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IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 206, As Amended in the Senate, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5201, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION 67-5206, IDAHO CODE, TO REMOVE PROVISIONS REGARDING PROMULGATION OF RULES IM-PLEMENTING THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5222, IDAHO CODE, TO PROVIDE REQUIREMENTS REGARDING PUBLIC PARTICIPATION IN AGENCY RULEMAKING AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5224, IDAHO CODE, TO REVISE PROVISIONS REGARDING ADMINISTRATIVE RULES AND TO REMOVE PROVISIONS REGARDING THE EFFECTIVE DATE OF AD-MINISTRATIVE RULES; AMENDING SECTION 67-5226, IDAHO CODE, TO REVISE PROVISIONS REGARDING TEMPORARY RULES AND TO REMOVE A PROVISION REGARD-ING TEMPORARY RULES; REPEALING SECTION 67-5291, IDAHO CODE, RELATING TO LEGISLATIVE REVIEW OF RULES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5291, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE REVIEW OF RULES; AMENDING SECTION 67-5292, IDAHO CODE, TO REMOVE PROVISIONS REGARDING THE EXPIRATION OF ADMINISTRATIVE RULES AND TO PROVIDE FOR THE PERIODIC REVIEW OF ADMINISTRATIVE RULES; AMEND-ING SECTION 20-212, IDAHO CODE, TO REMOVE A CODE REFERENCE AND TO MAKE

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

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

TECHNICAL CORRECTIONS; AMENDING SECTION 39-107, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMERGENCY AND PROVIDING AN

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

- (1) "Administrative code" means the Idaho administrative code established in this chapter.
- (2) "Adopt" means that an agency has, under the regular rulemaking process, promulgated a temporary rule, a new rule chapter, or an amendment or repeal of a final rule that will be submitted for review by the legislature as either a temporary rule or a pending rule.
- (2) (3) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.
 - (3) (4) "Agency action" means:
 - (a) The whole or part of a rule or order;
 - (b) The failure to issue a rule or order; or
- (c) An agency's performance of, or failure to perform, any duty placed on it by law.

 $\frac{(4)}{(5)}$ "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

- $\frac{\text{(5)}}{\text{(6)}}$ "Bulletin" means the Idaho administrative bulletin established in this chapter.
- $\frac{(6)}{(7)}$ "Chief administrative hearing officer" means the administrator of the office of administrative hearings created pursuant to section 67-5280, Idaho Code.
- (7) (8) "Contested case" means a proceeding that results in the issuance of an order.
- $\frac{(8)}{(9)}$ "Coordinator" means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.
- $\frac{(9)}{(10)}$ "Document" means any executive order, notice, rule or statement of policy of an agency.
- (10) [11] "Final rule" means a rule that has been adopted by an agency under the regular rulemaking process and is in effect rule that has been approved by the legislature and is in effect.
- $\frac{(11)}{(12)}$ "Hearing officer" means the chief administrative hearing officer and any hearing officers appointed by him pursuant to sections 67-5281 through 67-5283, Idaho Code, or a person appointed by an agency or board to hear a contested case.
- (12) <u>(13)</u> "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.
- (13) (14) "Official text" means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.
- (14) (15) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.
- (15) (16) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.
- (17) "Pending fee rule" means any pending rule all or a portion of which imposes or increases a fee or charge.
- (18) "Pending non-fee rule" means any pending rule that is not a pending fee rule.
- (16) (19) "Pending rule" means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review proposed rule that an agency has adopted under the regular rulemaking process but remains subject to legislative review, is not a final rule, and is not in effect.
- (17) (20) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.
- (18) (21) "Proposed rule" means a rule published in the bulletin as provided in section 67-5221, Idaho Code an agency proposal that has been adopted and remains subject to review by the legislature.

