

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 326

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO VETERANS; AMENDING SECTION 65-502, IDAHO CODE, TO REMOVE A DEF-
2 INITIATION; AMENDING SECTION 65-503, IDAHO CODE, TO PROVIDE A CODE REFER-
3 ENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-123, IDAHO
4 CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 67-5302,
5 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION
6 67-5309, IDAHO CODE, TO PROVIDE THAT RULEMAKING MAY INCLUDE CERTAIN
7 PROVISIONS AND TO PROVIDE A CORRECT CODE REFERENCE.
8

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

10 SECTION 1. That Section 65-502, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 65-502. DEFINITIONS. As used in this chapter:

13 (1) "Applicant" means an individual applying for a position with a pub-
14 lic employer.

15 (2) "Armed forces" means the army, navy, marine corps, coast guard, air
16 force, and the reserve components thereof.

17 (3) "Civil service position" means a position for which the public em-
18 ployee is selected from a pool of applicants through a competitive examina-
19 tion, a merit system or any other rating system based on experience and qual-
20 ifications.

21 (4) "Disabled veteran" means those veterans separated under honorable
22 conditions who:

23 (a) Qualify as disabled veterans because they have served on active
24 duty in the armed forces and have a current service-connected disabili-
25 ty of ten percent (10%) or more or are receiving compensation related
26 to a service-connected disability including retirement benefits or
27 pension from the military or the department of veterans affairs; or

28 (b) Are purple heart recipients.

29 (5) "Honorable conditions" means an honorable discharge or a general
30 discharge "under honorable conditions."

31 (6) "Initial appointment" means the first time a qualified veteran is
32 hired by a county or a municipal government or the state, provided however,
33 subsequent separation from the county, municipal government or the state
34 shall not result in the award of new preference or preference points with
35 that governmental entity. "Initial appointment" shall not include:

36 (a) Jobs held by patients, inmates or students in or enrolled at a state
37 institution;

38 (b) Temporary or casual employment; or

39 (c) An office filled by election.

40 (7) "Key employee" means an individual specifically hired for an "at
41 will" position that is not a civil service position and where:

1 (a) The position requires an advanced degree and the exercise of inde-
2 pendent judgment for a majority of the public employee's duties;

3 (b) The primary duty of the position is the management of a department
4 or subdivision of the public employer and the position requires the ex-
5 ercise of independent judgment for a majority of position duties;

6 (c) The primary duty of the position is administrative work arising
7 from the management of a department or subdivision of the public em-
8 ployer or administrative work arising from the exercise of the duties of
9 an elected official and the public employee holds a confidential rela-
10 tionship to the appointing or employing officer or elected official; or

11 (d) The primary duty of the position is to provide advice or consulta-
12 tion to an elected official and the public employee holds a confidential
13 relationship to the elected official.

14 (8) "Military duty" means training and service performed by an in-
15 ductee, enlistee or reservist or any entrant into a component of the armed
16 forces of the United States, provided "military duty" shall not include ac-
17 tive duty training as a reservist in the armed forces of the United States or
18 as a member of the national guard of the United States where the call is for
19 training only.

20 (9) "Position" means a job held by a public employee but shall not in-
21 clude:

22 (a) A job held by a patient, inmate or student in or enrolled at a state
23 institution;

24 (b) Temporary or casual employment; or

25 (c) An office filled by election.

26 (10) "Preference eligible" means an individual eligible for preference
27 under section 65-503, Idaho Code.

28 (11) "Public employee" means any person holding a position in public
29 employment.

30 (12) "Public employer" means any government, department or agency men-
31 tioned in subsection (13) of this section employing a public employee in a
32 position.

33 (13) "Public employment" means employment by the government of this
34 state, or by any county, municipality or other political subdivision of the
35 state, including any department or agency thereof.

36 (14) "Register" means a list of names of persons who have been deter-
37 mined to be eligible for employment in a civil service position.

38 (15) "Service-connected disability" means that the veteran is disabled
39 due to injury or illness that was incurred in or aggravated by military ser-
40 vice as certified by the federal veterans administration or an agency of the
41 department of defense.

42 (16) "Temporary or casual employment" means employment for a brief,
43 nonrecurrent period where there is no reasonable expectation that such em-
44 ployment will continue indefinitely or for a significant period of time.

45 ~~(17) "Veteran" means any person who has been discharged or released~~
46 ~~from active duty in the armed forces under honorable conditions provided~~
47 ~~they have served on active duty for a minimum of one hundred eighty (180)~~
48 ~~consecutive days. As used in this subsection and chapter, "active duty"~~
49 ~~means full-time duty in the active military service of the United States.~~
50 ~~Such term includes full-time training duty, annual training duty, and atten-~~

~~1 dance, while in the active military service, at a school designated as a ser-~~
~~2 vice school by law or by the secretary of the military department concerned.~~

3 SECTION 2. That Section 65-503, Idaho Code, be, and the same is hereby
 4 amended to read as follows:

5 65-503. ELIGIBILITY FOR PREFERENCE. The following individuals are
 6 eligible for preference-:

7 (1) Veterans as defined in section 65-203, Idaho Code, and disabled
 8 veterans as defined in section 65-502, Idaho Code;

9 (2) A widow or widower of any veteran as long as he or she remains unmar-
 10 ried; and

11 (3) The wife or husband of a service-connected disabled veteran if the
 12 veteran cannot qualify for any public employment because of a service-con-
 13 nected disability.

