoena for any witness or a subpoena duces tecum to com-
23 pel the production of books, records or papers, directed to the sheriff of
24 any county of the state of Idaho where such witness resides or may be found,
25 which subpoena shall be served and returned in the same manner as a subpoena
26 in a criminal case.

27 (3) The procedures for disciplinary proceedings shall be in compliance
28 with the Idaho administrative procedure act ~~and, the Idaho rules of the of-~~
29 ~~office of the attorney general~~ administrative procedure, and the division of
30 occupational and professional licenses.

31 SECTION 6. That Section 67-5201, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 67-5201. DEFINITIONS. As used in this chapter:

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

36 (2) "Administrative law judge" means any hearing officer who is
37 employed as a full-time state employee by the office of administrative
38 hearings, including the chief administrative law judge, the deputy chief
39 administrative law judge, and any administrative law judges appointed by
40 the chief administrative law judge pursuant to section 67-5282(1)(d), Idaho
41 Code.

42 ~~(2)~~ (3) "Adopt" means that an agency has, under the regular rulemaking
43 process, promulgated a temporary rule, a new rule chapter, or an amendment or
44 repeal of a final rule that will be submitted for review by the legislature as
45 either a temporary rule or a pending rule.

46 ~~(3)~~ (4) "Agency" means each state board, commission, department or of-
47 ficer authorized by law to make rules or to determine contested cases, but
48 does not include the legislative or judicial branches, executive officers
49 listed in section 1, article IV of the constitution of the state of Idaho in

1 the exercise of powers derived directly and exclusively from the constitu-
2 tion, the state militia or the state board of correction.

3 ~~(4)~~ (5) "Agency action" means:

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

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

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

8 ~~(5)~~ (6) "Agency head" means an individual or body of individuals in whom
9 the ultimate legal authority of the agency is vested by any provision of law.

10 ~~(6)~~ (7) "Bulletin" means the Idaho administrative bulletin established
11 in this chapter.

12 ~~(7)~~ (8) "Chief administrative ~~hearing officer~~ law judge" means the
13 administrator of the office of administrative hearings created pursuant to
14 section 67-5280, Idaho Code.

15 ~~(8)~~ (9) "Contested case" means a proceeding that results in the is-
16 suance of an order.

17 ~~(9)~~ (10) "Coordinator" means the administrative rules coordinator pre-
18 scribed in section 67-5202, Idaho Code.

19 ~~(10)~~ (11) "Document" means any executive order, notice, rule or state-
20 ment of policy of an agency.

21 ~~(11)~~ (12) "Final rule" means a rule that has been approved by the legis-
22 lature and is in effect.

23 ~~(12)~~ (13) "Hearing officer" means the chief administrative ~~hearing of-~~
24 ~~ficer and any hearing officers appointed by him pursuant to sections 67-5281~~
25 ~~through 67-5283, Idaho Code, law judge, the deputy chief administrative law~~
26 ~~judge, any administrative law judges appointed by the chief administrative~~
27 ~~law judge pursuant to section 67-5282(1)(d), Idaho Code, any independent~~
28 ~~contract hearing officers retained by the chief administrative law judge~~
29 ~~pursuant to section 67-5282(1)(i), Idaho Code, or a person otherwise ap-~~
30 ~~pointed by an agency or board to hear a contested case.~~

31 ~~(13)~~ (14) "License" means the whole or part of any agency permit, cer-
32 tificate, approval, registration, charter, or similar form of authorization
33 required by law, but does not include a license required solely for revenue
34 purposes.

35 ~~(14)~~ (15) "Official text" means the text of a document issued, pre-
36 scribed, or promulgated by an agency in accordance with this chapter and is
37 the only legally enforceable text of such document. Judicial notice shall be
38 taken of all documents issued, prescribed, or promulgated in accordance with
39 this chapter.

40 ~~(15)~~ (16) "Order" means an agency action of particular applicability
41 that determines the legal rights, duties, privileges, immunities, or other
42 legal interests of one (1) or more specific persons.

43 ~~(16)~~ (17) "Party" means each person or agency named or admitted as a
44 party or properly seeking and entitled as of right to be admitted as a party.

45 ~~(17)~~ (18) "Pending fee rule" means any pending rule all or a portion of
46 which imposes or increases a fee or charge.

47 ~~(18)~~ (19) "Pending non-fee rule" means any pending rule that is not a
48 pending fee rule.

1 ~~(19)~~ (20) "Pending rule" means a proposed rule that an agency has
2 adopted under the regular rulemaking process but remains subject to legisla-
3 tive review, is not a final rule, and is not in effect.

4 ~~(20)~~ (21) "Person" means any individual, partnership, corporation, as-
5 sociation, governmental subdivision or agency, or public or private organi-
6 zation or entity of any character.

