

IN THE SENATE

SENATE BILL NO. 1274

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION
2 67-5201, IDAHO CODE, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS;
3 AMENDING SECTION 67-5206, IDAHO CODE, TO REVISE PROVISIONS REGARDING
4 RULEMAKING; AMENDING SECTION 67-5240, IDAHO CODE, TO PROVIDE THAT IS-
5 SUANCE OF ORDERS BY CERTAIN ENTITIES SHALL NOT RESULT IN A CONTESTED
6 CASE GOVERNED BY THE PROVISIONS OF SPECIFIED LAW; AMENDING SECTION
7 67-5252, IDAHO CODE, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES NO PARTY
8 SHALL HAVE THE RIGHT TO A DISQUALIFICATION WITHOUT CAUSE AND TO MAKE
9 TECHNICAL CORRECTIONS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY
10 THE ADDITION OF A NEW SECTION 67-5280, IDAHO CODE, TO PROVIDE FOR THE
11 OFFICE OF ADMINISTRATIVE HEARINGS AND TO PROVIDE FOR POWERS AND DUTIES;
12 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW
13 SECTION 67-5281, IDAHO CODE, TO PROVIDE FOR THE CHIEF ADMINISTRATIVE
14 HEARING OFFICER; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE AD-
15 DITION OF A NEW SECTION 67-5282, IDAHO CODE, TO PROVIDE FOR DUTIES AND
16 PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE HEARING OFFICER; AMEND-
17 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
18 67-5283, IDAHO CODE, TO PROVIDE FOR THE SALARY OF THE CHIEF ADMINISTRA-
19 TIVE HEARING OFFICER; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
20 ADDITION OF A NEW SECTION 67-5284, IDAHO CODE, TO PROVIDE FOR HEARING
21 OFFICER QUALIFICATIONS AND TO PROVIDE FOR POWERS AND DUTIES; AMEND-
22 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
23 67-5285, IDAHO CODE, TO PROVIDE FOR THE COOPERATION OF AGENCIES; AMEND-
24 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
25 67-5286, IDAHO CODE, TO PROVIDE FOR THE OFFICE OF ADMINISTRATIVE HEAR-
26 INGS, TO PROVIDE FOR COST ESTIMATES, AND TO PROVIDE FOR THE ASSESSMENT
27 OF RECIPIENT AGENCIES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE
28 ADDITION OF A NEW SECTION 67-5287, IDAHO CODE, TO PROVIDE FOR THE ADVI-
29 SORY COUNCIL TO THE OFFICE OF ADMINISTRATIVE HEARINGS; AMENDING CHAPTER
30 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5288, IDAHO
31 CODE, TO PROVIDE FOR THE CONDUCT OF CONTESTED CASE PROCEEDINGS; AMEND-
32 ING SECTION 58-122, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND
33 AMENDING SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT CERTAIN HEARING
34 OFFICERS AND STAFF SHALL BE NONCLASSIFIED EMPLOYEES AND TO MAKE TECHNICAL
35 CORRECTIONS.
36

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

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

40 67-5201. DEFINITIONS. As used in this act:

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

1 (2) "Agency" means each state board, commission, department or officer
 2 authorized by law to make rules or to determine contested cases, but does not
 3 include the legislative or judicial branches, executive officers listed in
 4 section 1, article IV, of the constitution of the state of Idaho in the exer-
 5 cise of powers derived directly and exclusively from the constitution, the
 6 state militia or the state board of correction.

7 (3) "Agency action" means:

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

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

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

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

14 (5) "Bulletin" means the Idaho administrative bulletin established in
 15 this chapter.

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

19 (7) "Contested case" means a proceeding which results in the issuance
 20 of an order.

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

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

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

27 (101) "Hearing officer" means the chief administrative hearing offi-
 28 cer and any hearing officers appointed by him pursuant to sections 67-5281
 29 through 67-5284, Idaho Code.

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

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

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

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

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

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

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

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

5 (a) Statute; or

6 (b) Rule or decision of court.

