

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 563

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION
2 67-5226, IDAHO CODE, TO REVISE A PROVISION REGARDING ADOPTION OF A
3 TEMPORARY RULE; AMENDING SECTION 67-5229, IDAHO CODE, TO REVISE A PRO-
4 VISION REGARDING LEGISLATIVE REVIEW OF INCORPORATED MATERIAL AND TO
5 PROVIDE THAT AN AGENCY SHALL MAKE INCORPORATED MATERIAL AVAILABLE ON
6 ITS WEBSITE; AMENDING SECTION 67-5292, IDAHO CODE, TO PROVIDE FOR RE-
7 QUIREMENTS REGARDING THE PERIODIC REVIEW OF ADMINISTRATIVE RULES; AND
8 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
9

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

11 SECTION 1. That Section 67-5226, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 67-5226. TEMPORARY RULES. (1) If the governor finds that:

14 (a) Protection of the public health, safety, or welfare; or

15 (b) Compliance with deadlines in amendments to governing law or federal
16 programs; or

17 (c) ~~Conferring a benefit~~ Reducing a regulatory burden that would other-
18 wise impact individuals or businesses;

19 requires a rule to become effective before it has been submitted for review,
20 the agency may proceed with such notice as is practicable and adopt a tem-
21 porary rule, except as otherwise provided in section 67-5229(1)(d), Idaho
22 Code. The agency may make the temporary rule immediately effective. The
23 agency shall incorporate the required finding and a concise statement of its
24 supporting reasons in each rule adopted in reliance upon the provisions of
25 this subsection.

26 (2) A pending fee rule adopted pursuant to subsection (1) of this sec-
27 tion may become effective under this section before it has been approved by
28 concurrent resolution only if the governor finds that the fee or charge is
29 necessary to avoid immediate danger.

30 (3) Temporary rules shall be published in the first available issue of
31 the bulletin.

32 (4) Temporary rules are not subject to the requirements of section
33 67-5223, Idaho Code, provided that the coordinator sends a copy of the tempo-
34 rary rules to the director of the legislative services office.

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

1 SECTION 2. That Section 67-5229, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 67-5229. INCORPORATION BY REFERENCE. (1) If the incorporation of its
4 text in the agency rules would be unduly cumbersome, expensive, or otherwise
5 inexpedient, an agency may incorporate by reference in its rules and without
6 republication of the incorporated material in full, all or any part of:

7 (a) A code, standard or rule adopted by an agency of the United States;

8 (b) A code, standard or rule adopted by any nationally recognized or-
9 ganization or association;

10 (c) A code or standard adopted by Idaho statute or authorized by Idaho
11 statute for adoption by rule; or

12 (d) A final rule of a state agency; provided however, that a state
13 agency shall not adopt a temporary rule incorporating by reference a
14 rule of that agency that is being or has been repealed unless the rule
15 providing for the incorporation has been reviewed and approved by the
16 legislature.

17 (2) The agency shall, as part of the rulemaking:

18 (a) Include in the notice of proposed rulemaking a brief written synop-
19 sis of why the incorporation is needed; and

20 (b) Note where an electronic copy can be obtained or provide an elec-
21 tronic link to the incorporated materials that at a minimum will be
22 posted on the agency's website or included in the rule that is published
23 in the administrative code on the website of the office of the adminis-
24 trative rules coordinator; and

25 (c) If otherwise unavailable, note where copyrighted or other propri-
26 etary materials can be viewed or purchased.

27 (3) The incorporated material shall be identified with specificity
28 and shall include the date when the code, standard or rule was published,
29 approved or became effective. If the agency subsequently wishes to adopt
30 amendments to previously incorporated material, it shall comply with the
31 rulemaking procedures of this chapter.

32 (4) Unless prohibited by other provisions of law, the incorporated ma-
33 terial is subject to legislative review in accordance with the provisions of
34 section 67-5291, Idaho Code, and shall have the same force and effect as a
35 rule. The legislature may reject the incorporated material in whole or in
36 part in accordance with the provisions of section 67-5291, Idaho Code.

37 (5) The legislature finds that the public has the right to know about
38 and easily access all incorporated material that holds the force and effect
39 of law. Accordingly, an agency shall purchase or obtain at least one (1) dig-
40 ital copy of any incorporated material and shall, without charging a fee,
41 make only the incorporated material conspicuously available and easily ac-
42 cessible on its website unless otherwise prohibited by federal law or the
43 purchase agreement.

44 SECTION 3. That Section 67-5292, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 67-5292. PERIODIC REVIEW OF ADMINISTRATIVE RULES. (1) Each rule chap-
47 ter that is in effect on July 1, 2026, shall be reviewed by the legislature on
48 a staggered, periodic schedule between July 1, 2026, and June 30, 2034, and

1 on a similar schedule each eight (8) years thereafter. The review schedule
2 shall be established by the office of the administrative rules coordinator,
3 and the schedule shall be posted on its website no later than January 1, 2026.

4 (2) Prior to the review date for each rule chapter, as established in
5 the review schedule pursuant to subsection (1) of this section, the promul-
6 gating agency shall prepare a report for the legislature that states whether
7 the substantive content in the rule chapter is still necessary, and if it is
8 determined to be necessary, the rationale for such determination. In ad-
9 dition, the agency shall report whether the necessary substantive content
10 would be more appropriately integrated into Idaho Code as opposed to remain-
11 ing as a separate administrative rule. In consideration of such report, the
12 promulgating agency shall consider:

13 (a) The benefit of having all related requirements in a single location
14 in Idaho Code;

15 (b) The frequency with which the substantive content of the administra-
16 tive rule has been updated in the prior five (5) years and the antici-
17 ipated frequency of updates in the near future; and

18 (c) The cost of publishing and maintaining the administrative rule in
19 the Idaho administrative code and bulletin.

20 SECTION 4. An emergency existing therefor, which emergency is hereby
21 declared to exist, this act shall be in full force and effect on and after
22 July 1, 2024.