7 (22) "Presiding officer" means one (1) or more members of an agency
8 board, an agency head, or a duly appointed hearing officer who is authorized
9 by statute or rule to preside at a contested case hearing. When more than one
10 (1) officer sits at a hearing, they may all jointly be presiding officers or
11 may designate one (1) of them to be the presiding officer.

12 ~~(21)~~ (23) "Proposed rule" means an agency proposal that has been adopted
13 and remains subject to review by the legislature.

14 ~~(22)~~ (24) "Provision of law" means all or a part of the state or federal
15 constitution, or of any state or federal:

16 (a) Statute; or

17 (b) Rule or decision of court.

18 ~~(23)~~ (25) "Publish" means to bring before the public by publication in
19 the bulletin or administrative code, by electronic means or as otherwise
20 specifically provided by law.

21 ~~(24)~~ (26) "Rule" means all or a part of an agency statement of general
22 applicability that has been promulgated in compliance with the provisions of
23 this chapter and that implements, interprets, enforces, or prescribes:

24 (a) Law; or

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

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

31 (ii) Declaratory rulings issued pursuant to section 67-5232,
32 Idaho Code; ~~or~~

33 (iii) Intra-agency memoranda; or

34 (iv) Any written statements given by an agency that pertain to
35 an interpretation of a rule or to the documentation of compliance
36 with a rule.

37 ~~(25)~~ (27) "Rule chapter" means the numeric designation of a grouping of
38 related agency rules by the coordinator.

39 ~~(26)~~ (28) "Rulemaking" means the process for formulation and adoption
40 of a rule.

41 ~~(27)~~ (29) "Standard" means a manual, guideline, criterion, specifica-
42 tion, requirement, measurement or other authoritative principle providing a
43 model or pattern in comparison with which the correctness or appropriateness
44 of specified actions, practices or procedures may be determined.

45 ~~(28)~~ (30) "Submitted for review" means that a rule has been provided to
46 the legislature for review at a regular or special legislative session as
47 provided in section 67-5291, Idaho Code.

48 ~~(29)~~ (31) "Temporary rule" means a rule authorized by the governor to
49 become effective before it has been submitted to the legislature for review.

1 SECTION 7. That Section 67-5206, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE
4 ACT. (1) In accordance with the rulemaking requirements of this chapter, the
5 ~~attorney general shall promulgate~~ office of administrative hearings shall,
6 subject to legislative approval, promulgate and maintain rules implementing
7 the provisions of sections 67-5240 through 67-5255, Idaho Code. The rules
8 shall govern all contested cases unless otherwise required by governing fed-
9 eral law and shall specify:

10 (a) Form and content to be employed in giving notice of a contested
11 case;

12 (b) Procedures and standards required for intervention in a contested
13 case;

14 (c) Procedures for prehearing conferences;

15 (d) Format for pleadings, briefs, and motions;

16 (e) The method by which service shall be made;

17 (f) Procedures for the issuance of subpoenas, discovery orders, and
18 protective orders if authorized by other provisions of law;

19 (g) Qualifications for persons seeking to act as a representatives for
20 parties to contested cases;

21 (h) Procedures to facilitate informal settlement of matters; and

22 (i) Procedures for placing ex parte contacts on the record.

23 ~~(2) (a) After July 1, 1993, the rules promulgated by the attorney gen-~~
24 ~~eral under this section shall apply to all agencies that do not affirma-~~
25 ~~tively promulgate alternative procedures after the promulgation of the~~
26 ~~rules by the attorney general. The rules promulgated by the attorney~~
27 ~~general shall supersede the procedural rules of any agency in effect on~~
28 ~~June 30, 1993, unless that agency promulgates its own procedures as pro-~~
29 ~~vided in paragraph (b) of this subsection.~~

30 ~~(b) After July 1, 1993, an agency that promulgates its own procedures~~
31 ~~shall include in the rule adopting its own procedures a finding that~~
32 ~~states the reasons why the relevant portion of the attorney general's~~
33 ~~rules was inapplicable to the agency under the circumstances.~~

34 ~~(3) With respect to contested cases and other proceedings conducted by~~
35 ~~the office of administrative hearings as authorized by this chapter, rules~~
36 ~~promulgated by the attorney general or any agency pursuant to subsection (1)~~
37 ~~or (2) of this section shall remain in full force and effect, except with re-~~
38 ~~spect to hearing officer qualifications, until such time as the office of~~
39 ~~administrative hearings promulgates replacement rules, and thereafter such~~
40 ~~rules of the office of administrative hearings shall govern unless otherwise~~
41 ~~required by governing federal law.~~

42 (2) In accordance with the rulemaking requirements of this chapter, the
43 office of administrative hearings shall, subject to legislative approval,
44 have the authority to promulgate and maintain rules governing the procedure
45 of all other proceedings conducted by the office of administrative hearings,
46 including but not limited to adjudicatory hearings, mediations, and arbi-
47 trations not required by this chapter.