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

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

13 (a) Law or policy; or

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

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

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

22 (iii) Intra-agency memoranda; or

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

26 (~~202~~) "Rulemaking" means the process for formulation, adoption, amend-
27 ment or repeal of a rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (5) (a) After July 1, 1993, the rules promulgated by the attorney gen-
50 eral under this section shall apply to all agencies that do not affirma-

1 tively promulgate alternative procedures after the promulgation of the
 2 rules by the attorney general. The rules promulgated by the attorney
 3 general shall supersede the procedural rules of any agency in effect on
 4 June 30, 1993, unless that agency promulgates its own procedures as pro-
 5 vided in paragraph (b) of this subsection.

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

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

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

19 67-5240. CONTESTED CASES. A proceeding by an agency, other than the
 20 public utilities commission, ~~or~~ the industrial commission, the department
 21 of water resources, or the water resource board that may result in the is-
 22 suance of an order is a contested case and is governed by the provisions of
 23 this chapter, except as provided by other provisions of law.

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

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

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

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

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

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

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

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

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

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

13 67-5280. CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS -- POWERS AND
14 DUTIES. (1) There is hereby created in the department of self-governing
15 agencies the office of administrative hearings.

16 (2) The office of administrative hearings shall:

17 (a) Conduct all contested case proceedings that arise from an appeal of
18 an agency order;

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

23 (c) Promulgate rules to implement provisions relating to its duties and
24 actions authorized by this chapter; and

25 (d) Be subject to audit in the same manner as other agencies of the
26 state.

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

30 67-5281. CHIEF ADMINISTRATIVE HEARING OFFICER -- APPOINTMENT -- QUAL-
31 IFICATIONS -- REMOVAL. (1) A chief administrative hearing officer shall be
32 appointed by the governor, and confirmed by the senate, to serve a four (4)
33 year term. A person may be reappointed to serve additional terms. Provided
34 however, there is no right to reappointment.

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

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

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

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

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

45 (3) For purposes of this section, the following terms have the follow-
46 ing meanings:

1 (a) "Active" and "good standing" have the same definitions as those
2 terms are given by rule 301 of the Idaho bar commission rules or any suc-
3 cessor to those rules; and

4 (b) "Jurisdiction" means a state or territory of the United States, the
5 District of Columbia, or any branch of the United States military.

6 (4) The chief administrative hearing officer shall not have served as
7 an administrative hearing officer for an agency, nor as an attorney for an
8 agency, whether as an employee, an independent contractor, or pursuant to a
9 special appointment, for the one (1) year period immediately preceding his
10 initial appointment.

11 (5) The chief administrative hearing officer may be removed from of-
12 fice only by the governor for conviction of a felony or misdemeanor offense,
13 failing to retain those qualifications of his office established in subsec-
14 tion (2) of this section, engaging in prohibited conduct established in sec-
15 tion 67-5282(2), Idaho Code, disability, inefficiency, neglect of duty, or
16 malfeasance. Before such removal, the governor shall give the chief admin-
17 istrative hearing officer a written copy of the charges against him, provide
18 him an opportunity to submit a written response not less than fourteen (14)
19 calendar days thereafter, and may provide him such other process as the gov-
20 ernor deems appropriate. If the chief administrative hearing officer is re-
21 moved, the governor shall provide the house of representatives and the sen-
22 ate written notice of the removal, the effective date of the removal, and the
23 reason or reasons therefor.

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

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

31 67-5282. DUTIES AND PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE
32 HEARING OFFICER. (1) The chief administrative hearing officer shall:

33 (a) Serve as the administrator of the office of administrative hear-
34 ings;

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

38 (c) Devote full time to the office of administrative hearings and his
39 obligations as chief administrative hearings officer;

40 (d) Subject to the applicable law and regulation, appoint, supervise,
41 and remove hearing officers and staff as he deems appropriate to the
42 proper functioning of the office of administrative hearings, determine
43 the duties of such appointees as he deems appropriate, and, from among
44 the hearing officers employed by the office of administrative hearings,
45 designate a deputy chief administrative hearing officer to act in place
46 of the chief administrative hearing officer when the chief administra-
47 tive hearing officer is unable to perform his duties;

