

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 175

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5201, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS; REPEALING SECTION 67-5240, IDAHO CODE, RELATING TO CONTESTED CASES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5240, IDAHO CODE, TO PROVIDE FOR CONTESTED CASE EXEMPTIONS; AMENDING SECTION 67-5241, IDAHO CODE, TO REVISE PROVISIONS REGARDING DISPOSITION, TO PROVIDE FOR INCORPORATION OF AN AGREEMENT OR CONSENT ORDER INTO A FINAL CONTESTED CASE ORDER, TO PROVIDE FOR JUDICIAL REVIEW, TO PROVIDE THAT DISPOSITIONS BY AGREEMENT ARE PUBLIC RECORDS UNLESS EXEMPT UNDER SPECIFIED LAW, AND TO PROVIDE THAT CERTAIN NONDISCLOSURE PROVISIONS ARE VOID; REPEALING SECTIONS 67-5242 THROUGH 67-5254, IDAHO CODE, RELATING TO PROCEDURE AT HEARING, ORDERS NOT ISSUED BY AN AGENCY HEAD, REVIEW OF RECOMMENDED ORDERS, REVIEW OF PRELIMINARY ORDERS, FINAL ORDERS AND EFFECTIVENESS OF FINAL ORDERS, EMERGENCY PROCEEDINGS, CONTENTS OF ORDERS, AGENCY RECORDS, INDEXING OF PRECEDENTIAL AGENCY ORDERS AND INDEXING OF AGENCY GUIDANCE DOCUMENTS, EVIDENCE AND OFFICIAL NOTICE, PRESIDING OFFICERS AND DISQUALIFICATION, EX PARTE COMMUNICATIONS, AND AGENCY ACTION AGAINST LICENSEES; REPEALING SECTIONS 67-5270 AND 67-5271, IDAHO CODE, RELATING TO RIGHT OF REVIEW AND EXHAUSTION OF ADMINISTRATIVE REMEDIES; REPEALING SECTIONS 67-5273 THROUGH 67-5278, IDAHO CODE, RELATING TO TIME FOR FILING PETITION FOR REVIEW, STAY, AGENCY RECORDS FOR JUDICIAL REVIEW, ADDITIONAL EVIDENCE, JUDICIAL REVIEW OF ISSUES OF FACT, DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES, AND SCOPE OF REVIEW AND TYPE OF RELIEF; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5242, IDAHO CODE, TO PROVIDE FOR PRELIMINARY REVIEW AND TO PROVIDE FOR FACT-FINDING; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5243, IDAHO CODE, TO PROVIDE FOR THE COMMENCEMENT OF CONTESTED CASES AND TO PROVIDE A PROCEDURE FOR COMMENCEMENT; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5244, IDAHO CODE, TO PROVIDE A CONTESTED CASE PROCEDURE; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5245, IDAHO CODE, TO PROVIDE FOR EVIDENCE IN CONTESTED CASES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5246, IDAHO CODE, TO PROVIDE FOR A HEARING RECORD IN CONTESTED CASES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5247, IDAHO CODE, TO PROVIDE AN EMERGENCY ADJUDICATION PROCEDURE; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5248, IDAHO CODE, TO PROHIBIT EX PARTE COMMUNICATIONS, TO PROVIDE EXCEPTIONS FOR EX PARTE COMMUNICATIONS, TO PROVIDE PROCEDURES IF PROHIBITED EX PARTE COMMUNICATIONS OCCUR, AND TO PROVIDE FOR DISQUALIFICATION; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5250, IDAHO CODE, TO PROVIDE FOR SUBPOENAS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5251, IDAHO CODE, TO

1 PROVIDE FOR DISCOVERY; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY  
2 THE ADDITION OF A NEW SECTION 67-5252, IDAHO CODE, TO PROVIDE FOR DE-  
3 FAULT; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A  
4 NEW SECTION 67-5253, IDAHO CODE, TO PROVIDE FOR CONTESTED CASE ORDERS;  
5 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
6 TION 67-5254, IDAHO CODE, TO PROVIDE FOR AGENCY REVIEW OF CONTESTED CASE  
7 ORDERS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A  
8 NEW SECTION 67-5256, IDAHO CODE, TO PROVIDE FOR RECONSIDERATION; AMEND-  
9 ING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
10 67-5257, IDAHO CODE, TO PROVIDE FOR STAYS; AMENDING CHAPTER 52, TITLE  
11 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5258, IDAHO CODE, TO  
12 PROVIDE FOR THE AVAILABILITY AND INDEXING OF FINAL ORDERS, TO PROVIDE AN  
13 EXEMPTION FROM INDEXING CERTAIN FINAL ORDERS, TO PROVIDE FOR THE DESIG-  
14 NATION OF ORDERS AS PRECEDENT, AND TO PROVIDE FOR THE INDEXING OF GUID-  
15 ANCE DOCUMENTS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDI-  
16 TION OF A NEW SECTION 67-5259, IDAHO CODE, TO PROVIDE PROCEDURES FOR AC-  
17 TIONS AGAINST LICENSEES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY  
18 THE ADDITION OF A NEW SECTION 67-5260, IDAHO CODE, TO PROVIDE FOR JUDI-  
19 CIAL REVIEW; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION  
20 OF A NEW SECTION 67-5262, IDAHO CODE, TO PROVIDE FOR THE TIME TO SEEK  
21 JUDICIAL REVIEW AND TO PROVIDE LIMITATIONS; AMENDING CHAPTER 52, TITLE  
22 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5263, IDAHO CODE, TO  
23 PROVIDE FOR STAYS PENDING APPEAL; AMENDING CHAPTER 52, TITLE 67, IDAHO  
24 CODE, BY THE ADDITION OF A NEW SECTION 67-5264, IDAHO CODE, TO PROVIDE  
25 FOR STANDING; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION  
26 OF A NEW SECTION 67-5265, IDAHO CODE, TO PROVIDE FOR THE EXHAUSTION OF  
27 ADMINISTRATIVE REMEDIES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY  
28 THE ADDITION OF A NEW SECTION 67-5266, IDAHO CODE, TO PROVIDE FOR THE  
29 RECORD ON JUDICIAL REVIEW AND TO PROVIDE EXCEPTIONS; AMENDING CHAPTER  
30 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5267, IDAHO  
31 CODE, TO PROVIDE A STANDARD OF REVIEW; AMENDING SECTION 67-5255, IDAHO  
32 CODE, TO REDESIGNATE THE SECTION AND TO REVISE PROVISIONS RELATING TO  
33 DECLARATORY RULINGS BY AGENCIES; AMENDING SECTION 67-5272, IDAHO CODE,  
34 TO REDESIGNATE THE SECTION AND TO REVISE PROVISIONS REGARDING VENUES;  
35 AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
36 TION 67-5270, IDAHO CODE, TO PROVIDE FOR THE CREATION OF THE OFFICE OF  
37 ADMINISTRATIVE HEARINGS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY  
38 THE ADDITION OF A NEW SECTION 67-5271, IDAHO CODE, TO PROVIDE FOR THE  
39 CHIEF ADMINISTRATIVE HEARING OFFICER; AMENDING CHAPTER 52, TITLE 67,  
40 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5272, IDAHO CODE, TO PRO-  
41 VIDE FOR HEARING OFFICERS; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE,  
42 BY THE ADDITION OF A NEW SECTION 67-5273, IDAHO CODE, TO PROVIDE FOR  
43 COMPENSATION AND CLASSIFICATION; AMENDING CHAPTER 52, TITLE 67, IDAHO  
44 CODE, BY THE ADDITION OF A NEW SECTION 67-5274, IDAHO CODE, TO PROVIDE  
45 FOR DISQUALIFICATION; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE  
46 ADDITION OF A NEW SECTION 67-5275, IDAHO CODE, TO PROVIDE FOR AN ADVI-  
47 SORY COUNCIL; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION  
48 OF A NEW SECTION 67-5276, IDAHO CODE, TO PROVIDE FOR THE COOPERATION OF  
49 AGENCIES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION  
50 OF A NEW SECTION 67-5277, IDAHO CODE, TO PROVIDE FOR COST ESTIMATES