48 SECTION 8. That Section 67-5232, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 67-5232. DECLARATORY RULINGS BY AGENCIES. (1) Any person may petition
2 an agency for a declaratory ruling ~~as to the applicability of any statutory~~
3 ~~provision or of any that interprets or applies a statute or rule adminis-~~
4 ~~tered by the agency or states whether or in what manner an order issued by the~~
5 ~~agency applies to the petitioner.~~

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

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

10 (4) An agency shall index all currently effective declaratory orders in
11 accordance with the provisions of section 67-5250, Idaho Code.

12 SECTION 9. That Section 67-5241, Idaho Code, be, and the same is hereby
13 repealed.

14 SECTION 10. 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 67-5241, Idaho Code, and to read as follows:

17 67-5241. INFORMAL DISPOSITION. (1) Unless prohibited by other provi-
18 sions of law, an agency may, prior to initiation of a contested case:

19 (a) Decline to initiate a contested case;

20 (b) Request such additional information as required to decide whether
21 to initiate a contested case; and

22 (c) Seek informal disposition of the matter.

23 (2) Unless prohibited by other provisions of law, an agency may, fol-
24 lowing initiation of a contested case, seek informal disposition of the con-
25 tested case, upon which informal disposition a presiding officer may decline
26 to decide the contested case.

27 (3) Informal disposition is to be encouraged both prior to and follow-
28 ing the initiation of contested cases and may be made by alternative dispute
29 resolution, negotiation, stipulation, agreed settlement, or consent order.

30 (4) The agency may not abdicate its responsibility for any informal
31 disposition. Informal dispositions must be approved by the agency head or
32 by a presiding officer if a contested case has been initiated. Any agency
33 head or presiding officer approving an informal disposition, or otherwise
34 declining to initiate or decide a contested case, must furnish a brief state-
35 ment of the reasons for the decision to all persons involved. The provisions
36 of this subsection shall not apply to investigations or inquiries directed
37 to or performed by law enforcement agencies defined in section 74-101(7),
38 Idaho Code.

39 (5) Informal disposition of a contested case as provided in this sec-
40 tion is a final agency action.

41 SECTION 11. That Section 67-5242, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 67-5242. PROCEDURE AT HEARING. (1) An agency shall give notice of an
44 agency decision to a person when the agency takes an action for which the per-
45 son has a right to a contested case hearing. The notice must:

46 (a) Be in writing;

- 1 (b) Set forth the agency action being taken;
2 (c) Identify the agency statute or rule authorizing the action;
3 (d) Inform the person of the right, procedure, and time limit to file a
4 contested case petition; and
5 (e) Provide citation to any agency rules and procedures governing the
6 contested case.

7 ~~(1) (2) In a contested case other than an emergency proceeding held pur-~~
8 ~~suant to section 62-5247, Idaho Code, all parties shall receive notice that~~
9 ~~shall include:~~

- 10 (a) a A statement of the time, place, and nature of the hearing;
11 (b) a A statement of the legal authority under which the hearing is to be
12 held; and
13 (c) a A short and plain statement of the matters asserted or the issues
14 involved.

15 ~~(2) The agency head, one (1) or more members of the agency head, or one~~
16 ~~(1) or more hearing officers may, in the discretion of the agency head, be the~~
17 ~~presiding officer at the hearing.~~

18 (3) At the hearing, the presiding officer:

19 (a) Shall regulate the course of the proceedings to assure that there
20 is a full disclosure of all relevant facts and issues, including such
21 cross-examination as may be necessary.

22 (b) Shall afford all parties the opportunity to respond and present ev-
23 idence and argument on all issues involved, except as restricted by a
24 limited grant of intervention or by a prehearing order.

25 (c) May give nonparties an opportunity to present oral or written
26 statements. If the presiding officer proposes to consider a statement
27 by a nonparty, the presiding officer shall give all parties an opportu-
28 nity to challenge or rebut it and, on motion of any party, the presiding
29 officer shall require the statement to be given under oath or affirma-
30 tion.

31 (d) Shall cause the hearing to be recorded at the agency's expense. Any
32 party, at that party's expense, may have a transcript prepared or may
33 cause additional recordings to be made during the hearing if the making
34 of the additional recording does not cause distraction or disruption.

35 (e) May conduct all or part of the hearing by telephone, ~~television~~
36 video conference, or other electronic means, if each participant in
37 the hearing has an opportunity to participate in the entire proceeding
38 while it is taking place.