(19) (22) "Provision of law" means the whole all or a part of the state or federal constitution, or of any state or federal:

(a) Statute; or

- (b) Rule or decision of court.
- $\frac{(20)}{(23)}$ "Publish" means to bring before the public by publication in the bulletin or administrative code, by electronic means or as otherwise specifically provided by law.
- (21) <u>(24)</u> "Rule" means the whole <u>all</u> or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, <u>enforces</u>, or prescribes:
 - (a) Law or policy; or
 - (b) The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:
 - (i) Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or
 - (ii) Declaratory rulings issued pursuant to section 67-5232, Idaho Code; or
 - (iii) Intra-agency memoranda; or
 - (iv) Any written statements given by an agency that pertain to an interpretation of a rule or to the documentation of compliance with a rule.
- $\underline{\text{(25)}}$ "Rule chapter" means the numeric designation of a grouping of related agency rules by the coordinator.
- $\frac{(22)}{(26)}$ "Rulemaking" means the process for formulation, and adoption, amendment or repeal of a rule.
- (23) (27) "Standard" means a manual, guideline, criterion, specification, requirement, measurement or other authoritative principle providing a model or pattern in comparison with which the correctness or appropriateness of specified actions, practices or procedures may be determined.
- (24) (28) "Submitted for review" means that a rule has been provided to the legislature for review at a regular or special legislative session as provided in section 67-5291, Idaho Code.
- (25) (29) "Temporary rule" means a rule authorized by the governor to become effective before it has been submitted to the legislature for review and that expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in section 67-5226, Idaho Code.
- SECTION 2. That Section 67-5206, Idaho Code, be, and the same is hereby amended to read as follows:
- 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE ACT. (1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:
 - (a) Establish a uniform numbering system applicable to rules adopted by all agencies;

- (b) Establish a uniform style and format applicable to rules adopted by all agencies;
- (c) Establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;
- (d) Establish a uniform indexing system for agency orders; and

- (e) Include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.
- (2) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules of procedure appropriate for use by as many agencies as possible. The rules shall deal with all general functions and duties performed in common by several agencies.
- (3) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5220 through 67-5232, Idaho Code. The rules shall specify:
 - (a) The form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;
 - (b) Procedures for the creation of a record of comments received at any oral presentation;
 - (c) The standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;
 - (d) The form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;
 - (e) Procedures to facilitate negotiated rulemaking;
 - (f) The form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and
 - (g) Such other provisions as may be necessary or useful.
- $\frac{(4)}{(1)}$ In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5240 through 67-5255, Idaho Code. The rules shall specify:
 - (a) Form and content to be employed in giving notice of a contested case;
 - (b) Procedures and standards required for intervention in a contested case;
 - (c) Procedures for prehearing conferences;
 - (d) Format for pleadings, briefs, and motions;
 - (e) The method by which service shall be made;
 - (f) Procedures for the issuance of subpoenas, discovery orders, and protective orders if authorized by other provisions of law;
 - (g) Qualifications for persons seeking to act as a representative for parties to contested cases;
 - (h) Procedures to facilitate informal settlement of matters; and
 - (i) Procedures for placing ex parte contacts on the record.
 - $\frac{(5)}{(2)}$ (a) After July 1, 1993, the rules promulgated by the attorney general under this section shall apply to all agencies that do not affirmatively promulgate alternative procedures after the promulgation of the rules by the attorney general. The rules promulgated by the attorney general shall supersede the procedural rules of any agency in ef-

fect on June 30, 1993, unless that agency promulgates its own procedures as provided in paragraph (b) of this subsection.