14 SECTION 3. That Section 49-123, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 49-123. DEFINITIONS -- V. (1) "Variable load suspension axle" means an
 17 axle or axles designed to support a part of the vehicle and load and which
 18 can be regulated to vary the amount of load supported by such an axle or axles
 19 and which can be deployed or lifted by the operator of the vehicle. (See also
 20 section 49-117, Idaho Code)

21 (a) "Fully raised" means that the variable load suspension axle is in
 22 an elevated position preventing the tires on such axle from having any
 23 contact with the roadway.

24 (b) "Fully deployed" means that the variable load suspension axle is
 25 supporting a portion of the weight of the loaded vehicle as controlled
 26 by the preset pressure regulator valve.

27 (2) "Vehicle" means:

28 (a) General. Every device in, upon, or by which any person or property
 29 is or may be transported or drawn upon a highway, excepting devices used
 30 exclusively upon stationary rails or tracks.

31 (b) Assembled vehicle or vessel. A vehicle or vessel, not including a
 32 salvage vehicle or vessel, that has been constructed using major compo-
 33 nent parts from two (2) or more vehicles or vessels or that has been re-
 34 paired using new factory major component parts so that the resulting ve-
 35 hicle or vessel has the same appearance as a vehicle or vessel that was
 36 manufactured under a specific make and model by a manufacturer. A vehi-
 37 cle or vessel utilizing a kit for the entire body or a glider kit vehicle
 38 is not an assembled vehicle.

39 (c) Authorized emergency vehicle. Vehicles operated by any fire
 40 department or law enforcement agency of the state of Idaho or any po-
 41 litical subdivision of the state, ambulances, vehicles belonging to
 42 personnel of voluntary fire departments while in performance of offi-
 43 cial duties only, vehicles belonging to or operated by EMS personnel
 44 certified or otherwise recognized by the EMS bureau of the Idaho depart-
 45 ment of health and welfare while in the performance of emergency medical
 46 services, sheriff's search and rescue vehicles that are under the imme-
 47 diate supervision of the county sheriff, wreckers that are engaged in

1 motor vehicle recovery operations and are blocking part or all of one
2 (1) or more lanes of traffic, other emergency vehicles designated by the
3 director of the Idaho state police or vehicles authorized by the Idaho
4 transportation board and used in the enforcement of laws specified
5 in section 40-510, Idaho Code, pertaining to vehicles of ten thousand
6 (10,000) pounds or greater.

7 (d) Commercial vehicle or commercial motor vehicle. For the purposes
8 of chapters 3 and 9 of this title, driver's licenses and vehicle equip-
9 ment, a motor vehicle or combination of motor vehicles designed or used
10 to transport passengers or property if the motor vehicle:

11 (i) Has a manufacturer's gross combination weight rating (GCWR)
12 in excess of twenty-six thousand (26,000) pounds inclusive of
13 a towed unit with a manufacturer's gross vehicle weight rating
14 (GVWR) of more than ten thousand (10,000) pounds; or

15 (ii) Has a manufacturer's gross vehicle weight rating (GVWR) in
16 excess of twenty-six thousand (26,000) pounds; or

17 (iii) Is designed to transport sixteen (16) or more people, in-
18 cluding the driver; or

19 (iv) Is of any size and is used in the transportation of materials
20 found to be hazardous for the purposes of the hazardous material
21 transportation act and which require the motor vehicle to be plac-
22 arded under the hazardous materials regulations (49 CFR part 172,
23 subpart F).

24 For the purposes of chapter 4, title 49, Idaho Code, motor vehicle
25 registration, a vehicle or combination of vehicles of a type used or
26 maintained for the transportation of persons for hire, compensation or
27 profit, or the transportation of property for the owner of the vehicle,
28 or for hire, compensation, or profit, and shall include fixed load spe-
29 cially constructed vehicles exceeding the limits imposed by chapter
30 10, title 49, Idaho Code, and including drilling rigs, construction,
31 drilling and wrecker cranes, log jammers, log loaders, and similar
32 vehicles which are normally operated in an overweight or oversize
33 condition or both, but shall not include those vehicles registered pur-
34 suant to sections 49-402 and 49-402A, Idaho Code, or exempted by section
35 49-426, Idaho Code. A motor vehicle used in a ridesharing arrangement
36 that has a seating capacity for not more than fifteen (15) persons,
37 including the driver, shall not be a "commercial vehicle" under the pro-
38 visions of this title relating to equipment requirements, rules of the
39 road, or registration.