39 ~~(4) If a party fails to attend any stage of a contested case, the pre-~~
40 ~~siding officer may serve upon all parties notice of a proposed default order.~~
41 ~~The notice shall include a statement of the grounds for the proposed order.~~
42 ~~Within seven (7) days after service of the proposed order, the party against~~
43 ~~whom it was issued may file a written petition requesting the proposed order~~
44 ~~to be vacated. The petition shall state the grounds relied upon. The pre-~~
45 ~~siding officer shall either issue or vacate the default order promptly after~~
46 ~~the expiration of the time within which the party may file a petition. If the~~
47 ~~presiding officer issues a default order, the officer shall conduct any fur-~~
48 ~~ther proceedings necessary to complete the adjudication without the partic-~~
49 ~~ipation of the party in default and shall determine all issues in the adjudi-~~
50 ~~cation, including those affecting the defaulting party.~~

1 SECTION 12. 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 67-5242A, Idaho Code, and to read as follows:

4 67-5242A. DEFAULT. (1) Unless otherwise provided by statute or rule,
5 if a party fails to attend or participate in a prehearing conference or hear-
6 ing in a contested case, the presiding officer may serve upon all parties no-
7 tice of a proposed default order. The notice shall include a statement of the
8 grounds for the proposed order. Within seven (7) days after service of the
9 proposed order, the party against whom it was issued may file a written peti-
10 tion requesting the proposed order be vacated, and the petition shall state
11 the grounds relied on. The presiding officer shall either issue or vacate
12 the default order promptly after the expiration of the time within which the
13 party may file a petition.

14 (2) If a default order is issued, the presiding officer may conduct any
15 further proceedings necessary to complete the adjudication without the de-
16 faulting party and shall determine all issues in the adjudication, including
17 those affecting the defaulting party. A recommended, preliminary, or final
18 order issued against a defaulting party may be based on the existing record,
19 including the defaulting party's admissions, and any other evidence offered
20 by the nondefaulting party, without further hearing.

21 (3) Unless otherwise provided by statute or rule, if a party fails to
22 attend or participate in any other conference in a contested case, the pre-
23 siding officer may conduct the conference without the attendance of the non-
24 appearing party and issue any appropriate order addressing the subject mat-
25 ter of the conference.

26 SECTION 13. That Section 67-5244, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 67-5244. REVIEW OF RECOMMENDED ORDERS. (1) A recommended order shall
29 include a statement of the schedule for review consideration of that order
30 by the agency head or his designee. The agency head shall allow all parties
31 to ~~file exceptions to~~ request review of the recommended order, to present
32 briefs on the issues, and may allow all parties to participate in oral argu-
33 ment.

34 (2) Unless otherwise required, the agency head shall either:

35 (a) issue a final order in writing within fifty-six (56) days of the re-
36 ceipt of the final briefs or oral argument, whichever is later, unless
37 the period is waived or extended with the written consent of all parties
38 or for good cause shown;

39 (b) remand the matter for additional hearings; or

40 (c) hold additional hearings.

41 (3) The agency head on review of the recommended decision shall exer-
42 cise all the decision-making power that he would have had if the agency head
43 had presided over the hearing.

44 SECTION 14. That Section 67-5245, Idaho Code, be, and the same is hereby
45 amended to read as follows:

1 67-5245. REVIEW OF PRELIMINARY ORDERS. (1) A preliminary order shall
2 include:

3 (a) A statement that the order will become a final order without further
4 notice; and

5 (b) The actions necessary to obtain administrative review of the pre-
6 liminary order.

7 (2) The agency head, upon his own motion, may or, upon motion by any
8 party, shall review a preliminary order, except to the extent that:

9 (a) Another statute precludes or limits agency review of the preli-
10 nary order; or

11 (b) The agency head has delegated his authority to review preliminary
12 orders to one (1) or more persons.

13 (3) A petition for review of a preliminary order must be filed with the
14 agency head, or with any person designated for this purpose by rule of the
15 agency, within fourteen (14) days after the service date of the preliminary
16 order unless a different time is required by other provisions of law. If
17 the agency head on his own motion decides to review a preliminary order, the
18 agency head shall give written notice within fourteen (14) days after the
19 issuance of the preliminary order unless a different time is required by
20 other provisions of law. The fourteen (14) day period for filing of notice
21 is tolled by the filing of a petition for reconsideration under section
22 67-5243(3), Idaho Code.

23 (4) The basis for review must be stated on the petition. If the agency
24 head on his own motion gives notice of his intent to review a preliminary or-
25 der, the agency head shall identify the issues he intends to review.

26 (5) The agency head shall allow all parties to ~~file exceptions to~~
27 request review of the preliminary order, to present briefs on the issues, and
28 may allow all parties to participate in oral argument.

29 (6) The agency head shall:

30 (a) Issue a final order in writing, within fifty-six (56) days of the
31 receipt of the final briefs or oral argument, whichever is later, unless
32 the period is waived or extended with the written consent of all par-
33 ties, or for good cause shown;

34 (b) Remand the matter for additional hearings; or

35 (c) Hold additional hearings.

36 (7) The head of the agency or his designee for the review of preliminary
37 orders shall exercise all of the decision-making power that he would have had
38 if the agency head had presided over the hearing.

39 SECTION 15. That Section 67-5247, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 67-5247. EMERGENCY PROCEEDINGS. (1) An agency may act through an emer-
42 gency proceeding in a situation involving an immediate danger to the public
43 health, safety, or welfare requiring immediate agency action. The agency
44 shall take only such actions as are necessary to prevent or avoid the immedi-
45 ate danger that justifies the use of emergency contested cases.