- 1 (e) On behalf of the office of administrative hearings, promulgate
2 rules to implement the provisions of sections 67-5280 through 67-5287,
3 Idaho Code;
- 4 (f) Establish a hearing officer code of conduct that shall, among other
5 things, provide for independent and unbiased decision-making by hear-
6 ing officers both as perceived and in fact;
- 7 (g) Provide for a system to monitor compliance with, and sanction vio-
8 lations of, the hearing officer code of conduct;
- 9 (h) Protect and ensure the decisional independence of hearing offi-
10 cers;
- 11 (i) Implement a system for monitoring the quality of contested case
12 proceedings and such other proceedings as are conducted by the office of
13 administrative hearings in accordance with section 67-5280(2)(a) and
14 (b), Idaho Code;
- 15 (j) Submit a written report on the activities of the office of adminis-
16 trative hearings, the quality of its work, its compliance with the code
17 of conduct, and such other matters as he deems appropriate for the im-
18 mediately preceding fiscal year to the governor, the judiciary, rules,
19 and administration committee of the house of representatives, the ju-
20 diciary and rules committee of the senate, and the advisory council to
21 the office of administrative hearings on or before the first day of each
22 legislative session;
- 23 (k) As he deems appropriate, create specialized subject matter divi-
24 sions within the office of administrative hearings;
- 25 (l) At his discretion, retain independent contractor hearing officers
26 at reasonable and consistent rates of compensation; provided that an
27 independent contractor hearing officer with specialized expertise may
28 be compensated at a higher rate if such expertise is necessary to the
29 proper adjudication of the case and such higher rate of compensation is
30 necessary in order to obtain such expertise;
- 31 (m) Purchase, lease, or otherwise acquire for the office of administra-
32 tive hearings office space, furnishings, equipment, and supplies for
33 the proper functioning of the office of administrative hearings; and
- 34 (n) Contract with agencies to conduct such adjudicatory hearings, me-
35 diations, and arbitrations authorized by section 67-5280(2)(b), Idaho
36 Code.
- 37 (2) The chief administrative hearing officer shall not:
- 38 (a) Engage in the practice of law outside of his role in the office of
39 administrative hearings;
- 40 (b) Hold, or be a candidate for, any federal, state, county, municipal,
41 district, or other elective office;
- 42 (c) Serve as the agent, representative, officer, political treasurer,
43 or employee, whether for profit or otherwise, of any political party,
44 political committee, or candidate, whether as defined in either chapter
45 1, title 34, or chapter 66, title 67, Idaho Code, or otherwise; and
- 46 (d) Hold any other public or private sector position, whether for
47 profit or otherwise, except for volunteer positions that are not incon-
48 sistent with his duties as chief administrative hearing officer.

1 SECTION 8. 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 67-5283, Idaho Code, and to read as follows:

4 67-5283. SALARY OF THE CHIEF ADMINISTRATIVE HEARING OFFICER. The
5 chief administrative hearing officer shall receive the same salary as a mag-
6 istrate judge, as listed in section 59-502, Idaho Code.

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

10 67-5284. HEARING OFFICER QUALIFICATIONS -- POWERS -- DUTIES. (1)
11 All hearing officers, including the chief administrative hearing officer,
12 shall:

13 (a) On the effective date of their appointments and throughout their
14 tenure, meet and retain all of the qualifications specified in section
15 67-5281(2), 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 in section 67-5282(2)(a)
20 through (d), Idaho Code. Provided however, to the extent that it does
21 not create a conflict of interest, the code of conduct may waive some or
22 all of these prohibitions for contract hearing officers; and

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

31 (2) Those individuals serving as hearing officers in the office of the
32 attorney general for department of health and welfare contested case hear-
33 ings and those individuals serving as hearing officers for Idaho transporta-
34 tion department driver's license suspension contested case hearings on July
35 1, 2020, shall have the option to be appointed hearing officers if they meet
36 the hearing officer qualifications requirements set forth in this section
37 and if such hearing officer positions are available in the office of adminis-
38 trative hearings on an employment or independent contractor basis.

39 SECTION 10. That Chapter 52, Title 67, Idaho Code, be, and the same is
40 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
41 ignated as Section 67-5285, Idaho Code, and to read as follows:

42 67-5285. COOPERATION OF AGENCIES. (1) No agency or state officer,
43 other than the chief administrative hearing officer, shall attempt to in-
44 fluence the selection of a hearing officer for a contested case proceeding
45 or any other matter, except mediations, and the chief administrative hear-
46 ing officer shall not permit any such influence; provided that agencies and

1 state officers may inform the office of administrative hearings in writing
2 of their views regarding:

3 (a) Expertise needed or desired with respect to types of potential con-
4 tested cases;

5 (b) Proposed rules under consideration for adoption by the office of
6 administrative hearings;

7 (c) Legislation or rules under consideration or being proposed by the
8 office of administrative hearings; and

9 (d) Legislation or rules under consideration or being proposed by such
10 agencies or state officers.