- (b) After July 1, 1993, an agency that promulgates its own procedures shall include in the rule adopting its own procedures a finding that states the reasons why the relevant portion of the attorney general's rules were inapplicable to the agency under the circumstances.
- (6) (3) With respect to contested cases and other proceedings conducted by the office of administrative hearings as authorized by this chapter, rules promulgated by the attorney general or any agency pursuant to subsection (4) (1) of this section shall remain in full force and effect, except with respect to hearing officer qualifications, until such time as the office of administrative hearings promulgates replacement rules, and thereafter such rules of the office of administrative hearings shall govern unless otherwise required by governing federal law.
- SECTION 3. That Section 67-5222, Idaho Code, be, and the same is hereby amended to read as follows:
- 67-5222. PUBLIC PARTICIPATION. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall afford all interested persons reasonable opportunity to submit data, views and arguments, orally or in writing. The agency shall receive comments for not less than twenty-one (21) days after the date of publication of the notice of proposed rulemaking in the bulletin.
- (2) When promulgating substantive rules, the agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or an agency. The request must be made in writing and be within fourteen (14) days of the date of publication of the notice of proposed rulemaking in the bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later. An opportunity for oral presentation need not be provided when the agency has no discretion as to the substantive content of a proposed rule because the proposed rule is intended solely to comply:
 - (a) with With a controlling judicial decision or court order; or
 - (b) $\frac{\text{With }}{\text{With }}$ the provisions of a statute or federal rule that has been amended since the adoption of the agency rule.
- (3) Every agency must allow oral presentation through video conference or telephone. Beginning July 1, 2026, all agencies must post a video or audio recording of any oral presentation and public hearing on a rule within fifteen (15) days after the meeting and retain such recording and post the recording on the agency's website, if any, for not less than three (3) years.
- SECTION 4. That Section 67-5224, Idaho Code, be, and the same is hereby amended to read as follows:
- 67-5224. PENDING RULE —— FINAL RULE —— EFFECTIVE DATE. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall consider fully all written and oral submissions respecting the proposed rule.
- (2) Subject to the provisions of subsection (3) of this section, the agency shall publish the text of a pending rule and a notice of adoption of

the pending rule in the bulletin. The notice of adoption of the pending rule shall consist of a concise explanatory statement containing:

(a) Reasons for adopting the rule;

- (b) A statement of any change Any changes between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes;
- (c) The date on which the pending rule will become final and effective, as provided in subsection 67-5291 (5) of this section, Idaho Code, and a statement that the pending rule may be rejected must be approved by concurrent resolution of the legislature;
- (d) An identification of any portion of the pending <u>fee</u> rule <u>imposing</u> or increasing a fee or charge and a statement that this portion of the <u>pending fee</u> rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) The specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) Except as otherwise required in paragraph (g) of this subsection, a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule; or
- (g) If a notice of proposed rulemaking of the Idaho state tax commission, a specific description of any negative or positive fiscal impact greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule.
- (3) With the permission of the coordinator, the agency need not publish in full the text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and note all changes that have been made.
- (4) An agency shall not publish a pending rule until at least seven (7) days after the close of all public comment.
 - (5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.
 - (b) When the legislature approves a pending rule pursuant to section 67-5291, Idaho Code, the rule shall become final and effective upon

adoption of the concurrent resolution or such other date specified in the concurrent resolution.

- (c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved by concurrent resolution.
- (6) (5) Each agency shall provide the administrative rules coordinator with a description of any pending fee rule or portion thereof imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. The administrative rules coordinator shall provide the legislature with a compilation of the descriptions provided by the agencies.
- $\frac{(7)}{(6)}$ At the conclusion of the legislative session Upon adjournment sine die of the legislature or as soon thereafter as is practicable, the coordinator shall publish the date upon which the legislature adjourned sine die of adjournment and the date rules became effective and a list of final rules becoming effective on a different date, as provided in section $\frac{67-5224(5)}{67-5291}$, Idaho Code, and temporary rules remaining in effect as provided in section $\frac{67-5226(3)}{67-5291}$, Idaho Code.
- SECTION 5. That Section 67-5226, Idaho Code, be, and the same is hereby amended to read as follows:
 - 67-5226. TEMPORARY RULES. (1) If the governor finds that:
 - (a) Protection of the public health, safety, or welfare; or
 - (b) Compliance with deadlines in amendments to governing law or federal programs; or
 - (c) Conferring a benefit;

- requires a rule to become effective before it has been submitted to the legislature for review, the agency may proceed with such notice as is practicable and adopt a temporary rule, except as otherwise provided in section 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.
- (2) A <u>pending fee</u> rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.
- (3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective as provided in section 67-5224(5), Idaho Code.
- $\frac{(4)}{(3)}$ Temporary rules shall be published in the first available issue of the bulletin.
- $\frac{(5)}{(4)}$ Temporary rules are not subject to the requirements of section 67-5223, Idaho Code, provided that the administrative rules coordinator

sends a copy of the temporary rules to the director of the legislative services office.

 (6) (5) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

SECTION 6. That Section $\underline{67-5291}$, Idaho Code, be, and the same is hereby repealed.