46 (2) The agency shall issue an order, including a brief, reasoned state-
47 ment to justify both the decision that an immediate danger exists and the de-
48 cision to take the specific action. When appropriate, the order shall in-
49 clude findings of fact and conclusions of law.

1 (3) The agency shall give such notice as is reasonable to persons who
2 are required to comply with the order. The order is effective when issued.

3 (4) After issuing an order pursuant to this section, the agency shall
4 proceed as quickly as feasible to complete any proceedings that would be re-
5 quired if the matter did not involve an immediate danger.

6 (5) Unless otherwise required by a provision of law, the agency record
7 need not constitute the exclusive basis for agency action in emergency con-
8 tested cases or for judicial review thereof.

9 (6) No order issued pursuant to this section shall be effective for
10 longer than one hundred twenty (120) days or until the effective date of any
11 final order issued following the proceedings described in subsection (4) of
12 this section, whichever is earlier.

13 SECTION 16. That Section 67-5249, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 67-5249. AGENCY RECORD. (1) A presiding officer shall ensure that a
16 hearing record is created that complies with the provisions of this section.

17 ~~(1) (2)~~ An agency shall maintain an official record of each contested
18 case under this chapter for a period of not less than six (6) months after the
19 expiration of the last date for judicial review, unless otherwise provided
20 by law.

21 ~~(2) (3)~~ The record shall include:

22 (a) The recording of the hearing;

23 ~~(a) (b) all All~~ notices of proceedings, pleadings, motions, briefs,
24 petitions, and intermediate rulings the hearing and other conferences
25 conducted by the presiding officer;

26 (c) All prehearing orders;

27 (d) All motions, pleadings, briefs, petitions, requests, and interme-
28 diatate rulings;

29 ~~(b) (e)~~ All evidence received or considered;

30 ~~(c) (f)~~ a A statement of all matters officially noticed and any related
31 notices;

32 ~~(d) (g)~~ All offers of proof and objections and rulings thereon;

33 ~~(e)~~ the record prepared by the presiding officer under the provisions
34 of section 67-5242, Idaho Code, together with any transcript of all or
35 part of that record;

36 (h) All proposed findings and requested orders;

37 (i) Any transcript of the hearing, if prepared;

38 ~~(f) (j)~~ staff Staff memoranda or data submitted to the presiding offi-
39 cer or the agency head in connection with the consideration of the pro-
40 ceeding; and

41 ~~(g) (k)~~ any Any recommended order, preliminary order, final order, or
42 order on reconsideration; and

43 (l) All matters placed on the record after an ex parte communication
44 pursuant to section 67-5253, Idaho Code.

45 ~~(3) (4)~~ Except to the extent that this chapter or another statute pro-
46 vides otherwise, the agency record constitutes the exclusive basis for
47 agency action in contested cases under this chapter or for judicial review
48 thereof.

1 SECTION 17. That Section 67-5250, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 67-5250. INDEXING OF PRECEDENTIAL AGENCY ORDERS -- INDEXING OF AGENCY
4 GUIDANCE DOCUMENTS. (1) Unless otherwise prohibited by any provision of law,
5 each agency shall index all written final orders, including all currently
6 effective declaratory orders, that the agency intends to rely ~~upon~~ on as
7 precedent. The index and the orders shall be available for public inspection
8 and copying at cost in the main office and each regional or district office
9 of the agency. The orders shall be indexed by name and subject. If an agency
10 is authorized to not disclose certain information in its records to protect
11 confidentiality, the agency shall redact confidential information in the
12 order.

13 (2) A written final order may not be relied on as precedent by an agency
14 to the detriment of any person until it has been made available for public
15 inspection and indexed in the manner described in this subsection (1) of this
16 section.

17 ~~(2)~~ (3) Unless otherwise prohibited by any provision of law, each
18 agency shall index by subject all agency guidance documents. The index and
19 the guidance documents shall be available for public inspection and copying
20 at cost in the main office and each regional or district office of the agency.
21 As used in this section, "agency guidance" means all written documents,
22 other than rules, orders, and pre-decisional material, that are intended to
23 guide agency actions affecting the rights or interests of persons outside
24 the agency. "Agency guidance" shall include memoranda, manuals, policy
25 statements, interpretations of law or rules, and other material that are
26 of general applicability, whether prepared by the agency alone or jointly
27 with other persons. The indexing of a guidance document does not give that
28 document the force and effect of law or other precedential authority.

29 (4) All final written orders and guidance documents indexed by an
30 agency pursuant to this section shall be posted on the agency's website on
31 a single webpage, organized by subject, and with a direct link to each such
32 final written order or guidance document.