1 AND ASSESSMENT OF RECIPIENT AGENCIES; AMENDING SECTION 67-5279, IDAHO  
 2 CODE, TO REVISE PROVISIONS REGARDING SCOPE OF REVIEW; AMENDING SECTION  
 3 67-2601, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF SELF-GOVERNING  
 4 AGENCIES SHALL INCLUDE THE OFFICE OF ADMINISTRATIVE HEARINGS; AMENDING  
 5 SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT THE CHIEF ADMINISTRATIVE  
 6 HEARING OFFICER AND HEARING OFFICERS IN THE OFFICE OF ADMINISTRATIVE  
 7 HEARINGS SHALL BE NONCLASSIFIED EMPLOYEES AND TO MAKE TECHNICAL COR-  
 8 RECTIONS; AMENDING CHAPTER 9, TITLE 6, IDAHO CODE, BY THE ADDITION OF A  
 9 NEW SECTION 6-930, IDAHO CODE, TO PROVIDE FOR DETERMINATIONS OF RETAL-  
 10 IATION AGAINST ONE SEEKING APPEAL OR ADMINISTRATIVE REVIEW; AMENDING  
 11 SECTION 16-107, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF HEALTH  
 12 AND WELFARE IS NOT EXEMPT FROM COMPLYING WITH SPECIFIED LAW IN EXER-  
 13 CISING RESPONSIBILITIES REGARDING EARLY INTERVENTION SERVICES AND TO  
 14 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-31-208, IDAHO CODE,  
 15 TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 26-31-309, IDAHO  
 16 CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-46-302,  
 17 IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION  
 18 28-46-404, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING  
 19 SECTION 33-5209C, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND  
 20 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 40-709A, IDAHO CODE,  
 21 TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS;  
 22 AMENDING SECTION 41-227, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES  
 23 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-328, IDAHO CODE,  
 24 TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 50-222, IDAHO  
 25 CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-2509,  
 26 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL  
 27 CORRECTION; REPEALING SECTION 56-133, IDAHO CODE, RELATING TO THE AD-  
 28 MINISTRATIVE REVIEW PROCESS; AMENDING CHAPTER 1, TITLE 56, IDAHO CODE,  
 29 BY THE ADDITION OF A NEW SECTION 56-133, IDAHO CODE, TO PROVIDE FOR AD-  
 30 MINISTRATIVE APPEALS; AMENDING SECTION 56-202, IDAHO CODE, TO PROVIDE  
 31 THAT THE DEPARTMENT OF HEALTH AND WELFARE IS NOT EXEMPT FROM COMPLYING  
 32 WITH SPECIFIED LAW IN EXERCISING CERTAIN DUTIES AND TO MAKE TECHNICAL  
 33 CORRECTIONS; REPEALING SECTION 56-216, IDAHO CODE, RELATING TO AP-  
 34 PEALS; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A  
 35 NEW SECTION 56-216, IDAHO CODE, TO PROVIDE FOR ADMINISTRATIVE APPEALS;  
 36 AMENDING SECTION 56-1003, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF  
 37 HEALTH AND WELFARE IS NOT EXEMPT FROM COMPLYING WITH SPECIFIED LAW IN  
 38 EXERCISING CERTAIN POWERS AND DUTIES; AMENDING SECTION 56-1005, IDAHO  
 39 CODE, TO PROVIDE FOR APPEALS, TO PROVIDE THAT THE DEPARTMENT OF HEALTH  
 40 AND WELFARE IS NOT EXEMPT FROM COMPLYING WITH SPECIFIED LAW, AND TO MAKE  
 41 TECHNICAL CORRECTIONS; AMENDING SECTION 58-122, IDAHO CODE, TO PROVIDE  
 42 CORRECT CODE REFERENCES; AMENDING SECTION 67-2317, IDAHO CODE, TO PRO-  
 43 VIDE A CORRECT CODE REFERENCE; AMENDING SECTION 67-5206, IDAHO CODE, TO  
 44 PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AND  
 45 PROVIDING EFFECTIVE DATES AND PROVIDING A SUNSET DATE.

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

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

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

(1) "Administrative code" means the Idaho administrative code established in this chapter.

(2) "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) "Agency action" means:

(a) ~~The whole or part~~ Issuance 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.

(4) "Agency decision" means an agency action in a proceeding other than rulemaking.

(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.

(56) "Bulletin" means the Idaho administrative bulletin established in this chapter.

(67) "Contested case" means a proceeding an adjudication proceeding arising out of an agency decision or failure to issue an agency decision, from which results in the issuance of an order an opportunity for an evidentiary hearing is required by the federal constitution, a federal statute or the constitution or a statute of this state. A contested case commences when a request for a contested case proceeding is filed with the office of administrative hearings under section 67-5243, Idaho Code.

(78) "Contested case order" means an order issued by a hearing officer resolving issues in a contested case and includes all findings of fact and conclusions of law upon which the order is based, which is intended to be the final order submitted to the agency head.

(9) "Coordinator" means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.

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

(11) "Final order" means:

(a) A contested case order that is final as provided in sections 67-5253 and 67-5254, Idaho Code; or

(b) A declaratory ruling order that is a final agency action subject to judicial review.

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

(13) "Hearing officer" means an individual, appointed by the chief administrative hearing officer of the office of administrative hearings pursuant to section 67-5271, Idaho Code.

(104) "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.

(115) "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.

(126) "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. The granting of an application for a license that is unconditional in respect to the license requested, and that does not affect the rights of a third party who may have a right to commence a contested case, is not an order.

(137) "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.

(148) "Pending rule" means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review.

(159) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(20) "Preliminary review" means the receipt, collection, processing, and analyzing of information, or other activity of an agency preparatory to and including the making of an agency decision.

(1621) "Proposed rule" means a rule published in the bulletin as provided in section 67-5221, Idaho Code.

(1722) "Provision of law" means the whole or a part of the state or federal constitution, or of any state or federal:

(a) Statute; or

(b) Rule or decision of court.

(1823) "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.

(24) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(1925) "Rule" means the whole 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, 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~~ 67-5268, Idaho Code; or

(iii) Intra-agency memoranda; or

(iv) Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(206) "Rulemaking" means the process for formulation, adoption, amendment or repeal of a rule.