40 (e) Farm vehicle. A vehicle or combination of vehicles owned by a
41 farmer or rancher, or by his designated agent, which are operated over
42 public highways, and used exclusively to transport unprocessed agri-
43 cultural products raised, owned or grown by the owner of the vehicle to
44 market or place of storage; and shall include the transportation by the
45 farmer or rancher of any equipment, supplies or products purchased by
46 that farmer or rancher for his own use, and used in the farming or ranch-
47 ing operation or used by a farmer partly in transporting agricultural
48 products or livestock from the farm of another farmer that were origi-
49 nally grown or raised on the farm, or when used partly in transporting
50 agricultural supplies, equipment, materials or livestock to the farm

1 of another farmer for use or consumption on the farm but not transported
2 for hire, and shall not include vehicles of husbandry or vehicles regis-
3 tered pursuant to sections 49-402 and 49-402A, Idaho Code.

4 (f) Foreign vehicle. Every vehicle of a type required to be registered
5 under the provisions of this title brought into this state from another
6 state, territory or country other than in the ordinary course of busi-
7 ness by or through a manufacturer or dealer and not registered in this
8 state.

9 (g) Glider kit vehicle. Every large truck manufactured from a kit man-
10 ufactured by a manufacturer of large trucks which consists of a frame,
11 cab complete with wiring, instruments, fenders and hood and front axles
12 and wheels. The "glider kit" is made into a complete assembly by the ad-
13 dition of the engine, transmission, rear axles, wheels and tires.

14 (h) Motor vehicle. Every vehicle that is self-propelled, and for the
15 purpose of titling and registration meets federal motor vehicle safety
16 standards as defined in section 49-107, Idaho Code. Motor vehicle does
17 not include vehicles moved solely by human power, electric personal
18 assistive mobility devices, personal delivery devices, electric-as-
19 sisted bicycles, and motorized wheelchairs or other such vehicles that
20 are specifically exempt from titling or registration requirements un-
21 der title 49, Idaho Code.

22 (i) Multipurpose passenger vehicle (MPV). For the purposes of section
23 49-966, Idaho Code, a motor vehicle designed to carry ten (10) or fewer
24 persons which is constructed either on a truck chassis or with special
25 features for occasional off-road operation.

26 (j) Neighborhood electric vehicle (NEV). A self-propelled, electri-
27 cally powered, four-wheeled motor vehicle which is emission free and
28 conforms to the definition and requirements for low-speed vehicles as
29 adopted in the federal motor vehicle safety standards for low-speed ve-
30 hicles under federal regulations at 49 CFR part 571. An NEV shall be ti-
31 tled, registered and insured according to law as provided respectively
32 in chapters 4, 5 and 12, title 49, Idaho Code, and shall only be operated
33 by a licensed driver. Operation of an NEV on a highway shall be allowed
34 as provided in section 49-663, Idaho Code.

35 (k) Noncommercial vehicle. For the purposes of chapter 4, title 49,
36 Idaho Code, motor vehicle registration, a noncommercial vehicle shall
37 not include those vehicles required to be registered under sections
38 49-402 and 49-402A, Idaho Code, and means all other vehicles or combi-
39 nations of vehicles which are not commercial vehicles or farm vehicles,
40 but shall include motor homes. A noncommercial vehicle shall include
41 those vehicles having a combined gross weight not in excess of sixty
42 thousand (60,000) pounds and not held out for hire, used for purposes
43 related to private use and not used in the furtherance of a business or
44 occupation for compensation or profit or for transporting goods for
45 other than the owner.

46 (l) Passenger car. For the purposes of section 49-966, Idaho Code, a
47 motor vehicle, except a multipurpose passenger vehicle, motorcycle or
48 trailer, designed to carry ten (10) or fewer persons.

49 (m) Rebuilt salvage vehicle or vessel. Every vehicle or vessel previ-
50 ously determined or declared to be a salvage vehicle that has been re-

1 built or repaired using like make and model parts and visually appears
2 as a vehicle or vessel that was originally constructed under a distinc-
3 tive manufacturer. This includes a salvage vehicle or vessel which is
4 damaged to the extent that a "rebuilt salvage" brand is required to be
5 added to the title.

6 (n) Replica vehicle or vessel. A vehicle or vessel made to replicate
7 any vehicle or vessel previously manufactured, using metal, fiberglass
8 or other composite materials. Replica vehicles must look like the orig-
9 inal vehicle being replicated but may use a more modern drive train. At
10 a minimum, replica vehicles shall meet the same federal motor vehicle
11 safety and emission standards in effect for the year and type of vehicle
12 being replicated.