SECTION 7. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a <u>NEW SECTION</u>, to be known and designated as Section 67-5291, Idaho Code, and to read as follows:

- 67-5291. LEGISLATIVE REVIEW OF RULES. (1) A standing committee of the legislature shall review any temporary, pending, or final rule that is germane to its committee and has been published in the bulletin or in the administrative code to determine if the rule is consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement, or enforce. If a reviewed rule is approved, the standing committee that approves the rule shall report its findings and recommendations to the body. If ordered by the presiding officer, the committee's report shall be printed in the journal.
 - (2) (a) All temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the legislature. The concurrent resolution shall state the effective date of the approval or rejection.
 - (b) The legislature may reject a rule, in whole or in part, where the legislature determines that the rule, or part of the rule, is not consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement, or enforce. When rejecting a rule, the legislature shall make a finding of facts as to why the rule does not meet the legislative intent of the enabling statute by identifying how the rule is inconsistent with the authority granted by or the requirements of the corresponding section of Idaho Code. For purposes of this section, "part of the rule" means a provision in a rule that is designated either numerically or alphabetically or the entirety of any new or amended language contained therein. The rejection of a rule in whole or in part shall terminate the rule, in whole or in part, as of the effective date of the rejection. An agency shall not, subsequent to the rejection, issue a proposed rule that is substantially similar to the rejected rule unless it is consistent with the legislative intent of the statute as expressed in the concurrent resolution.
 - (c) The secretary of state shall immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve or reject, in whole or in part, an agency rule. When an agency rule has been partially rejected, the secretary of state shall transmit a copy of the concurrent resolution to the director of the agency for promulgation of the rule as amended.

- (d) The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule in whole or in part, if any, in the case of a resolution rejecting a rule in whole or in part. The agency shall publish notice of rejection of a rule in whole or in part in the bulletin.
- (3) A temporary rule that is not approved by a concurrent resolution shall expire by its own terms or at adjournment sine die of the next succeeding regular session of the legislature, whichever date is earlier.
- (4) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending fee rule that is not approved by a concurrent resolution shall expire upon adjournment sine die of the legislative session during which the agency submits the pending fee rule to the legislature for review.
- (5) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending non-fee rule that is not approved by a concurrent resolution shall expire upon adjournment sine die of the legislative session during which the agency submits the pending rule to the legislature for review.
- SECTION 8. That Section 67-5292, Idaho Code, be, and the same is hereby amended to read as follows:
- 67-5292. EXPIRATION PERIODIC REVIEW OF ADMINISTRATIVE RULES. (1) Notwithstanding any other provision of this chapter to the contrary, every rule adopted and becoming effective after June 30, 1990, shall automatically expire on July 1 of the following year unless the rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.
- (2) All rules adopted prior to June 30, 1990, shall expire on July 1, 1991, unless extended by statute. Thereafter, any rules which are extended shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each succeeding year.
- (3) This section is a critical and integral part of this chapter. If any portion of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall be deemed to affect all rules adopted subsequent to the effective date of this act and such rules shall be deemed null, void and of no further force and effect.
- Each rule chapter that is in effect on July 1, 2026, shall be reviewed by the legislature on a staggered, periodic schedule between July 1, 2026, and June 30, 2034, and on a similar schedule each eight (8) years thereafter.
- SECTION 9. That Section 20-212, Idaho Code, be, and the same is hereby amended to read as follows:
- 20-212. RULES -- AUTHORITY OF BOARD. (1) The state board of correction shall make all necessary rules to carry out the provisions of this chapter not inconsistent with express statutes or the state constitution and to carry out those duties assigned to the department of correction pursuant to the provisions of chapter 8, title 20, Idaho Code. The board shall fix the time and place of meetings, the order of business, the form of records to be kept, the reports to be made, and all other rules necessary to the efficient management and control of the state penitentiary and all properties used in