(217) "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.

(228) "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.

(239) "Temporary rule" means a rule authorized by the governor to become effective before it has been submitted to the legislature for review and which 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 67-5240, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5240, Idaho Code, and to read as follows:

67-5240. CONTESTED CASE EXEMPTIONS. A proceeding by an agency, other than the public utilities commission, the industrial commission, the department of water resources or the water resources board that may result in a contested case order is governed by the provisions of this chapter, except as provided by other provisions of law.

SECTION 4. That Section 67-5241, Idaho Code, be, and the same is hereby amended to read as follows:

67-5241. INFORMAL DISPOSITION BY AGREEMENT. (1) Unless prohibited by other provisions of law, informal disposition by written agreement prior to filing a request for a contested case proceeding by a party is not a contested case. Informal settlement of matters is to be encouraged.

~~(a) an agency or a presiding officer may decline to initiate a contested case;~~

~~(b) any part of the evidence in a contested case may be received in written form if doing so will expedite the case without substantially prejudicing the interests of any party;~~

~~(c) informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement, or consent order. Informal settlement of matters is to be encouraged;~~

~~(d) the parties may stipulate as to the facts, reserving the right to appeal to a court of competent jurisdiction on issues of law.~~

(2) An agency or a presiding officer may request such additional information as required to decide whether to initiate or to decide a contested case as provided in subsection (1) of this section. After filing of a request for a contested case, disposition of all or part of the issues in a case may be made between the parties in a written agreement or a consent order. The agreement or consent order must be filed with the office of administrative

1 hearings. If the agreement or consent order is a full disposition of all is-  
 2 sues, a contested case order adopting the agreement or consent order shall be  
 3 signed by the hearing officer and shall be served upon the parties pursuant  
 4 to section 67-5253, Idaho Code.

5 ~~(3) If an agency or a presiding officer declines to initiate or decide~~  
 6 ~~a contested case under the provisions of this section, the agency or the of-~~  
 7 ~~ficer shall furnish a brief statement of the reasons for the decision to all~~  
 8 ~~persons involved. This subsection does not apply to investigations or in-~~  
 9 ~~quiries directed to or performed by law enforcement agencies defined in sec-~~  
 10 ~~tion 74-101(7), Idaho Code. If the agreement or consent order does not resolve~~  
 11 ~~all of the issues, it shall not be final, but shall be incorporated into the~~  
 12 ~~final contested case order resolving all of the issues.~~

13 (4) The agency may not abdicate its responsibility for any informal  
 14 disposition of a contested case. Disposition of a contested case as provided  
 15 in this section is a final agency action. A contested case order based upon  
 16 agreement or consent order disposing of all the issues is subject to judicial  
 17 review when final, as any other final order, unless as part of the agreement  
 18 or consent order the right to judicial review has been expressly waived.

19 (5) Any disposition by agreement is a public record except as otherwise  
 20 exempt under chapter 1, title 74, Idaho Code, and any nondisclosure provi-  
 21 sion protecting nonexempt information is void as against public policy.

22 SECTION 5. That Sections [67-5242](#) through [67-5254](#), Idaho Code, be, and  
 23 the same are hereby repealed.

24 SECTION 6. That Sections [67-5270](#) and [67-5271](#), Idaho Code, be, and the  
 25 same are hereby repealed.

26 SECTION 7. That Sections [67-5273](#) through [67-5278](#), Idaho Code, be, and  
 27 the same are hereby repealed.

28 SECTION 8. 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 67-5242, Idaho Code, and to read as follows:

31 67-5242. PRELIMINARY REVIEW -- EXCLUSION. (1) Except as otherwise  
 32 provided by law, the provisions of this act do not apply to an agency prelimi-  
 33 nary review until an order is issued, not issued within the time required by  
 34 law, or the agency fails to perform a duty required by law.

35 (2) Notwithstanding subsection (1) of this section, an agency may use,  
 36 and adopt by rule, provisions of this act for preliminary reviews consistent  
 37 with requirements of due process.

38 (3) If an agency determines that as part of a preliminary review the use  
 39 of a fact finder is beneficial or legally required, it has authority to as-  
 40 sign an employee or contract with a private individual or entity to perform  
 41 such fact-finding. Such fact finder shall not be from the office of adminis-  
 42 trative hearings, and any fact-finding shall be for the use of the agency in  
 43 making an agency decision, and is not binding in any way as findings of fact  
 44 in a contested case proceeding.

1       SECTION 9. 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 67-5243, Idaho Code, and to read as follows:

4       67-5243. COMMENCEMENT OF CONTESTED CASES. (1) This section applies to  
 5 an emergency adjudication under section 67-5247, Idaho Code, except as oth-  
 6 erwise provided in that section.

7       (2) A contested case commences when a request for a contested proceed-  
 8 ing is filed as provided in this section by:

9       (a) A person who has received notice of an agency decision;

10       (b) A person challenging the failure of an agency to timely issue an  
 11 agency decision;

12       (c) A person challenging an emergency order issued pursuant to section  
 13 67-5247, Idaho Code, when the order is not included within the subject  
 14 matter of an existing contested case proceeding;

15       (d) An agency seeking to revoke, suspend, annul or withdraw an existing  
 16 license as provided in section 67-5259, Idaho Code; or

17       (e) An agency decision to take other adverse action against a person in  
 18 connection with which the person or the agency is entitled by law to an  
 19 opportunity for an evidentiary hearing.

20       (3) An agency shall give notice to a person of an agency decision that  
 21 would entitle the person to initiate a contested case proceeding. The no-  
 22 tice must be in writing, set forth the agency decision, inform the person  
 23 of the right, procedure and time limit to file a contested case request, and  
 24 provide a copy of the procedures governing contested cases. Within twenty-  
 25 eight (28) days of receipt of the notice provided for in this subsection, the  
 26 affected person may file a request for a contested case proceeding that sets  
 27 forth the grounds for the request for a contested case proceeding.

28       (4) A person or agency filing a request for a contested case proceeding  
 29 as provided in subsection (2) of this section shall file the request with the  
 30 office of administrative hearings. The request shall identify the matter  
 31 that is the subject of the request, including the agency and person or per-  
 32 sons that are parties, the nature of the contested case, and the grounds upon  
 33 which the matter is contested.

34       (5) A person may also file a request for a contested case proceeding  
 35 with the agency. The agency shall then, within seven (7) days of receipt of  
 36 the request for a contested case proceeding, file the request with the office  
 37 of administrative hearings.

38       (6) When a request for a contested case proceeding is filed with the of-  
 39 fice of administrative hearings by a person, the office shall, within seven  
 40 (7) days of receipt of the request for a contested case proceeding, forward a  
 41 copy of the same to the agency.

42       (7) When an agency files a request for a contested case proceeding, it  
 43 shall simultaneously serve a copy of the request upon the other parties.  
 44 When a request for a contested case proceeding is filed by an agency with  
 45 the office of administrative hearings, the office shall, within seven (7)  
 46 days of receipt, forward a copy of the same to the other named parties giving  
 47 notice of filing of the request with the office.