13 (o) Salvage vehicle or vessel. Any vehicle or vessel for which a sal-
14 vage certificate of title, salvage bill of sale or other documentation
15 has been issued showing evidence that the vehicle or vessel has been de-
16 clared salvage or which has been damaged to the extent that the owner,
17 or an insurer, or other person acting on behalf of the owner, determines
18 that the cost of parts and labor minus the salvage value makes it uneco-
19 nomical to repair or rebuild. When an insurance company has paid money
20 or has made other monetary settlement as compensation for a total loss
21 of any vehicle or vessel, such vehicle shall be considered to be a sal-
22 vage vehicle or vessel.

23 (p) Specially constructed vehicle or vessel. Every vehicle or vessel
24 of a type required to be registered not originally constructed under a
25 distinctive name, make, model or type by a generally recognized man-
26 ufacturer of vehicles or vessels and not materially altered from its
27 original construction and cannot be visually identified as a vehicle or
28 vessel produced by a particular manufacturer. This includes:

29 (i) A vehicle or vessel that has been structurally modified so
30 that it does not have the same appearance as a similar vehicle or
31 vessel from the same manufacturer; or

32 (ii) A vehicle or vessel that has been constructed entirely from
33 homemade parts and materials not obtained from other vehicles or
34 vessels; or

35 (iii) A vehicle or vessel that has been constructed by using major
36 component parts from one (1) or more manufactured vehicles or ves-
37 sels and cannot be identified as a specific make or model; or

38 (iv) A vehicle or vessel constructed by the use of a custom kit
39 that cannot be visually identified as a specific make or model.
40 All specially constructed vehicles of a type required to be reg-
41 istered shall be certified by the owner to meet all applicable
42 federal motor vehicle safety standards in effect at the time con-
43 struction is completed, and all requirements of chapter 9, title
44 49, Idaho Code.

45 (q) Specialty off-highway vehicle. A specialty off-highway vehicle as
46 defined in section 67-7101, Idaho Code.

47 (r) Tank vehicle.

48 (i) Any commercial motor vehicle transporting, or designed to
49 transport, any liquid or gaseous materials within:

1 1. A tank that is either permanently or temporarily attached
2 or secured to the vehicle or chassis and has a rated capacity
3 of one thousand (1,000) gallons or more; or

4 2. Multiple tanks either permanently or temporarily at-
5 tached or secured, when the aggregate rated capacity of
6 those tanks is one thousand (1,000) gallons or more, as de-
7 termined by adding the capacity of each individual tank with
8 a capacity of more than one hundred nineteen (119) gallons.

9 (ii) If a commercial motor vehicle transports one (1) or more
10 tanks that are manifested either as empty or as residue and that
11 are actually empty or contain only residue, those tanks shall not
12 be considered in determining whether the vehicle is a tank vehi-
13 cle.

14 (s) Total loss vehicle. Every vehicle that is deemed to be uneconomi-
15 cal to repair. A total loss shall occur when an insurance company or any
16 other person pays or makes other monetary settlement to the owner when
17 it is deemed to be uneconomical to repair the damaged vehicle. The com-
18 pensation for total loss as defined herein shall not include payments
19 by an insurer or other person for medical care, bodily injury, vehicle
20 rental or for anything other than the amount paid for the actual damage
21 to the vehicle.

22 (3) "Vehicle identification number." (See "identifying number," sec-
23 tion 49-110, Idaho Code)

24 (4) "Vehicle salesman" means any person who, for a salary, commission
25 or compensation of any kind, is employed either directly or indirectly, or
26 regularly or occasionally by any dealer to sell, purchase or exchange, or to
27 negotiate for the sale, purchase or exchange of vehicles. (See also "full-
28 time salesman," section 49-107, Idaho Code, and "part-time salesman," sec-
29 tion 49-117, Idaho Code)

30 (5) "Vessel." (See section 67-7003, Idaho Code)

31 (6) "Veteran." (See section 65-~~502~~203, Idaho Code)

32 (7) "Violation" means a conviction of a misdemeanor charge involving a
33 moving traffic violation, or an admission or judicial determination of the
34 commission of an infraction involving a moving traffic infraction, except
35 bicycle infractions.

36 SECTION 4. That Section 67-5302, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 67-5302. DEFINITIONS. As used in this chapter, and other applicable
39 sections of the Idaho Code, each of the terms defined in this section shall
40 have the meaning given in this section unless a different meaning is clearly
41 required by the context. Such terms and their definitions are:

42 (1) "Administrative employee" means any person, nonclassified or clas-
43 sified, appointed to a position that meets the criteria set forth in the fed-
44 eral fair labor standards act, 29 U.S.C. 201 et seq. Final designation of
45 a classified position as "administrative" within this definition shall be
46 made by the administrator of the division of human resources. Exceptions to
47 this designation that do not violate the federal fair labor standards act, 29
48 U.S.C. 201 et seq., may be made by the administrator.

1 (2) "Administrator" means the administrator of the division of human
2 resources in the governor's office.

3 (3) "Appointing authority" means the officer, board, commission, per-
4 son or group of persons authorized by statute or lawfully delegated author-
5 ity to make appointments to or employ personnel in any department.