33 SECTION 18. That Section 67-5251, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 67-5251. EVIDENCE -- OFFICIAL NOTICE. (1) The presiding officer may
36 exclude evidence that is irrelevant, unduly repetitious, or excludable on
37 constitutional or statutory grounds, or on the basis of any evidentiary
38 privilege provided by statute or recognized in the courts of this state. All
39 other evidence may be admitted if it is of a type commonly relied ~~upon~~ on by
40 prudent persons in the conduct of their affairs.

41 (2) Any part of the evidence may be received in written form if doing so
42 will expedite the hearing without substantially prejudicing the interests
43 of any party.

44 (3) The parties may stipulate as to some or all of the facts at issue in
45 the contested case.

46 (4) The presiding officer may request such additional information from
47 any party as he may require to decide the contested case.

1 ~~(3)~~ (5) Documentary evidence may be received in the form of copies or
 2 excerpts, if the original is not readily available. Upon request, parties
 3 shall be given an opportunity to compare the copy with the original if avail-
 4 able.

5 (6) Testimony shall be made under oath or affirmation.

6 ~~(4)~~ (7) Official notice may be taken of:

7 (a) ~~any~~ Any facts that could be judicially noticed in the courts of this
 8 state; and

9 (b) ~~generally~~ Generally recognized technical or scientific facts
 10 within the agency's specialized knowledge.

11 Parties shall be notified of the specific facts or material noticed and the
 12 source thereof, including any staff memoranda and data. Notice should be
 13 provided either before or during the hearing, and must be provided before the
 14 issuance of any order that is based in whole or in part on facts or material
 15 noticed. Parties must be afforded a timely and meaningful opportunity to
 16 contest and rebut the facts or material so noticed. When the presiding offi-
 17 cer proposes to notice staff memoranda or reports, a responsible staff mem-
 18 ber shall be made available for cross-examination if any party so requests.

19 ~~(5)~~ (8) The agency's or presiding officer's experience, technical com-
 20 petence, and specialized knowledge may be utilized in the evaluation of the
 21 evidence.

22 SECTION 19. That Section 67-5252, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 67-5252. PRESIDING OFFICER -- DISQUALIFICATION. (1) Except as pro-
 25 vided in subsection (4) of this section, any party shall have the right to one
 26 (1) disqualification without cause of any person serving or designated to
 27 serve as presiding officer, and any party shall have a right to move to dis-
 28 qualify for bias, prejudice, interest, substantial prior involvement in the
 29 matter other than as a presiding officer, status as an employee of the agency
 30 hearing the contested case, lack of professional knowledge in the subject
 31 matter of the contested case, or any other cause provided in this chapter or
 32 any cause for which a judge is or may be disqualified.

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

35 (a) Within fourteen (14) days after receipt of notice indicating that
 36 the person will preside at the contested case; or

37 (b) Promptly upon discovering facts establishing grounds for disquali-
 38 fication, whichever is later.

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

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

45 (4) When disqualification of the agency head or a member of the agency
 46 head would result in an inability to decide a contested case, the actions of
 47 the agency head shall be treated as a conflict of interest under the provi-
 48 sions of section 74-404, Idaho Code.

1 (5) When a decision is required to be rendered within fourteen (14)
 2 weeks of the date of a request for a hearing by state or federal statutes or
 3 rules and regulations, or when the presiding officer is the chief adminis-
 4 trative ~~hearing officer~~ law judge or appointed by the chief administrative
 5 ~~hearing officer~~ law judge as defined in section 67-5201, Idaho Code, no party
 6 shall have the right to a disqualification without cause.

7 SECTION 20. That Section 67-5281, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 67-5281. CHIEF ADMINISTRATIVE ~~HEARING OFFICER~~ LAW JUDGE -- APPOINT-
 10 MENT -- QUALIFICATIONS -- REMOVAL -- SALARY. (1) A chief administrative
 11 ~~hearing officer~~ law judge shall be appointed by the governor and confirmed by
 12 the senate to serve a four (4) year term. A person may be reappointed to serve
 13 additional terms. Provided, however, there is no right to reappointment.

14 (2) The chief administrative ~~hearing officer~~ law judge must meet the
 15 following qualifications on the effective date of his appointment:

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

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

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

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

24 (3) If the chief administrative ~~hearing officer~~ law judge resigns,
 25 dies, or is removed from office as provided in this section, the governor
 26 shall appoint a person who meets the qualifications established in this sec-
 27 tion, subject to confirmation by the senate, to fill the unexpired term.

28 (4) The chief administrative ~~hearing officer~~ law judge may be removed
 29 from office by the governor for failing to retain those qualifications of his
 30 office established in subsection (2) of this section, for engaging in pro-
 31 hibited conduct established in section 67-5282(2), Idaho Code, or for good
 32 cause shown. Before such removal, the governor shall give the chief adminis-
 33 trative ~~hearing officer~~ law judge a written copy of the charges against him,
 34 provide him an opportunity to submit a response no fewer than fourteen (14)
 35 ~~calendars~~ calendar days thereafter, and may provide him such other process
 36 as the governor deems appropriate. If the chief administrative ~~hearing of-~~
 37 ~~ficer~~ law judge is removed, the governor shall provide the house of represen-
 38 tatives and the senate written notice of the removal, the effective date of
 39 removal, and the reason or reasons therefor.