48       (8) In a contested case proceeding initiated by a person, not later than  
 49 seven (7) days after the filing of the contested case proceeding request with



1 the office of administrative hearings, the office of administrative hear-  
 2 ings shall give notice to all parties that the case has been commenced. The  
 3 notice must contain:

- 4 (a) A statement that a case has been commenced that may result in an or-  
 5 der affecting the rights of the parties;
- 6 (b) A short and plain statement of the matters asserted in the request  
 7 for a contested case proceeding;
- 8 (c) A statement of the legal authority under which the hearing will be  
 9 held citing the statutes and any rules involved;
- 10 (d) The official file or other reference number and the name of the pro-  
 11 ceeding;
- 12 (e) The name, official title and mailing address of the hearing officer  
 13 and the name, official title, mailing address and telephone number of  
 14 the agency's representative;
- 15 (f) A statement that a party who fails to attend or participate in any  
 16 subsequent proceeding in the case may be held in default;
- 17 (g) A statement of the date, time, place and nature of the prehearing  
 18 conference or hearing, if any;
- 19 (h) The names and last known addresses of all parties and other persons  
 20 to which notice is being given; and
- 21 (i) Any other information that the hearing officer considers desirable  
 22 to expedite the proceedings.

23 SECTION 10. That Chapter 52, Title 67, Idaho Code, be, and the same is  
 24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 25 ignated as Section 67-5244, Idaho Code, and to read as follows:

26 67-5244. CONTESTED CASE PROCEDURE. (1) In a contested case, the hear-  
 27 ing officer shall give all parties a timely opportunity to file pleadings,  
 28 motions and objections. The hearing officer may give all parties the oppor-  
 29 tunity to file briefs, proposed findings of fact and conclusions of law, and  
 30 proposed contested case orders. The hearing officer, with the consent of all  
 31 parties, may refer the parties in a contested case to mediation or other dis-  
 32 pute resolution procedure.

33 (2) In a contested case, to the extent necessary for full disclosure of  
 34 all relevant facts and issues, the hearing officer shall give all parties the  
 35 opportunity to respond, present evidence and argument, conduct cross-exami-  
 36 nation and submit rebuttal evidence.

37 (3) Except as otherwise provided by law other than this act, the hear-  
 38 ing officer may conduct all or part of an evidentiary hearing or a prehearing  
 39 conference by telephone, television, video conference or other electronic  
 40 means. The hearing may be conducted by telephone or other method by which the  
 41 witnesses may not be seen only if all parties consent or the hearing officer  
 42 finds that this method will not impair reliable determination of the credi-  
 43 bility of testimony. Each party must be given an opportunity to attend, hear  
 44 and be heard at the proceeding as it occurs.

45 (4) Any part of the evidence in a contested case may be received in writ-  
 46 ten form if doing so will expedite the case without substantially prejudic-  
 47 ing the interests of any party.

48 (5) Except as otherwise provided by law or in subsection (6) of this  
 49 section, a hearing in a contested case must be open to the public. A hearing

1 conducted by telephone, television, video conference or other electronic  
2 means is open to the public if members of the public have an opportunity to  
3 attend the hearing at the place where the hearing officer is located or to  
4 hear or see the proceeding as it occurs.

5 (6) A hearing officer may close a hearing to the public on a ground on  
6 which a court of this state may close a judicial proceeding to the public or  
7 pursuant to law of this state other than this act.

8 (7) Unless prohibited by law of this state other than this act, a party,  
9 at the party's expense, may be advised or represented by counsel. If allowed  
10 by administrative rule or statute, a party may be advised or represented by  
11 another individual. A corporate or other business entity may be represented  
12 by an officer, general partner or manager of the corporation or business en-  
13 tity.

14 (8) A hearing officer shall ensure that a hearing record is created that  
15 complies with section 67-5246, Idaho Code.

16 (9) The order in a contested case must be based on the hearing record  
17 and contain a statement of the findings of fact and conclusions of law upon  
18 which the order is based. The order must be prepared electronically and, on  
19 request, made available in writing.

20 (10) The parties may stipulate as to the facts, reserving the right to  
21 appeal to a court of competent jurisdiction on issues of law.

22 (11) Unless prohibited by law of this state other than this act, a hear-  
23 ing officer may dispose of a contested case without a hearing by stipulation.

24 SECTION 11. That Chapter 52, Title 67, Idaho Code, be, and the same is  
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
26 ignated as Section 67-5245, Idaho Code, and to read as follows:

27 67-5245. EVIDENCE IN CONTESTED CASES. The following rules apply in a  
28 contested case:

29 (1) Except as otherwise provided in subsection (2) of this section, all  
30 relevant evidence is admissible, including hearsay evidence, if it is of a  
31 type commonly relied on by a reasonably prudent individual in the conduct of  
32 the affairs of the individual.

33 (2) The hearing officer may exclude evidence with or without objection  
34 if the evidence is irrelevant, immaterial, unduly repetitious, or exclud-  
35 able on constitutional or statutory grounds or on the basis of an evidentiary  
36 privilege recognized in the courts of this state.

37 (3) If the hearing officer excludes evidence with or without objection,  
38 the offering party may make an offer of proof before further evidence is pre-  
39 sented or at a later time determined by the hearing officer.

40 (4) Documentary evidence may be received in the form of a copy if the  
41 original is not readily available. On request, parties must be given an op-  
42 portunity to compare the copy with the original.

43 (5) Testimony must be made under oath or affirmation.

44 (6) Evidence must be made part of the hearing record of the case. Infor-  
45 mation or evidence may not be considered in determining the case unless it is  
46 part of the hearing record. If the hearing record contains information that  
47 is confidential, the hearing officer may conduct a closed hearing to discuss  
48 the information, issue necessary protective orders, and seal all or part of  
49 the hearing record.

1 (7) The hearing officer may take official notice of all facts of which  
2 judicial notice may be taken and of scientific, technical or other facts  
3 within the specialized knowledge of the agency. A party must be notified at  
4 the earliest practicable time of the facts proposed to be noticed and their  
5 source, including any staff memoranda or data. The party must be afforded  
6 an opportunity to contest any officially noticed fact before the decision  
7 becomes final.

8 SECTION 12. That Chapter 52, Title 67, Idaho Code, be, and the same is  
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10 ignated as Section 67-5246, Idaho Code, and to read as follows:

11 67-5246. HEARING RECORD IN CONTESTED CASES. (1) The hearing officer  
12 and office of administrative hearings shall cause the hearing to be recorded  
13 at the agency's expense. Any party, at that party's expense, may have a  
14 transcript prepared or may cause additional recordings to be made during the  
15 hearing if the making of the additional recording does not cause distraction  
16 or disruption.

17 (2) The office of administrative hearings shall maintain the hearing  
18 record in each contested case for a period of not less than six (6) months  
19 after the expiration of the last date for judicial review, unless otherwise  
20 provided by law.