6 (4) "Class" means a group of positions sufficiently similar as to the
7 duties performed, degree of supervision exercised or required, minimum re-
8 quirements of training, experience or skill, and other characteristics that
9 the same title, the same tests of fitness and the same schedule of compensa-
10 tion may be applied to each position in the group.

11 (5) "Classified officer or employee" means any person appointed to or
12 holding a position in any department of the state of Idaho, which position
13 is subject to the provisions of the merit examination, selection, retention,
14 promotion and dismissal requirements of chapter 53, title 67, Idaho Code.

15 (6) "Commission" means the Idaho personnel commission.

16 (7) "Compensatory time" means approved time off from duty provided in
17 compensation for overtime hours worked.

18 (8) "Computer worker" means any person, nonclassified or classified,
19 appointed to a position that meets the criteria set forth in the federal fair
20 labor standards act, 29 U.S.C. 201 et seq. Final designation of a classified
21 position as "computer worker" within this definition shall be made by the ad-
22 ministrator of the division of human resources. Exceptions to this designa-
23 tion that do not violate the federal fair labor standards act, 29 U.S.C. 201
24 et seq., may be made by the administrator.

25 (9) "Department" means any department, agency, institution or office
26 of the state of Idaho.

27 (10) "Disabled veteran" is as defined in section 65-502, Idaho Code.

28 (11) "Eligible" means a person who has been determined to be qualified
29 for a classified position and whose name has been placed on the register of
30 eligibles.

31 (12) "Executive employee" means any person, nonclassified or classi-
32 fied, appointed to a position equivalent to a bureau chief or above as pro-
33 vided in section 67-2402, Idaho Code, or any employee meeting the following
34 criteria:

35 (a) An individual whose primary duty is management of a department, di-
36 vision or bureau; and

37 (b) Who customarily and regularly directs the work of at least two (2)
38 or more other employees therein; and

39 (c) Who has the authority to hire and fire, or to recommend hiring and
40 firing; or whose recommendation on these and other actions affecting
41 employees is given particular weight; and

42 (d) Who customarily and regularly exercises discretionary powers; and

43 (e) Who is classified to a position allocated to the pay grade equiva-
44 lent to two hundred sixty (260) points or higher pursuant to the rating
45 system established by rule.

46 (f) Final designation of a classified position as "executive" in this
47 definition shall be made by the administrator. Exceptions to this des-
48 ignation that do not violate the federal fair labor standards act, 29
49 U.S.C. 201 et seq., may be made by the administrator.

1 (13) "Exempt employee" means any employee, classified or nonclassi-
 2 fied, who is determined to be an executive, professional or administrative
 3 employee as defined herein, or who qualifies for any other exemption from
 4 cash compensation for overtime under applicable federal law. Final designa-
 5 tion of a classified position as exempt shall be made by the administrator.

6 (14) "Full-time employee" means any employee working a forty (40) hour
 7 workweek.

8 (15) "Holiday" means the following:

9 January 1 (New Year's Day);

10 Third Monday in January (Martin Luther King, Jr.-Idaho Human
 11 Rights Day);

12 Third Monday in February (Washington's Birthday);

13 Last Monday in May (Memorial Day);

14 July 4 (Independence Day);

15 First Monday in September (Labor Day);

16 Second Monday in October (Columbus Day);

17 November 11 (Veterans Day);

18 Fourth Thursday in November (Thanksgiving);

19 December 25 (Christmas).

20 In addition, the term "holiday" shall mean any day so designated by the pres-
 21 ident of the United States or the governor of this state for a public fast,
 22 thanksgiving or holiday.

23 In the event that a holiday occurs on a Saturday, the preceding Friday
 24 shall be a holiday, and if the holiday falls on a Sunday, the following Monday
 25 shall be a holiday.

26 A holiday is a day of exemption from work granted to nonexecutive em-
 27 ployees during which said employees shall be compensated as if they actually
 28 worked. Employees classified as executive exempt are entitled to ten (10)
 29 paid holidays per year. If such an employee works on one (1) of the official
 30 holidays listed in this subsection, then such employee may take an alterna-
 31 tive day off but shall not receive additional compensation.

32 (16) "Hours worked" means those hours actually spent in the performance
 33 of the employee's job on any day including holidays and shall not include va-
 34 cation or sick leave or other approved leave of absence.

35 (17) "Nonclassified employee" means any person appointed to or holding
 36 a position in any department of the state of Idaho, which position is ex-
 37 empted from the provisions of chapter 53, title 67, Idaho Code, as provided
 38 for in section 67-5303, Idaho Code.

39 (18) "Normal workweek" means any forty (40) hours worked during a par-
 40 ticular one hundred sixty-eight (168) hour period as previously established
 41 by the employee's appointing authority.

42 (19) "Open competitive examination" means an examination that may be
 43 taken by qualified applicants to compete on an equal basis for listing on the
 44 register of eligibles.