40 (5) The chief administrative ~~hearing officer~~ law judge shall be compen-
 41 sated as determined by the governor.

42 SECTION 21. That Section 67-5282, Idaho Code, be, and the same is hereby
 43 amended to read as follows:

44 67-5282. DUTIES AND PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE
 45 ~~HEARING OFFICER~~ LAW JUDGE. (1) The chief administrative ~~hearing officer~~ law
 46 judge shall:

- 1 (a) Serve as the administrator of the office of administrative hear-
2 ings;
- 3 (b) Conduct such contested case proceedings and such other proceedings
4 as are conducted by the office of administrative hearings in accordance
5 with section 67-5280(2)(a) and (b), Idaho Code;
- 6 (c) Devote full-time to the office of administrative hearings and his
7 obligations as chief administrative ~~hearing officer~~ law judge;
- 8 (d) Subject to applicable law and regulation, appoint, supervise, and
9 remove ~~hearing officers~~ administrative law judges and staff as he deems
10 appropriate to the proper functioning of the office of administrative
11 hearings, determine the duties of such appointees as he deems appro-
12 priate, and, from among the ~~hearing officers~~ administrative law judges
13 employed by the office of administrative hearings, designate a deputy
14 chief administrative ~~hearing officer~~ law judge to act in place of the
15 chief administrative ~~hearing officer~~ law judge when the chief adminis-
16 trative ~~hearing officer~~ law judge is unable to perform his duties;
- 17 (e) Have the authority to promulgate rules, pursuant to the provisions
18 of this chapter, to implement sections 67-5280 through 67-5286, Idaho
19 Code;
- 20 (f) Establish a hearing officer code of conduct that shall, among other
21 things, provide for independent and unbiased decision-making by hear-
22 ing officers both as perceived and in fact and provide for a system to
23 monitor compliance with, and sanction violations of, the hearing offi-
24 cer code of conduct;
- 25 (g) Protect and ensure the decisional independence of administrative
26 law judges and independent contractor hearing officers;
- 27 (h) Implement a system for monitoring the quality of contested case
28 proceedings and such other proceedings as are conducted by the office of
29 administrative hearings in accordance with section 67-5280(2)(a) and
30 (b), Idaho Code;
- 31 (i) At his discretion, unless otherwise prohibited by state or federal
32 law, retain independent contractor hearing officers at reasonable and
33 consistent rates of compensation; provided that an independent con-
34 tractor hearing officer with specialized expertise may be compensated
35 at a higher rate if such expertise is necessary to the proper adjudica-
36 tion of the case and such higher rate of compensation is necessary in
37 order to obtain such expertise; and
- 38 (j) Contract with agencies to conduct such adjudicatory hearings, me-
39 diations, and arbitrations authorized by section 67-5280(2)(b), Idaho
40 Code.
- 41 (2) The chief administrative ~~hearing officer~~ law judge shall not:
- 42 (a) Engage in the practice of law outside of his role in the office of
43 administrative hearings, except for the practice of law that is permit-
44 ted for a judge by the Idaho code of judicial conduct and is not incon-
45 sistent with the code of conduct or his duties as chief administrative
46 ~~hearing officer~~ law judge;
- 47 (b) Hold, or be a candidate for, any federal, state, county, municipal,
48 district, or other elective office;
- 49 (c) Serve as the agent, representative, officer, political treasurer,
50 or employee, whether for profit or otherwise, of any political party,

1 political committee, or candidate as defined in either chapter 1, title
2 34 or chapter 66, title 67, Idaho Code, or otherwise; and

3 (d) Hold any other public or private-sector position, whether for
4 profit or otherwise, except for volunteer or adjunct faculty posi-
5 tions that are not inconsistent with his duties as chief administrative
6 ~~hearing officer~~ law judge.

7 SECTION 22. That Section 67-5283, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 67-5283. HEARING OFFICER QUALIFICATIONS -- POWERS -- DUTIES. (1) The
10 chief administrative ~~hearing officer~~ law judge and hearing officers ap-
11 pointed by the chief administrative ~~hearing officer~~ law judge shall:

12 (a) On the effective date of their appointments and throughout their
13 tenure, meet and retain all of the qualifications specified for the
14 chief administrative ~~hearing officer~~ law judge in section 67-5281(2),
15 Idaho Code;

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

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

19 (d) Not engage in the conduct prohibited of the chief administrative
20 ~~hearing officer~~ law judge in section 67-5282(2), Idaho Code. Provided,
21 however, to the extent that it does not create a conflict of interest,
22 the code of conduct may be waived for some or all of these prohibitions
23 for independent contractor hearing officers; and

24 (e) Be deemed the presiding officers of contested case proceedings and
25 other proceedings conducted by the office of administrative hearings
26 and assigned to them and have the power to issue subpoenas, administer
27 oaths, control the course of the proceedings, order the use of alter-
28 native dispute resolution with the parties' consent, enter such awards
29 for costs and attorney's fees as authorized by law, and perform other
30 necessary and appropriate acts in the performance of their duties with
31 respect to such cases.