21 (3) The hearing record must contain:

22 (a) A recording of each hearing;

23 (b) Notice of each hearing;

24 (c) Any prehearing order;

25 (d) Any motion, pleading, brief, request and intermediate ruling;

26 (e) Evidence admitted;

27 (f) A statement of any matter officially noticed;

28 (g) Any proffer of proof and objection and ruling thereon;

29 (h) Any proposed finding, requested order, and exception;

30 (i) Any transcript of the proceeding;

31 (j) Any contested case order and any orders preliminary thereto, or any  
32 order on reconsideration; and

33 (k) Any matter placed on the record after an ex parte communication un-  
34 der section 67-5248, Idaho Code.

35 (4) The hearing record constitutes the exclusive basis for hearing of-  
36 ficer action in a contested case.

37 SECTION 13. That Chapter 52, Title 67, Idaho Code, be, and the same is  
38 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
39 ignated as Section 67-5247, Idaho Code, and to read as follows:

40 67-5247. EMERGENCY ADJUDICATION PROCEDURE. (1) If otherwise autho-  
41 rized by law of this state, an agency may take action and issue an order to  
42 address an immediate danger to the public health or safety. The agency shall  
43 take only such actions as are necessary to prevent or avoid the immediate  
44 danger to the public health or safety that justifies the use of an emergency  
45 order.

46 (2) Before issuing an order under this section, an agency, if practica-  
47 ble, shall give notice and an opportunity to be heard to the person to which

1 the agency action is directed. The notice of the hearing and the hearing may  
2 be oral or written and may be by telephone, facsimile or other electronic  
3 means.

4 (3) An order issued under this section must briefly explain the factual  
5 and legal reasons for using emergency adjudication procedures. The order is  
6 effective when signed by the agency head or the designee of the agency head.

7 (4) As soon as practicable, but not more than seven (7) days after is-  
8 suance of an order, an agency shall give notice to the person to which the  
9 agency action is directed that an order has been issued. The notice shall  
10 contain the information required under section 67-5243 (3), Idaho Code, and  
11 shall contain a copy of the emergency order.

12 (5) A person receiving a notice of issuance of an emergency order may  
13 within twenty-one (21) days file a request for a contested case proceeding  
14 pursuant to section 67-5243, Idaho Code, if the emergency order is not oth-  
15 erwise part of an existing contested case proceeding. The office of adminis-  
16 trative hearings shall, as soon as practicable, but no more than thirty (30)  
17 days after the filing of the request for a contested case proceeding, conduct  
18 a hearing following the procedure under section 67-5244, Idaho Code, to de-  
19 termine the issues underlying the emergency order. The time for hearing may  
20 be extended upon request of the person against whom the order was issued. The  
21 hearing officer may shorten times and limit discovery, which in his discre-  
22 tion are consistent with both an expedited hearing and equity. In the event  
23 that a contested case proceeding was previously initiated regarding the sub-  
24 ject matter of the emergency order, the hearing officer shall set an exp-  
25 dited hearing only with regard to the issuance of the emergency order follow-  
26 ing procedures consistent with this section.

27 (6) An order issued under this section, unless stayed after hearing or  
28 otherwise, may be effective for not longer than one hundred twenty (120) days  
29 or until the expiration date of any order issued under subsection (1) of this  
30 section, whichever is shorter. Provided however, an emergency order may be  
31 extended for a reasonable time upon motion of the agency with notice to all  
32 parties, and for good cause determined after hearing by the hearing officer.

33 SECTION 14. That Chapter 52, Title 67, Idaho Code, be, and the same is  
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
35 ignated as Section 67-5248, Idaho Code, and to read as follows:

36 67-5248. EX PARTE COMMUNICATIONS. (1) Except as otherwise provided in  
37 subsection (2) of this section, while a contested case is pending, the hear-  
38 ing officer may not make to or receive from any person any communication con-  
39 cerning the case without notice and opportunity for all parties to partici-  
40 pate in the communication. For the purpose of this section, a contested case  
41 is considered pending upon the filing of a request for a contested case pro-  
42 ceeding with the office of administrative hearings. A contested case is no  
43 longer pending once a final order is issued by an agency.

44 (2) A hearing officer may communicate about a pending contested case  
45 with any person if the communication is required for the disposition of ex  
46 parte matters authorized by statute or if it concerns an uncontested proce-  
47 dural issue.

48 (3) If a communication prohibited by this section is made, the hearing  
49 officer shall notify all parties of the prohibited communication and permit

1 parties to respond in a record not later than fourteen (14) days after the  
 2 notice is given. For good cause, the hearing officer may permit additional  
 3 testimony in response to the prohibited communication.

4 (4) If necessary to eliminate the effect of a communication received in  
 5 violation of this section, a hearing officer may be disqualified under sec-  
 6 tion 67-5274, Idaho Code, the parts of the record pertaining to the communi-  
 7 cation may be sealed by protective order, or other appropriate relief may be  
 8 granted, including an adverse ruling on the merits of the case or dismissal  
 9 of the application.

10 SECTION 15. 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 67-5250, Idaho Code, and to read as follows:

13 67-5250. SUBPOENAS. (1) On request by a party in a contested case, the  
 14 hearing officer, on a showing of general relevance and reasonable scope of  
 15 the evidence sought for use at the hearing, shall issue a subpoena for the  
 16 attendance of a witness and the production of books, records and other evi-  
 17 dence.

18 (2) Unless otherwise provided by law or agency rule, a subpoena issued  
 19 under subsection (1) of this section shall be served and, on application to  
 20 the court by a party or the agency, enforced in the manner provided by law for  
 21 the service and enforcement of a subpoena in a civil action.

22 (3) Witness fees shall be paid by the party requesting a subpoena in the  
 23 manner provided by law for witness fees in a civil action.

24 (4) The provisions of this section shall provide the exclusive method  
 25 for the issuance of subpoenas in all contested cases.

26 SECTION 16. That Chapter 52, Title 67, Idaho Code, be, and the same is  
 27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 28 ignated as Section 67-5251, Idaho Code, and to read as follows:

29 67-5251. DISCOVERY. (1) In this section, "statement" includes a  
 30 record of a person's written statement signed by the person and a record that  
 31 summarizes an oral statement made by the person.

32 (2) Except as otherwise provided for in an emergency hearing under  
 33 section 67-5247, Idaho Code, a party, on written notice to another party  
 34 at least thirty (30) days before an evidentiary hearing, unless otherwise  
 35 ordered by the hearing officer under this section, may:

36 (a) Obtain the names and addresses of witnesses the other party will  
 37 present at the hearing to the extent known to the other party; and

38 (b) Inspect and copy any of the following materials in the possession,  
 39 custody or control of the other party:

40 (i) Statements of parties and witnesses proposed to be called by  
 41 the other party;

42 (ii) All records, including reports of mental, physical, and  
 43 blood examinations, and other evidence the other party proposes to  
 44 offer;

45 (iii) Investigative reports made by or on behalf of the agency or  
 46 other party pertaining to the subject matter of the adjudication;

1 (iv) Statements of expert witnesses proposed to be called by the  
2 other party;

3 (v) Any exculpatory material in the possession of the agency; and

4 (vi) Other materials for good cause.

5 (3) Parties to a contested case have a duty to supplement responses pro-  
6 vided under subsection (2) of this section to include information thereafter  
7 acquired, to the extent that the information will be relied on in the hear-  
8 ing.