11 (2) Nothing in this section shall be deemed to prohibit an agency direc-
12 tor, the attorney general, or a designee of either of them from carrying out
13 their duties as a member of the advisory council to the office of administra-
14 tive hearings.

15 SECTION 11. That Chapter 52, Title 67, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 67-5286, Idaho Code, and to read as follows:

18 67-5286. OFFICE OF ADMINISTRATIVE HEARINGS -- COST ESTIMATES -- AS-
19 SESSMENT OF RECIPIENT AGENCIES. (1) The office of administrative hearings
20 shall prepare an estimate of costs for state budgeting purposes for services
21 provided by the office of administrative hearings. The office of adminis-
22 trative hearings shall notify the division of financial management of such
23 estimated costs by October 1. The division of financial management shall no-
24 tify all state agencies of these cost estimates for the next fiscal year on or
25 before November 1. The division of financial management and the legislative
26 services office shall allow state agencies to modify their budget requests
27 in response to such estimates.

28 (2) The office of administrative hearings shall assess each recipient
29 agency the amounts allocated for services provided. Amounts so assessed
30 shall be separately accounted for and can be expended only after legislative
31 appropriation. Such amount shall be paid by each state entity in the suc-
32 ceeding fiscal year to the indirect cost recovery fund. Before June 30 of
33 each fiscal year, the state controller shall transfer an amount equal to such
34 deposits to the state general fund.

35 SECTION 12. That Chapter 52, Title 67, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 67-5287, Idaho Code, and to read as follows:

38 67-5287. ADVISORY COUNCIL TO THE OFFICE OF ADMINISTRATIVE HEAR-
39 INGS. (1) There is hereby created the advisory council to the office of
40 administrative hearings, referred to as "the council" in this section.

41 (2) The council shall consist of nine (9) members that shall not include
42 the chief administrative hearing officer or any hearing officers or staff of
43 the office of administrative hearings. Members shall include the following:

44 (a) One (1) senator from the majority party selected by the president
45 pro tempore and one (1) senator from the minority party selected by the
46 minority leader;

1 (b) One (1) member of the house of representatives from the majority
2 party selected by the speaker of the house of representatives and one
3 (1) member of the house of representatives from the minority party se-
4 lected by the minority leader;

5 (c) The attorney general, or a deputy attorney general designated by
6 the attorney general;

7 (d) Two (2) state agency directors, appointed by the governor, or their
8 designees. Provided however, a designee of an agency director must be
9 an employee of the agency and may not be a deputy attorney general. Pro-
10 vided further, only those agencies subject to application of the con-
11 tested case provisions of this act shall be eligible for appointment;
12 and

13 (e) Two (2) members of the public appointed by the governor, neither of
14 whom shall be an employee or independent contractor or otherwise have a
15 financial relationship with the office of administrative hearings. One
16 (1) of the public members must be a member in good standing of the Idaho
17 state bar. The other public member shall not be an attorney nor formerly
18 an attorney authorized to practice law in any jurisdiction.

19 (3) The terms of the public members shall be for four (4) years. An
20 agency director and a designee may be replaced by the appointing or designat-
21 ing authority at any time. A vacancy shall exist with respect to any member
22 who no longer holds the position or qualifications required to be such a mem-
23 ber and as to any public member who has failed to meaningfully participate in
24 the council's business as determined by the governor upon the recommendation
25 of the chair of the council. Public members may serve more than one (1) term.

26 (4) Members shall serve without honorarium or compensation of any kind,
27 but shall be reimbursed for actual and necessary expenses, subject to the
28 limits provided in section 67-2008, Idaho Code.

29 (5) A quorum shall consist of a majority of the members, but any action
30 of the council shall require six (6) votes.