32 (2) (a) Independent ~~contractors~~ contractor hearing officers may be
33 hired as ~~hearing officers~~ without the limitation on outside work or out-
34 side practice of law, provided that:

35 (i) A disclosure is filed with the chief administrative ~~hearing~~
36 ~~officer~~ law judge that states in what other outside work the inde-
37 pendent contractor hearing officer is engaged;

38 (ii) The independent contractor hearing officer does not engage
39 in outside work presenting a conflict of interest; and

40 (iii) The independent contractor hearing officer discloses such
41 other information as required by the code of conduct.

42 (b) If a failure to comply with the requirements of this subsection by
43 an independent contractor hearing officer is brought to the attention
44 of the chief administrative ~~hearing officer~~ law judge within thirty
45 (30) days of the issuance of the independent contractor hearing offi-
46 cer's order, the chief administrative ~~hearing officer~~ law judge shall
47 declare such order void and of no effect within fourteen (14) days. The
48 chief administrative ~~hearing officer~~ law judge shall be permitted to

1 issue a stay while he investigates the issue of failure to comply if the
2 order involves a financial transaction.

3 (3) Those individuals serving as hearing officers in the office of
4 the attorney general for department of health and welfare contested case
5 hearings on December 31, 2023, shall have the option to be appointed hear-
6 ing officers when the office of administrative hearings begins conducting
7 such hearings on or after January 1, 2024, as provided by section 67-5286,
8 Idaho Code, if they meet the hearing officer ~~qualifications~~ qualification
9 requirements set forth in this section and if such ~~hearing officer~~ positions
10 are available in the office of administrative hearings on an employment or
11 independent contractor basis.

12 SECTION 23. That Section 67-5284, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 67-5284. COOPERATION OF AGENCIES. No agency or state officer, other
15 than the chief administrative ~~hearing officer~~ law judge, shall attempt to
16 influence the selection of a hearing officer for a contested case proceeding
17 or any other matter, except mediations, and the chief administrative ~~hearing~~
18 ~~officer~~ law judge shall not permit any such influence; provided that agen-
19 cies and state officers may inform the office of administrative hearings in
20 writing of their views regarding:

- 21 (1) Expertise needed or desired with respect to types of potential con-
22 tested cases;
- 23 (2) Proposed rules under consideration for adoption by the office of
24 administrative hearings;
- 25 (3) Legislation or rules under consideration or being proposed by the
26 office of administrative hearings;
- 27 (4) Legislation or rules under consideration or being proposed by such
28 agencies or state officers; and
- 29 (5) Alleged violations of the code of conduct.

30 SECTION 24. That Section 67-5286, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 67-5286. CONDUCT OF DEPARTMENT OF HEALTH AND WELFARE CONTESTED CASE
33 PROCEEDINGS. ~~(1) Notwithstanding any other provision of this chapter, the~~
34 ~~office of administrative hearings shall not conduct contested case proceed-~~
35 ~~ings until January 1, 2023. Contested case proceedings commenced prior to~~
36 ~~that date shall proceed under the law as it existed as of June 30, 2022, un-~~
37 ~~less the hearing for such contested case did not commence prior to January~~
38 ~~1, 2023. Provided, however, the office of administrative hearings shall not~~
39 ~~conduct department of health and welfare contested case hearings until Jan-~~
40 ~~uary 1, 2024, and such hearings commenced prior to that date shall be com-~~
41 ~~pleted by the department of health and welfare.~~

42 ~~(2)~~ The department of health and welfare shall expeditiously submit to
43 the centers for medicare and medicaid services (CMS) all that may be required
44 for CMS to approve the conduct of department of health and welfare contested
45 case hearings by the office of administrative hearings ~~commencing on Jan-~~
46 ~~uary 1, 2024, as provided for in subsections (1) and (3) of this section, in-~~
47 ~~cluding but not limited to state plan amendments, waivers, and memorandums~~

1 of agreement, as may be required by CMS from time to time. The governor, by
2 and through the director of the department of health and welfare, shall re-
3 tain the authority to exercise appropriate oversight of hearings necessary
4 to comply with requirements described in 42 U.S.C. 1396a and related regula-
5 tions.

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

11 SECTION 25. SEVERABILITY. The provisions of this act are hereby de-
12 clared to be severable and if any provision of this act or the application
13 of such provision to any person or circumstance is declared invalid for any
14 reason, such declaration shall not affect the validity of the remaining por-
15 tions of this act.

16 SECTION 26. An emergency existing therefor, which emergency is hereby
17 declared to exist, this act shall be in full force and effect on and after
18 July 1, 2025.