9 (4) On request, the hearing officer may issue a protective order for  
10 any material for which discovery is sought under this section that is exempt,  
11 privileged, or otherwise made confidential or protected from disclosure by  
12 law of this state other than this act, and material, the disclosure of which  
13 would result in annoyance, embarrassment, oppression or undue burden or ex-  
14 pense to any person.

15 (5) On request, the hearing officer may issue an order compelling dis-  
16 covery for refusal to comply with a discovery request unless good cause ex-  
17 ists for refusal. Failure to comply with the order may be enforced according  
18 to the rules of civil procedure.

19 (6) On request and for good cause, the hearing officer may issue an or-  
20 der authorizing additional discovery tools allowed under the Idaho rules of  
21 civil procedure.

22 SECTION 17. That Chapter 52, Title 67, Idaho Code, be, and the same is  
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
24 ignated as Section 67-5252, Idaho Code, and to read as follows:

25 67-5252. DEFAULT. (1) Unless otherwise provided by law of this state  
26 other than this act, if a party without good cause fails to attend or partic-  
27 ipate in a prehearing conference or hearing in a contested case, the hearing  
28 officer may issue a default order.

29 (2) If a default order is issued, the hearing officer may conduct any  
30 further proceedings necessary to complete the adjudication without the de-  
31 faulting party and shall determine all issues in the adjudication, including  
32 those affecting the defaulting party, and issue a contested case order.

33 (3) A contested case order issued against a defaulting party may be  
34 based on the defaulting party's admissions or other evidence that may be used  
35 without notice to the defaulting party. If the burden of proof is on the  
36 defaulting party to establish that the party is entitled to the agency action  
37 sought, the hearing officer may issue a contested case order without taking  
38 evidence.

39 (4) Not later than sixty (60) days after notice to a party subject to  
40 a default order that any resulting contested case order has been rendered  
41 against the party, the party may request the hearing officer to vacate the  
42 contested case order. If good cause is shown for the party's failure to  
43 appear, the hearing officer shall vacate the contested case order and, af-  
44 ter proper service of notice, conduct another evidentiary hearing. If good  
45 cause is not shown for the party's failure to appear, the hearing officer  
46 shall deny the motion to vacate.

1       SECTION 18. 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 67-5253, Idaho Code, and to read as follows:

4       67-5253. CONTESTED CASE ORDERS. (1) A contested case order must sep-  
5 arately state findings of fact and conclusions of law on all material is-  
6 sues of fact, law, or discretion, the remedy prescribed, and, if applica-  
7 ble, the action taken on a request for a stay. The hearing officer may per-  
8 mit a party to submit proposed findings of fact and conclusions of law. A  
9 contested case order must state any circumstances under which the contested  
10 case order, without further notice, may become a final order.

11       (2) Findings of fact must be based on the evidence and matters offi-  
12 cially noticed in the hearing record in the contested case.

13       (3) A contested case order is issued under this section when it is  
14 signed by the hearing officer.

15       (4) A contested case order must be served by the office of administra-  
16 tive hearings in a record on each party and the agency head not later than  
17 sixty (60) days after the hearing ends, the record closes, or memoranda,  
18 briefs, or proposed findings are submitted, whichever is latest. The hear-  
19 ing officer may extend the time by stipulation of the parties or upon motion  
20 and finding of good cause. The contested case order shall be accompanied by  
21 proof of service stating the service date, each party who was served and the  
22 method of service.

23       (5) A contested case order is final twenty-eight (28) days after its  
24 service date unless reconsideration is granted under section 67-5256, Idaho  
25 Code, or if there is an agency review under section 67-5254, Idaho Code.

26       (6) The hearing officer shall attach to the contested case order the  
27 available procedures and time limits for seeking reconsideration or other  
28 administrative relief and must state the time limits for seeking judicial  
29 review of the contested case order.

30       SECTION 19. That Chapter 52, Title 67, Idaho Code, be, and the same is  
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
32 ignated as Section 67-5254, Idaho Code, and to read as follows:

33       67-5254. AGENCY REVIEW OF CONTESTED CASE ORDER. (1) An agency head may  
34 review a contested case order before the order is final. If the agency head  
35 decides to review a contested case order, the agency head shall give notice  
36 in a record to the parties and the administrative hearing officer that he in-  
37 tends to review the order. A notice of review of a contested case order by  
38 an agency head must be filed with the office of administrative hearings not  
39 later than twenty-eight (28) days after the service date of the hearing of-  
40 ficer's order. The agency head shall also contemporaneously serve a copy of  
41 the notice of review on the parties. The office of administrative hearings  
42 shall serve notice within three (3) days to all parties that a notice of re-  
43 view has been filed by the agency head, and the date of the filing.

44       (2) A party may request an agency head to review a contested order be-  
45 fore it is final. The party shall serve a request for review upon the office  
46 of administrative hearings. If the request is timely, the office of admin-  
47 istrative hearings shall serve the request within three (3) days upon the  
48 agency head, with notice of service to all parties. The agency head shall

1 have fourteen (14) days from the service of the request for review upon the  
2 agency head to file a notice with the office of administrative hearings with  
3 service upon the other parties either accepting or declining the request for  
4 review. If no timely notice accepting or declining the review is filed by  
5 the agency head, the request shall be deemed declined. If the request is de-  
6 clined, the contested case order shall be final from the date of the notice of  
7 or last day for declining the review or twenty-eight (28) days after filing  
8 of the contested case order, whichever is later. If the agency head accepts  
9 the request for review, the time for review under subsection (6) of this sec-  
10 tion commences on the date of the filing of the notice of acceptance of the  
11 request for review.

12 (3) If a request for review is not filed or the agency head does not  
13 elect to review the contested case order within the prescribed time limit,  
14 the order becomes a final order as provided in section 67-5253 (5), Idaho  
15 Code.

16 (4) A notice of agency review or a request for agency review may not  
17 be filed during the pendency of a request for reconsideration under section  
18 67-5256, Idaho Code. If request for reconsideration is filed after a notice  
19 of agency review, the request for reconsideration takes precedence and shall  
20 be decided first by the hearing officer. If the reconsideration is granted,  
21 a pending notice shall be deemed moot, subject to filing of a new notice fol-  
22 lowing filing of the reconsidered contested case order. If the request for  
23 reconsideration is denied, the agency head review process shall proceed as  
24 if the request for reconsideration had not been filed with any relevant time  
25 periods tolled during the pendency of the request for reconsideration.

26 (5) When reviewing a contested case order, the agency head shall ex-  
27 ercise the decision-making power that the agency head would have had if the  
28 agency head had conducted the hearing that produced the order, except that  
29 the agency head shall not modify findings of fact.

30 (6) If an agency head reviews a contested case order, the agency head  
31 shall issue a final order disposing of the proceeding not later than sixty  
32 (60) days after the notice to review the contested case order was filed with  
33 the office of administrative hearings.

34 (7) An order issued by the agency head after agency head review of a con-  
35 tested case order must identify any difference between the final order and  
36 the contested case order and must state the law that supports any difference  
37 in legal conclusions and the policy reasons that support any difference in  
38 the exercise of discretion. Findings of fact shall not be modified in the re-  
39 view process.