31 (6) Members shall elect two (2) officers, a chair, and a vice chair,
32 who shall serve two (2) year terms. The vice chair shall serve in place of
33 the chair when the chair is absent or the chair's position is vacant. In the
34 event of a vacancy in the office of chair or vice chair, the office shall be
35 filled at the next meeting of the board, and the new officeholder shall com-
36 plete the term of the officer being replaced.

37 (7) The council's duties shall be as follows:

38 (a) To make recommendations to the chief administrative hearing offi-
39 cer about:

40 (i) The operation of the office of administrative hearings;

41 (ii) Rules being considered for promulgation by the office of ad-
42 ministrative hearings;

43 (iii) The code of conduct and the annual written report required
44 pursuant to section 67-5282, Idaho Code;

45 (iv) Hearing officer training; and

46 (v) Such other matters as the council deems appropriate to the
47 proper operation of the office of administrative hearings;

48 (b) To make recommendations to the governor, the chief administrative
49 hearing officer, and the legislature as it deems appropriate; and

1 (c) To meet at least annually at such times and places as the council
2 determines. The meetings shall be conducted in accordance with the open
3 meetings law as provided in chapter 2, title 74, Idaho Code.

4 (8) This section shall be null, void, and of no force and effect on and
5 after September 1, 2025.

6 SECTION 13. That Chapter 52, Title 67, Idaho Code, be, and the same is
7 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
8 ignated as Section 67-5288, Idaho Code, and to read as follows:

9 67-5288. CONDUCT OF CONTESTED CASE PROCEEDINGS. Notwithstanding any
10 other provision of this chapter, the office of administrative hearings shall
11 not conduct contested case proceedings until January 1, 2021. Provided,
12 contested case proceedings commenced prior to that date shall proceed under
13 the law as it existed as of June 30, 2020, unless the hearing for such con-
14 tested case did not commence prior to January 1, 2021.

15 SECTION 14. That Section 58-122, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 58-122. CONTESTED CASES -- PROCEDURE. It shall be the duty of the
18 director of the department of lands in any or all contested cases, at the
19 direction of the board, to appoint hearing officers, receive evidence,
20 issue subpoenas and to hold contested case hearings in accordance with sec-
21 tions 67-5240 through 67-5271, Idaho Code, when hearings are necessary and
22 witnesses may be required to be examined. Provided however, that when the
23 state board of land commissioners is exercising its duties and authorities
24 concerning the direction, control or disposition of the public lands of the
25 state pursuant to sections 7 and 8, article IX, of the constitution of the
26 state of Idaho, such actions shall not be considered to be contested cases
27 as defined in subsection (67) of section 67-5201, Idaho Code, and section
28 67-5240, Idaho Code, unless the board, in its discretion, determines that a
29 contested case hearing would be of assistance to the board in the exercise of
30 its duties and authorities.

31 SECTION 15. That Section 67-5303, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state
34 of Idaho and all employees in such departments, except those employees
35 specifically defined as nonclassified, shall be classified employees, who
36 are subject to this chapter and to the system of personnel administration
37 which it prescribes. Nonclassified employees shall be:

38 (a) Members of the state legislature and all other officers of the state
39 of Idaho elected by popular vote, and persons appointed to fill vacancies in
40 elective offices, and employees of the state legislature.

41 (b) Members of statutory boards and commissions and heads of depart-
42 ments appointed by and serving at the pleasure of the governor, deputy direc-
43 tors appointed by the director and members of advisory boards and councils
44 appointed by the departments.

1 (c) All employees and officers in the office, and at the residence, of
2 the governor; and all employees and officers in the offices of the lieutenant
3 governor, secretary of state, attorney general, state treasurer, state con-
4 troller, and state superintendent of public instruction who are appointed on
5 and after the effective date of this chapter.

6 (d) Except as otherwise provided by law, not more than one (1) declared
7 position for each board or commission and/or head of a participating depart-
8 ment, in addition to those declared to be nonclassified by other provisions
9 of law.

10 (e) Part-time professional consultants who are paid on a fee basis for
11 any form of legal, medical or other professional service, and who are not en-
12 gaged in the performance of administrative duties for the state.

13 (f) Judges, temporary referees, receivers and jurors.

14 (g) All employees of the Idaho supreme court, Idaho court of appeals and
15 district courts.

16 (h) All employees of the Idaho state bar.

17 (i) Assistant attorneys general attached to the office of the attorney
18 general.

