

IN THE SENATE

SENATE BILL NO. 1250

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PUBLIC RECORDS; AMENDING SECTION 74-103, IDAHO CODE, TO PRO-  
2 VIDE FOR PUBLIC RECORDS REQUESTS TO BE MADE TO CUSTODIANS OF PUBLIC  
3 RECORDS; AMENDING SECTION 74-114, IDAHO CODE, TO PROVIDE CORRECT CODE  
4 REFERENCES; AMENDING CHAPTER 1, TITLE 74, IDAHO CODE, BY THE ADDITION  
5 OF A NEW SECTION 74-126, IDAHO CODE, TO PROVIDE THAT THE LEGISLATIVE  
6 SERVICES OFFICE IS THE CUSTODIAN FOR LEGISLATIVE RECORDS AND TO PROVIDE  
7 THAT A PUBLIC RECORDS REQUEST FOR THE LEGISLATURE SHALL BE MADE TO THE  
8 LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 74-126, IDAHO CODE, TO  
9 REDESIGNATE THE SECTION; AND DECLARING AN EMERGENCY.  
10

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

12 SECTION 1. That Section 74-103, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 74-103. REQUEST AND RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC  
15 RECORDS. (1) A request to examine public records shall be made to the cus-  
16 todian of such records as defined in section 74-101(3), Idaho Code. If a  
17 custodian has not been designated, a public records request may be made to  
18 any official or employee of a public agency. No penalty may be assessed  
19 against a public agency or any official or employee of a public agency relat-  
20 ing to a public records request if such public records request is not made  
21 to the custodian of records, if a custodian of records has been designated.  
22 A public records request must clearly indicate that it is a public records  
23 request. A requestor's failure to comply with the requirements of this sub-  
24 section shall provide immunity to a public agency or any official or employee  
25 of a public agency from the penalties of this chapter, including attorney's  
26 fees, relating to any such public records request.

27 (2) A public agency or independent public body corporate and politic  
28 shall either grant or deny a person's request to examine or copy public  
29 records within three (3) working days of the date of the receipt of the re-  
30 quest for examination or copying. If it is determined by employees of the  
31 public agency or independent public body corporate and politic that a longer  
32 period of time is needed to locate or retrieve the public records, the pub-  
33 lic agency or independent public body corporate and politic shall so notify  
34 in writing the person requesting to examine or copy the records and shall  
35 provide the public records to the person no later than ten (10) working days  
36 following the person's request. Provided however, if it is determined the  
37 existing electronic record requested will first have to be converted to  
38 another electronic format by the agency or by a third party and that such con-  
39 version cannot be completed within ten (10) working days, the agency shall so  
40 notify in writing the person requesting to examine or copy the records. The  
41 agency shall provide the converted public record at a time mutually agreed  
42 upon between the agency and the requester, with due consideration given to

1 any limitations that may exist due to the process of conversion or due to the  
2 use of a third party to make the conversion.

3 (23) If the public agency or independent public body corporate and  
4 politic fails to respond, the request shall be deemed to be denied within ten  
5 (10) working days following the request.

6 (34) If the public agency or independent public body corporate and  
7 politic denies the person's request for examination or copying the public  
8 records or denies in part and grants in part the person's request for exam-  
9 ination and copying of the public records, the person legally responsible  
10 for administering the public agency or independent public body corporate and  
11 politic or that person's designee shall notify the person in writing of the  
12 denial or partial denial of the request for the public record.

13 (45) The notice of denial or partial denial shall state that the attor-  
14 ney for the public agency or independent public body corporate and politic  
15 has reviewed the request or shall state that the public agency or independent  
16 public body corporate and politic has had an opportunity to consult with an  
17 attorney regarding the request for examination or copying of a record and has  
18 chosen not to do so. The notice of denial or partial denial also shall in-  
19 dicate the statutory authority for the denial and indicate clearly the per-  
20 son's right to appeal the denial or partial denial and the time periods for  
21 doing so.

22 SECTION 2. That Section 74-114, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 74-114. ACCESS TO AIR QUALITY, WATER QUALITY AND HAZARDOUS WASTE  
25 RECORDS -- PROTECTION OF TRADE SECRETS. (1) To the extent required by the  
26 federal clean air act, the federal clean water act and the resource conser-  
27 vation and recovery act for state primacy over any delegated or authorized  
28 programs, even if the record is otherwise exempt from disclosure under this  
29 chapter, any person may inspect and copy:

- 30 (a) Air pollution emission data;
- 31 (b) The content of any title V operating permit;
- 32 (c) The name and address of any Idaho pollutant discharge elimination  
33 system (IPDES) applicant or permittee;
- 34 (d) The content of any IPDES permit;
- 35 (e) IPDES permit applications, and information required to be submit-  
36 ted by IPDES application forms, whether the information is submitted on  
37 the application forms themselves or in any attachments used to supply  
38 information required by the application forms;
- 39 (f) Effluent data or a standard or limitation, as defined in 40 CFR  
40 2.302;
- 41 (g) The name and address of any applicant or permittee for a hazardous  
42 waste treatment, storage, or disposal facility permit pursuant to chap-  
43 ter 44, title 39, Idaho Code; and
- 44 (h) Any other record required to be provided to or obtained by the de-  
45 partment of environmental quality pursuant to the federal clean air  
46 act, the federal clean water act and the resource conservation and re-  
47 covery act, and the implementing state statutes, federal regulations  
48 and state rules, unless the record is a trade secret.