40 (8) A final order under this section must include, or incorporate by  
41 express reference to the contested case order, the matters required by sec-  
42 tion 67-5253(1), Idaho Code. The agency head shall file the order with the  
43 office of administrative hearings, which order shall be final upon filing,  
44 and which shall be a final contested case order. The agency head shall also  
45 simultaneously serve the parties with a copy of the final order.

46 (9) A party may request a reconsideration by the agency head of an  
47 agency review order by filing a request with the agency head within four-  
48 teen (14) days of the order. The agency head shall notify the office of  
49 administrative hearings promptly upon receipt of such a request for recon-  
50 sideration. The request for reconsideration by the agency head shall be



1 procedurally treated as a notice of agency review under this section, and  
 2 any order previously filed under subsection (8) of this section shall not  
 3 be considered final until an order denying the request for reconsideration  
 4 or modifying the previous order is filed with the office of administrative  
 5 hearings and served upon the parties.

6 SECTION 20. 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 67-5256, Idaho Code, and to read as follows:

9 67-5256. RECONSIDERATION. (1) A party, not later than fourteen (14)  
 10 days after the service date of a contested case order, may file a request for  
 11 reconsideration with the office of administrative hearings that states the  
 12 specific grounds on which relief is requested.

13 (2) If a request for reconsideration is timely filed, and if the re-  
 14 quester has complied with procedural rules for reconsideration, the time for  
 15 filing a request for judicial review does not begin until the hearing officer  
 16 fully disposes of the request for reconsideration as provided in subsection  
 17 (3) of this section. Provided that if an agency review is conducted under  
 18 this section, time for filing a request for judicial review shall be governed  
 19 by this section. A party is not required to file a request for or notice of  
 20 agency head review to exhaust remedies under section 67-5265, Idaho Code.

21 (3) Not later than twenty-one (21) days after a request is filed under  
 22 subsection (1) of this section, the hearing officer shall issue a written or-  
 23 der denying the request, granting the request and modifying the contested  
 24 case order, or granting the request and setting the matter for further pro-  
 25 ceedings. The parties may extend the time by filing a stipulation for exten-  
 26 sion of time before the expiration of the twenty-one (21) days. If the hear-  
 27 ing officer fails to act upon the request within the twenty-one (21) days or  
 28 extension thereof, the request is deemed denied. The tolling under subsec-  
 29 tion (2) of this section ends on the date the request is deemed denied.

30 SECTION 21. That Chapter 52, Title 67, Idaho Code, be, and the same is  
 31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 32 ignated as Section 67-5257, Idaho Code, and to read as follows:

33 67-5257. STAY. Except as otherwise provided by law of this state other  
 34 than this act, a party, not later than seven (7) days after the service date  
 35 of the final order, may request the agency to stay a final order pending judi-  
 36 cial review. The agency may grant the request for a stay pending judicial re-  
 37 view if the agency finds that justice requires. The agency may grant or deny  
 38 the request for stay of the order before, on, or after the effective date of  
 39 the order.

40 SECTION 22. That Chapter 52, Title 67, Idaho Code, be, and the same is  
 41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 42 ignated as Section 67-5258, Idaho Code, and to read as follows:

43 67-5258. AVAILABILITY OF ORDERS -- INDEX -- INDEXING OF GUIDANCE DOC-  
 44 UMENTS. (1) Except as otherwise provided in subsections (2) and (3) of this  
 45 section, an agency shall create an index of all final orders in contested

1 cases and make the index and all final orders available for public inspection  
2 and copying, at cost, in its principal offices.

3 (2) Final orders that are exempt, privileged, or otherwise made confi-  
4 dential or protected from disclosure by the public records law of this state  
5 are not public records and may not be indexed.

6 (3) An agency may not rely on a final order adverse to a party other than  
7 the agency as precedent in future adjudications, unless the agency desig-  
8 nates the order as a precedent and the order has been published, placed in an  
9 index, and made available for public inspection.

10 (4) Unless otherwise prohibited by any provision of law, each agency  
11 shall index by subject all agency guidance documents. The index and the  
12 guidance documents shall be available for public inspection and copying at  
13 cost in the main office and each regional or district office of the agency.  
14 As used in this section, "agency guidance" means all written documents,  
15 other than rules, orders, and pre-decisional material, that are intended to  
16 guide agency actions affecting the rights or interests of persons outside  
17 the agency. "Agency guidance" shall include memoranda, manuals, policy  
18 statements, interpretations of law or rules, and other materials that are  
19 of general applicability, whether prepared by the agency alone or jointly  
20 with other persons. The indexing of a guidance document does not give that  
21 document the force and effect of law or other precedential authority.

22 (5) If the index and order or document is publicly available on an  
23 agency website, the obligation to provide copies is deemed satisfied.

24 SECTION 23. That Chapter 52, Title 67, Idaho Code, be, and the same is  
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
26 ignated as Section 67-5259, Idaho Code, and to read as follows:

27 67-5259. LICENSES. (1) If a licensee has made timely and sufficient  
28 application for the renewal of a license or a new license for any activity  
29 of a continuing nature, the existing license does not expire until the agency  
30 takes final action on the application and, if the application is denied or  
31 the terms of the new license are limited, until the last day for seeking re-  
32 view of the agency order or a later date fixed by the reviewing court.

33 (2) Before an agency institutes proceedings to revoke, suspend, annul  
34 or withdraw a license, the agency shall notify the licensee of: (a) the facts  
35 or conduct that warrants the intended action; and (b) provide the licensee  
36 with any options available to cure deficiencies. The agency shall also give  
37 the licensee a reasonable opportunity to show compliance with all lawful re-  
38 quirements for the retention of the license.

39 (3) A proceeding to revoke, suspend, annul or withdraw a license is a  
40 contested case and shall be commenced in accordance with section 67-5243,  
41 Idaho Code.

42 (4) If the agency finds that immediate danger to the public health or  
43 safety requires emergency action in connection with continued use of the li-  
44 cense by the licensee, an emergency order may be issued in accordance with  
45 section 67-5247, Idaho Code, and shall be filed together with a request for a  
46 contested case proceeding. The emergency order shall be reviewed in accor-  
47 dance with the provisions of section 67-5247, Idaho Code, as part of the con-  
48 tested case.

1 (5) A revocation, suspension, annulment, or withdrawal of a license  
2 that is in conflict with the provisions of this section shall be null, void  
3 and of no force and effect.

4 SECTION 24. That Chapter 52, Title 67, Idaho Code, be, and the same is  
5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
6 ignated as Section 67-5260, Idaho Code, and to read as follows:

7 67-5260. RIGHT TO JUDICIAL REVIEW -- FINAL AGENCY ACTION REVIEW-  
8 ABLE. (1) In this section and sections 67-5262 through 67-5267, Idaho Code,  
9 "final agency action" means a final order or an agency action that imposes an  
10 obligation, grants or denies a right, confers a benefit, or determines a le-  
11 gal relationship. The term includes a disposition by agreement as provided  
12 in section 67-5241, Idaho Code. The term does not include agency action that  
13 is a failure to act unless in the form of a contested case order that is final.