45 (20) "Overtime work" means time worked on holidays and time worked in
 46 excess of forty (40) hours in a period of one hundred sixty-eight (168) con-
 47 secutive hours, except that in the case of those employees engaged in law
 48 enforcement, correctional and fire protection activities characterized by
 49 irregular shift work schedules, time worked in excess of one hundred sixty
 50 (160) hours in a period of twenty-eight (28) consecutive days shall consti-

1 tute overtime work within the meaning of this chapter. Such employees may
2 also be paid overtime for specific hours worked in addition to their normal
3 schedules upon emergency declaration by the governor or with the approval of
4 the appointing authority and the board of examiners.

5 (21) "Participating department" means any department of the state of
6 Idaho that employs persons in classified positions subject to the merit ex-
7 amination, selection, retention, promotion and dismissal requirements of
8 this chapter.

9 (22) "Part-time employee" means any employee whose usually scheduled
10 work is fewer than forty (40) hours in a period of one hundred sixty-eight
11 (168) consecutive hours, and who shall not be entitled to sick leave accruals
12 provided in section 67-5333, Idaho Code, vacation leave provided in section
13 67-5334, Idaho Code, nor holiday pay as defined in subsection (15) of this
14 section, unless contributions are being made to the public employee retire-
15 ment system in accordance with chapter 13, title 59, Idaho Code, and rules
16 promulgated by the public employee retirement system board.

17 (23) "Personnel system" means the procedure for administering employ-
18 ees in accordance with this chapter.

19 (24) "Political office" means a public office for which partisan poli-
20 tics is a basis for nomination, election or appointment.

21 (25) "Political organization" means a party that sponsors candidates
22 for election to political office.

23 (26) "Position" means a group of duties and responsibilities legally
24 assigned or delegated by one (1) or more appointing authorities and requir-
25 ing the employment of one (1) person.

26 (27) "Professional employee" means any person, nonclassified or clas-
27 sified, appointed to a position that meets the criteria set forth in the fed-
28 eral fair labor standards act, 29 U.S.C. 201 et seq. Final designation of a
29 classified position as "professional" within this definition shall be made
30 by the administrator. Exceptions to this designation that do not violate the
31 federal fair labor standards act, 29 U.S.C. 201 et seq., may be made by the
32 administrator.

33 (28) "Provisional appointment" means appointment to a classified posi-
34 tion pending the establishment of a register for such position, and employ-
35 ment shall not be continued in this status longer than thirty (30) days after
36 establishment of a register.

37 (29) "Public education entity" means community colleges, public school
38 districts, public charter schools and the Idaho digital learning academy.

39 (30) "Qualifying examination" means an examination or evaluation given
40 to a selected person to determine eligibility for reclassification or ap-
41 pointment to a position in a classification.

42 (31) "Register" means a list of names of persons who have been deter-
43 mined to be eligible for employment in a classified position as determined on
44 the basis of examination and merit factors as established by the administra-
45 tor.

46 (32) "Seasonal appointment" means an appointment to a position that is
47 permanent in nature but that has intermittent work periods throughout the
48 year.

49 (33) "Service rating" means a recorded evaluation of work performance
50 and promotional potential of an employee by his supervisor.

1 (34) "State educational agency" means the following state agencies and
2 educational institutions supervised by the Idaho state board of education:

- 3 (a) Boise state university;
4 (b) Idaho state university;
5 (c) University of Idaho;
6 (d) Lewis-Clark state college;
7 (e) Idaho public television;
8 (f) The division of vocational rehabilitation;
9 (g) The division of career technical education;
10 (h) The office of the state board of education; and
11 (i) The department of education.

12 (35) "Temporary appointment" means appointment to a position that is
13 not permanent in nature and in which employment will not exceed one thousand
14 three hundred eighty-five (1,385) hours during any twelve (12) month period.
15 No person holding a temporary appointment may work in excess of one thousand
16 three hundred eighty-five (1,385) hours during a twelve (12) month period
17 of time for any one (1) department, except upon petition by the appointing
18 authority of the department of lands that demonstrates good cause, the ad-
19 ministrator of the division of human resources may extend the one thousand
20 three hundred eighty-five (1,385) hour limit for employees of the department
21 who are required to perform fire suppression activities.

22 (36) "Vacation leave" means a period of exemption from work granted to
23 employees during which time said employees shall be compensated. The term
24 shall not include compensatory time for overtime work.

25 (37) "Veteran" is as defined in section 65-502203, Idaho Code.