connection therewith. All rules of the board shall be subject to review of the legislature pursuant to sections $67-454_{T}$ and 67-5291 and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the board, except as otherwise specifically provided by statute. When making rules required by this section, the board or the department shall submit the rules to the office of the state administrative rules coordinator, in a format suitable to the office of the state administrative rules coordinator as provided in section 67-5202, Idaho Code, and the board or department shall pay all the fees provided in section 67-5205, Idaho Code. The office of the state administrative rules coordinator is authorized and shall publish the board or department's rules in the administrative bulletin. Additionally, whenever the board or department desires to amend, modify or repeal any of its rules, it shall follow the procedure provided in this section. All rules_T or the amendment or repeal of rules shall be effective thirty (30) days after the date of publication by the office of the administrative rules coordinator. If the board determines that the rules need to be effective at a sooner date, they shall issue a proclamation indicating that the public health, safety and welfare is in jeopardy and, if the governor agrees, the rules shall be effective upon the governor signing the proclamation.

- (2) "Rule" as used in this section means the whole or a part of the board of correction or department of correction's statement of general applicability that has been promulgated in compliance with the provisions of this section and that implements, interprets or prescribes:
 - (a) Law or policy; or

- (b) The procedure or practice requirements of the board or department. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:
 - (i) Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or
 - (ii) Declaratory rulings issued pursuant to statute or the board's rules; or
 - (iii) Intra-department memoranda; or
 - (iv) Any written statements given by the department or board which that pertain to an interpretation of a rule or to the documentation of compliance with a rule.
- (3) At the same time that the proclamation of rulemaking is filed with the coordinator, the board or department shall provide the same notice, accompanied by the full text of the rule under consideration in legislative format, as well as and a statement of the substance of the intended action, to the director of legislative services. If the rulemaking is based upon on a requirement of federal law or regulation, a copy of that specific federal law or regulation shall accompany the submission to the director of legislative services. The director of legislative services shall analyze and refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code.
- (4) The board or department shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a rule if the germane joint subcommittee files a written request with the board or department for such a statement. The statement shall contain an evaluation of

the costs and benefits of the rule, including any health, safety, or welfare costs and benefits. The adequacy of the contents of the statement of economic impact is not subject to judicial review.

 SECTION 10. That Section 39-107, Idaho Code, be, and the same is hereby amended to read as follows:

- 39-107. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS -- SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES.
 - (1) (a) The board of environmental quality shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members shall serve at the pleasure of the governor. Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector and shall be appointed to assure appropriate geographic representation of the state of Idaho. Not more than four (4) members of the board shall be from any one (1) political party. Two (2) members of the board shall be chosen with due regard to their knowledge of and interest in solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues. At least four (4) of the board members shall represent the public's interest and not derive any significant portion of their income from persons subject to air quality permits or enforcement orders.
 - (b) The members of the board of environmental quality shall be appointed for a term of four (4) years. In appointing members whose terms begin in 2000, the governor shall designate three (3) members to be appointed for a term of three (3) years, two (2) members appointed for a term of four (4) years, and two (2) members appointed for a term of two (2) years. Successors to the members appointed for a term of less than four (4) years shall be appointed for a term of four (4) years thereafter.
- (2) The board annually shall elect a chairman, a vice chairman, and a secretary and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting, and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(h), Idaho Code.
- (3) The board, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required

by this subpoena before the board or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

- (4) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.
- (5) Any person aggrieved by an action or inaction of the department shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or a hearing officer designated by it shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.
- (6) Any person adversely affected by a final determination of the board may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.
- (7) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state. The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment of the state.
- (8) All rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(9) The board shall adopt contested case rules consistent with the rules adopted by the attorney general under section 67-5206 (4) (1), Idaho Code, the provisions of this act and other statutory authority of the department.

- (10) All rules, permits and other actions heretofore adopted, issued or taken by the board of health and welfare pertaining to the environmental protection functions administered by the division of environmental quality shall remain in full force and effect until superseded.
- (11) The board of environmental quality shall be the successor to all rights, powers and duties of the board of health and welfare regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authority and other matters pertaining to environmental protection functions administered by the division of environmental quality.
- (12) Upon creation of the board of environmental quality, all pending business before the board of health and welfare relating to environmental protection functions administered by the division of environmental quality shall be transferred to and determined by the board of environmental quality.

SECTION 11. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2023.