1 (2) For purposes of this section, a record, or a portion of the record,  
2 is a "trade secret" if the information contained in the record is a trade se-  
3 cret within the meaning of the Idaho trade secrets act, sections 48-801, et  
4 seq., Idaho Code, including commercial or financial information which, if  
5 disclosed, could cause substantial competitive harm to the person from whom  
6 the record was obtained.

7 (3) Any record, or portion of a record, provided to or obtained by the  
8 department of environmental quality and identified by the person providing  
9 the record as a trade secret shall not be disclosed to the public and shall be  
10 kept confidential according to the procedures established in this section.

11 (4) Nothing in this section shall be construed as limiting the disclo-  
12 sure of a trade secret by the department of environmental quality:

13 (a) To any officer, employee, or authorized representative of the state  
14 or the United States, under a continuing claim of confidentiality, as  
15 necessary to carry out the provisions of state or federal law, or when  
16 relevant to any proceeding thereunder;

17 (b) As determined necessary by the director of the department of en-  
18 vironmental quality (under a continuing confidentiality claim) to pro-  
19 tect the public health and safety from imminent and substantial endan-  
20 germent;

21 (c) As required by state or federal law, including section 74-115(3),  
22 Idaho Code, under a continuing claim of confidentiality and subsection  
23 (1) of this section; or

24 (d) With the consent of the person from whom the record is obtained.

25 (5) It shall be the responsibility of any person providing a record to  
26 the department of environmental quality to give notice of the existence of a  
27 trade secret on each page or other portion of information at the time of sub-  
28 mittal, and such person shall have the burden of demonstrating that the in-  
29 formation is a trade secret.

30 (6) Notwithstanding the time frames set forth in section 74-103(4),  
31 Idaho Code, when a request is made to the department of environmental qual-  
32 ity pursuant to the provisions of this chapter for the disclosure of informa-  
33 tion for which a trade secret claim has been made, and the information has not  
34 been demonstrated to be a trade secret to the satisfaction of the director  
35 of the department of environmental quality, within three (3) working days  
36 of receipt of the request for the disclosure of the information, the depart-  
37 ment of environmental quality shall provide a written request for substan-  
38 tiation to the person making the confidentiality claim. A response shall be  
39 submitted to the department of environmental quality by the person claiming  
40 the trade secret protection within ten (10) working days after receipt of the  
41 request for substantiation, or the information subject to the claim shall be  
42 disclosed without further notice. Upon receipt of a timely response to the  
43 request for substantiation, the director of the department of environmental  
44 quality shall determine whether the information is a trade secret subject to  
45 protection.

46 (a) If it is determined that the information, or any portion of the in-  
47 formation, is a trade secret, within three (3) working days after re-  
48 ceipt of the response, the director of the department of environmental  
49 quality shall notify the person requesting the information that the re-

1 quest is denied pursuant to subsections (34) and (45) of section 74-103,  
2 Idaho Code.

3 (b) If it is determined that the information, or any portion of the  
4 information, is not a trade secret and is, therefore, subject to dis-  
5 closure, within three (3) working days after receipt of the response,  
6 the director of the department of environmental quality shall inform  
7 the person making the confidentiality claim of the determination. The  
8 decision shall be a final agency action directly appealable, de novo, to  
9 the district court of the county where the records or some part thereof  
10 are located. An appeal contesting the decision of the director of the  
11 department of environmental quality to release information claimed to  
12 be a trade secret shall be filed within ten (10) working days from the  
13 date of receipt of the written notice of decision. The information  
14 claimed to be a trade secret shall not be disclosed until the period  
15 for appeal has expired with no appeal being taken, or a court order has  
16 been issued finding that the information is not a trade secret and all  
17 appeals of that order have been exhausted.

18 (7) In any appeal taken pursuant to this section, the court may award  
19 reasonable costs and attorney's fees to the prevailing party if it finds the  
20 claim of confidentiality or the decision of the director of the department of  
21 environmental quality to provide records was frivolously pursued.

22 (8) The department of environmental quality shall adopt rules which in-  
23 clude:

24 (a) Appropriate measures to safeguard and protect against improper  
25 disclosure of trade secrets, including procedures to train all employ-  
26 ees on the proper handling of trade secrets; and

27 (b) Any other provisions necessary to carry out this section.

28 (9) As it relates to the department of environmental quality, or to  
29 agents, contractors, or other representatives of the department, the immu-  
30 nity created in section 74-118, Idaho Code, shall apply only when disclosure  
31 of a trade secret is made consistent with this section.

32 SECTION 3. That Chapter 1, Title 74, Idaho Code, be, and the same is  
33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
34 ignated as Section 74-126, Idaho Code, and to read as follows:

35 74-126. PUBLIC RECORDS REQUESTS -- LEGISLATURE -- LEGISLATIVE SER-  
36 VICES OFFICE AS CUSTODIAN. (1) The legislative services office is designated  
37 as custodian for legislative records.

38 (2) A public records request for the legislature, either house of the  
39 legislature, or an individual legislator shall be made to the legislative  
40 services office. The legislature, either house of the legislature, or an in-  
41 dividual legislator shall not be obligated to respond to a public records re-  
42 quest that is not made to the legislative services office.

43 SECTION 4. That Section 74-126, Idaho Code, be, and the same is hereby  
44 amended to read as follows:

45 74-1267. SEVERABILITY. The provisions of this act are hereby declared  
46 to be severable and if any provision of this act or the application of such  
47 provision to any person or circumstance is declared invalid for any reason,

1 such declaration shall not affect the validity of remaining portions of this  
2 act.

3 SECTION 5. An emergency existing therefor, which emergency is hereby  
4 declared to exist, this act shall be in full force and effect on and after its  
5 passage and approval.