26 SECTION 5. That Section 67-5309, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 67-5309. RULES OF THE DIVISION OF HUMAN RESOURCES AND THE PERSONNEL
29 COMMISSION. The administrator of the division of human resources shall have
30 the power and authority to adopt, amend, or rescind such rules as may be nec-
31 essary for proper administration of this chapter. Such rules ~~shall~~ may in-
32 clude:

33 (a) A rule requiring the administrator, after consulting with each de-
34 partment, to develop, adopt, and make effective a job classification system
35 for positions covered by this chapter, based upon an analysis of the duties
36 and responsibilities of the positions. The job classification shall include
37 an appropriate title for each class and a description of duties and responsi-
38 bilities of positions in the classes and the requirements of minimum train-
39 ing, experience and other qualifications suitable for the performance of du-
40 ties of the position.

41 (b) A rule describing the relevant labor markets and benchmark job
42 classifications used in the administrator's salary surveys.

43 (c) A rule requiring that all classes of positions which are common to
44 the departments concerned shall have the same titles, minimum requirements
45 and compensation ranges.

46 (d) A rule providing for review by the administrator of the personnel
47 system including classifications and compensation policies and procedures.

48 (e) A rule that, notwithstanding the procedure for examination and
49 ranking of eligibles on a register provided in subsection (f) of this sec-

1 tion, an agency may appoint an individual directly into an entrance or
2 promotional probation if the division of vocational rehabilitation, Idaho
3 commission for the blind and visually impaired or the industrial commission
4 certifies, with the concurrence of division of human resources staff, that
5 the individual: (1) has a disability or handicap as defined under state or
6 federal law; (2) is qualified to perform the essential functions of a par-
7 ticular classified position with or without reasonable accommodation; and
8 (3) lacks competitiveness in the examination process due to the disability
9 or handicap. The probationary period as provided in subsection (j) of this
10 section shall be the sole examination for such individuals.

11 (f) A rule requiring fair and impartial selection of appointees to all
12 positions other than those defined as nonclassified in this chapter, on the
13 basis of open competitive merit examinations or evaluations. An applica-
14 tion for an examination will be accepted after the closing date of the exam-
15 ination from a person who was serving in the armed forces or undergoing ser-
16 vice-connected hospitalization up to one (1) year following discharge. The
17 application must be submitted within one hundred twenty (120) days of separa-
18 tion from the armed forces or hospitalization and prior to the expiration
19 of the register established as a result of the examination. A disabled veter-
20 eran may file an application at any time up until a selection has been made
21 for any position for which the division maintains a register as a source for
22 future job openings or for which a register is about to be established, pro-
23 vided he or she has not already been examined twice for the same position and
24 grade for which application is made, does not have current eligibility on
25 that register, or is not serving in a competitive position in the same grade
26 for which application is made. Examinations may be assembled or unassembled
27 and may include various examining techniques such as rating of training and
28 experience, written tests, oral interviews, recognition of professional li-
29 censing, performance tests, investigations and any other measure of ability
30 to perform the duties of the position. Examinations shall be scored objec-
31 tively. Five (5) points shall be added to the earned rating of any veteran
32 as defined in section 65-502203, Idaho Code, and the widow or widower of any
33 veteran as defined in section 65-502203, Idaho Code, as long as he or she re-
34 mains unmarried. Pursuant to section 65-504, Idaho Code, ten (10) points
35 shall be added to the earned rating of any disabled veteran as defined in sec-
36 tion 65-502, Idaho Code, the widow or widower of any disabled veteran as long
37 as he or she remains unmarried, or the spouse of any eligible disabled vet-
38 eran who cannot qualify for any public employment because of a service-con-
39 nected disability. Employment registers shall be established in order of
40 final score except that the names of all five (5) and ten (10) point prefer-
41 ence eligibles resulting from any merit system or civil service examination
42 shall be placed on the register in accordance with their augmented rating.
43 Certification of eligibility for appointment to vacancies shall be in ac-
44 cordance with a formula that limits selection by the hiring department from
45 among the twenty-five (25) top ranking available eligibles plus the names
46 of all individuals with scores identical to the twenty-fifth ranking eligi-
47 ble on the register. A register with at least five (5) eligibles shall be
48 adequate. Selective certification shall be permitted when justified by the
49 hiring department, under rules to be made by the division defining adequate
50 justification based on the duties and requirements of the positions. Such

1 examinations need not be held until after the rules have been adopted, the
2 service classified and a pay plan established, but shall be held not later
3 than one (1) year after departments commence participation in the personnel
4 system.

5 (g) A rule that, whenever practicable, a vacancy in a classified posi-
6 tion shall be filled by the promotion of a qualified employee of the agency
7 in which the vacancy occurs. An interagency promotion shall be made through
8 competitive examination and all qualified state employees shall have the
9 opportunity to compete for such promotions. If an employee's name appears
10 within certifiable range on a current register for a higher class of posi-
11 tion, he shall be eligible for a transfer and promotion.

12 (h) A rule for development and maintenance of a system of service rat-
13 ings and the use of such ratings by all departments in connection with pro-
14 motions, demotions, retentions, separations and reassignments. The rule
15 shall require that an evaluation of each classified employee shall be made
16 after each two thousand eighty (2,080) hour period of credited state service
17 and that a copy of the evaluation shall be filed with the division.