19 (j) Officers, members of the teaching staffs of state educational in-
20 stitutions, the professional staff of the Idaho department of education
21 administered by the board of regents and the board of education, and the
22 professional staffs of the Idaho division of career technical education
23 and vocational rehabilitation administered by the state board for career
24 technical education. "Teaching staff" includes teachers, coaches, resident
25 directors, librarians and those principally engaged in academic research.
26 The word "officer" means presidents, vice presidents, deans, directors, or
27 employees in positions designated by the state board who receive an annual
28 salary of not less than step "A" of the pay grade equivalent to three hundred
29 fifty-five (355) Hay points in the state compensation schedule. A nonclas-
30 sified employee who is designated as an "officer" on July 5, 1991, but does
31 not meet the requirements of this subsection, may make a ~~one (1) time~~ onetime
32 irrevocable election to remain nonclassified. Such an election must be made
33 not later than August 2, 1991. When such positions become vacant, these
34 positions will be reviewed and designated as either classified or nonclassi-
35 fied in accordance with this subsection.

36 (k) Employees of the military division.

37 (l) Patients, inmates or students employed in a state institution.

38 (m) Persons employed in positions established under federal grants,
39 which, by law, restrict employment eligibility to specific individuals or
40 groups on the basis of nonmerit selection requirements. Such employees
41 shall be termed "project exempt" and the tenure of their employment shall
42 be limited to the length of the project grant, or twenty-four (24) months,
43 or four thousand one hundred sixty (4,160) hours of credited state service,
44 whichever is of the shortest duration. No person hired on a project-exempt
45 appointment shall be employed in any position allocated to the classified
46 service.

47 (n) Temporary employees.

48 (o) All employees and officers of the following named commodity commis-
49 sions, and all employees and officers of any commodity commission created
50 hereafter: the Idaho potato commission, as provided in chapter 12, title 22,

1 Idaho Code; the Idaho honey commission, as provided in chapter 28, title 22,
2 Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22,
3 Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, ti-
4 tle 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33,
5 title 22, Idaho Code; the Idaho pea and lentil commission, as provided in
6 chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in
7 chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in
8 chapter 37, title 22, Idaho Code; the Idaho mint commission, as provided in
9 chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as
10 provided in chapter 1, title 25, Idaho Code; the state brand inspector, and
11 all district supervisors, as provided in chapter 11, title 25, Idaho Code;
12 the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and
13 the Idaho dairy products commission, as provided in chapter 31, title 25,
14 Idaho Code.

15 (p) All inspectors of the fresh fruit and vegetable inspection service
16 of the Idaho department of agriculture, except those positions involved in
17 the management of the program.

18 (q) All employees of correctional industries within the department of
19 correction.

20 (r) All deputy administrators and wardens employed by the department of
21 correction. Deputy administrators are defined as only the deputy adminis-
22 trators working directly for the nonclassified division administrators un-
23 der the director of the department of correction.

24 (s) All public information positions, with the exception of secretar-
25 ial positions, in any department.

26 (t) Any division administrator.

27 (u) Any regional administrator or division administrator in the de-
28 partment of environmental quality.

29 (v) All employees of the division of financial management, all employ-
30 ees of the STEM action center, all employees of the office of species conser-
31 vation, all employees of the office of drug policy and all employees of the
32 office of energy resources.

33 (w) All employees of the Idaho food quality assurance institute.

34 (x) The state appellate public defender, deputy state appellate public
35 defenders and all other employees of the office of the state appellate public
36 defender.

37 (y) All quality assurance specialists or medical investigators of the
38 Idaho board of medicine.

39 (z) All pest survey and detection employees and their supervisors hired
40 specifically to carry out activities under the Idaho plant pest act, chapter
41 20, title 22, Idaho Code, including but not limited to pest survey, detec-
42 tion and eradication, except those positions involved in the management of
43 the program.

44 (aa) All medical directors employed by the department of health and
45 welfare who are engaged in the practice of medicine, as defined by section
46 54-1803, Idaho Code, at an institution named in section 66-115, Idaho Code.

47 (bb) All hearing officers and staff in the office of administrative
48 hearings as provided for in sections 67-5280 through 67-5286, Idaho Code,
49 but not including the chief administrative hearing officer and any indepen-
50 dent contractor hearing officers.