18 (i) A rule prohibiting disqualification of any person from taking an
19 examination, from appointment to a position, from promotion, or from holding
20 a position because of race or national origin, color, sex, age, political or
21 religious opinions or affiliations, and providing for right of appeal.

22 (j) A rule establishing a probation period not to exceed one thousand
23 forty (1,040) hours of credited state service for all appointments and pro-
24 motions, except that peace officers as defined in section 19-5101, Idaho
25 Code, shall be subject to a probation period of two thousand eighty (2,080)
26 hours of credited state service, and for the appointing authority to pro-
27 vide the employee and the administrator a performance evaluation indicating
28 satisfactory or unsatisfactory performance not later than thirty (30) days
29 after the expiration of the probationary period. The rule shall provide that
30 if the appointing authority fails to provide a performance evaluation within
31 thirty (30) days after the expiration of the probationary period, the em-
32 ployee shall be deemed to have satisfactorily completed the probation unless
33 the appointing authority receives approval from the administrator to extend
34 the probationary period for good cause for an additional specified period
35 not to exceed one thousand forty (1,040) hours of credited state service. If
36 an employee is performing in an unsatisfactory manner during the entrance
37 probationary period, the appointing authority shall ask the employee to re-
38 sign and, if no resignation is submitted, shall terminate the employment of
39 such employee without the right of grievance or appeal.

40 (k) A rule concerning temporary appointments.

41 (l) A rule governing the employment of consultants and persons retained
42 under independent contract.

43 (m) A rule for the disciplinary dismissal, demotion, suspension or
44 other discipline of employees only for cause with reasons given in writing.
45 Such rule shall provide that any of the following reasons shall be proper
46 cause for the disciplinary dismissal, demotion or suspension of any employee
47 in the state classified service:

- 48 1. Failure to perform the duties and carry out the obligations imposed
49 by the state constitution, state statutes and rules of the employee's
50 department, or rules of the administrator or the division.

1 2. Inefficiency, incompetency, or negligence in the performance of
2 duties, or job performance that fails to meet established performance
3 standards.

4 3. Physical or mental incapability for performing assigned duties.

5 4. Refusal to accept a reasonable and proper assignment from an autho-
6 rized supervisor.

7 5. Insubordination or conduct unbecoming a state employee or conduct
8 detrimental to good order and discipline in the employee's department.

9 6. Intoxication on duty.

10 7. Careless, negligent, or improper use or unlawful conversion of state
11 property, equipment or funds.

12 8. Use of any influence that violates the principles of the merit system
13 in an attempt to secure a promotion or privileges for individual advan-
14 tage.

15 9. Conviction of official misconduct in office, or conviction of any
16 felony, or conviction of any other crime involving moral turpitude.

17 10. Acceptance of gifts in exchange for influence or favors given in the
18 employee's official capacity.

19 11. Habitual pattern of failure to report for duty at the assigned place
20 and time.

21 12. Habitual improper use of sick leave privileges.

22 13. Unauthorized disclosure of confidential information from official
23 records.

24 14. Absence without leave.

25 15. Misstatement or deception in the application for the position.

26 16. Failure to obtain or maintain a current license or certificate law-
27 fully required as a condition for performing the duties of the job.

28 17. Prohibited participation in political activities.

29 (n) A rule to establish procedures for maintenance of a record of the
30 employment history and appropriate information relating to performance of
31 all employees under the personnel system. For the purposes of this rule, the
32 state shall be considered one (1) employer.

33 (o) Rules to provide for recruitment programs in cooperation with de-
34 partment heads and the employment security agency in keeping with current
35 employment conditions and labor market trends.

36 (p) Rules to establish procedures for examinations as necessary for the
37 purpose of maintaining current registers from which to fill employment va-
38 cancies.

39 (q) Other rules not inconsistent with the foregoing provisions of this
40 section as may be necessary and proper for the administration and enforce-
41 ment of this chapter.

42 (r) A rule concerning "project exempt" appointments.

43 (s) Rules relating to leave for state employees from official duties
44 including, but not limited to, sick leave, military leave, jury duty, leaves
45 of absence without compensation and such other forms of absence from perfor-
46 mance of duties in the course of state employment as may be necessary.

47 (t) A rule providing up to twenty-five percent (25%) shift differential
48 pay based on local market practices.

49 (u) A rule to establish guidelines for awarding employee suggestion
50 awards set forth in sections 59-1603 and 67-5309D, Idaho Code.

1 (v) A rule to establish the reimbursement of moving expenses for a cur-
2 rent or newly hired state employee.

3 (w) A rule to allow, at the request of the hiring agency, temporary ser-
4 vice time to count toward fulfilling entrance probationary requirements as
5 established in subsection (j) of this section.

6 (x) A rule to allow, at the request of the hiring agency, acting ap-
7 pointment service time to count toward fulfilling promotional probationary
8 requirements as established in subsection (j) of this section.