14 (2) Except to the extent that a statute of this state other than this act  
15 limits or precludes judicial review, a person who meets the requirements of  
16 this section is entitled to judicial review of a final agency action.

17 (3) A person entitled to judicial review of a final agency action under  
18 subsection (2) of this section is entitled to judicial review of an agency  
19 action that is not final if postponement of judicial review would result in  
20 an inadequate remedy or irreparable harm that outweighs the public benefit  
21 derived from postponing judicial review.

22 (4) A court may compel an agency to take action that is unlawfully with-  
23 held or unreasonably delayed.

24 SECTION 25. That Chapter 52, Title 67, Idaho Code, be, and the same is  
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
26 ignated as Section 67-5262, Idaho Code, and to read as follows:

27 67-5262. TIME TO SEEK JUDICIAL REVIEW OF AGENCY ACTION -- LIMITA-  
28 TIONS. (1) A petition for judicial review of a temporary or final rule may be  
29 filed at any time, except as limited by section 67-5231, Idaho Code.

30 (2) A petition for judicial review of a final order must be filed within  
31 twenty-eight (28) days of the service date of the final order, or, if recon-  
32 sideration is sought, within twenty-eight (28) days after the service date  
33 of the decision thereon. A cross-petition for judicial review may be filed  
34 within fourteen (14) days after a party is served with a copy of the notice of  
35 the petition for judicial review.

36 (3) A petition for judicial review of a final agency action other than  
37 a rule or final order must be filed within twenty-eight (28) days of the  
38 agency action, except as provided by other provision of law. The time for  
39 filing a petition for review shall be extended during the pendency of the  
40 petitioner's timely attempts to exhaust administrative remedies, if the  
41 attempts are clearly not frivolous or repetitious. A cross-petition for ju-  
42 dicial review may be filed within fourteen (14) days after a party is served  
43 with a copy of the notice of the petition for judicial review.

44 (4) The time for seeking judicial review under this section is tolled  
45 during any time a party pursues an administrative remedy before the agency,  
46 which remedy must be exhausted as a condition of judicial review.

(5) A party may not petition for judicial review while seeking reconsideration under section 67-5256, Idaho Code. During the time a petition for reconsideration is pending before an agency, the time for seeking judicial review in subsection (1) of this section is tolled.

SECTION 26. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5263, Idaho Code, and to read as follows:

67-5263. STAYS PENDING APPEAL. A petition for judicial review does not automatically stay an agency decision. A challenging party may petition the reviewing court for a stay on the same basis as stays are granted under the Idaho rules of civil procedure, and the reviewing court may grant a stay regardless of whether the challenging party first sought a stay from the agency.

SECTION 27. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5264, Idaho Code, and to read as follows:

67-5264. STANDING. A person has standing to obtain judicial review of a final agency action if the person:

- (1) Is a party in a contested case proceeding who has standing to obtain judicial review of a final order in the contested case;
- (2) Is a party to a declaratory ruling which is a final agency action under section 67-5268, Idaho Code; or
- (3) Otherwise satisfies applicable Idaho law conferring standing.

SECTION 28. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5265, Idaho Code, and to read as follows:

67-5265. EXHAUSTION OF ADMINISTRATIVE REMEDIES. (1) Subject to subsection (3) of this section, or law of this state other than this act, that provides that a person need not exhaust administrative remedies, a person may file a request for judicial review under this act only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review.

(2) Filing a request for reconsideration or a stay of proceedings is not a prerequisite for seeking judicial review.

(3) The court may relieve a requester of the requirement to exhaust any or all administrative remedies to the extent the administrative remedies are inadequate or the requirement would result in irreparable harm.

SECTION 29. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5266, Idaho Code, and to read as follows:

67-5266. RECORD ON JUDICIAL REVIEW -- EXCEPTIONS. (1) If the hearing officer was required by the provisions of this act to maintain a record dur-

1 ing the proceeding that gave rise to the action under review, the court re-  
2 view is confined to that record and to matters arising from that record.

3 (2) In any case to which subsection (1) of this section does not apply,  
4 the record for review consists of the unprivileged materials that the hear-  
5 ing officer or agency decision-maker directly or indirectly considered or  
6 that were submitted for consideration by any person in connection with the  
7 action under review, including information that is adverse to the agency's  
8 position. If the agency action was ministerial or was taken on the basis of a  
9 minimal or no administrative record, the court may receive evidence relating  
10 to the agency's basis for taking the action.

11 (3) In any case to which subsection (1) of this section does not apply,  
12 if a challenging party makes a substantial showing of need, the court may al-  
13 low discovery or other evidentiary proceedings and consider evidence out-  
14 side the record to:

15 (a) Ensure that the record is complete as required by this act and other  
16 applicable law;

17 (b) Adjudicate allegations of procedural error not disclosed by the  
18 record; or

19 (c) Prevent manifest injustice.

20 (4) Notwithstanding the provisions of subsection (1) of this section,  
21 if, before the date set for hearing, application is made to the court for  
22 leave to present additional evidence and it is shown to the satisfaction of  
23 the court that the additional evidence is material, relates to the validity  
24 of the action, and that there were good reasons for failure to present it in  
25 the proceeding before the hearing officer, the court may remand the matter  
26 to the hearing officer with directions that the hearing officer receive ad-  
27 ditional evidence and conduct additional fact-finding. The hearing officer  
28 may modify his action by reason of the additional evidence and shall file any  
29 modifications, new findings, or decisions with the reviewing court.

30 SECTION 30. That Chapter 52, Title 67, Idaho Code, be, and the same is  
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
32 ignated as Section 67-5267, Idaho Code, and to read as follows:

33 67-5267. STANDARD OF REVIEW. Except as provided by law of this state  
34 other than this act, in judicial review of a final agency order, the follow-  
35 ing rules apply:

36 (1) When the agency was required by the provisions of this chapter or by  
37 other provisions of law to issue a final agency order, the court shall affirm  
38 the final agency order unless the court finds that the findings, inferences,  
39 conclusions, or decisions are:

40 (a) In violation of constitutional or statutory provisions;

41 (b) In excess of statutory authority;

42 (c) Made upon unlawful procedure;

43 (d) Not supported by substantial evidence on the record as a whole; or

44 (e) Arbitrary, capricious, or an abuse of discretion.

45 (2) The court shall affirm, modify or set aside the final agency order,  
46 in whole or in part, and may remand for further proceedings as necessary.

47 SECTION 31. That Section 67-5255, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

1        67-525568. DECLARATORY RULINGS BY AGENCIES. (1) Any person may  
 2 ~~petition request that an agency for issue~~ a declaratory ruling as to the  
 3 applicability of any order issued by the agency under a set of given or stipu-  
 4 lated facts.

5        (2) ~~A petition for a declaratory ruling does not preclude an agency from~~  
 6 ~~initiating a contested case in the matter.~~

7        ~~(3)~~ A declaratory ruling issued by an agency under this section is a fi-  
 8 nal agency action.

9        SECTION 32. That Section 67-5272, Idaho Code, be, and the same is hereby  
 10 amended to read as follows:

11        67-527269. VENUE -- FORM OF ACTION. (1) Except when required by other  
 12 provision of law, proceedings for judicial review or declaratory judgment  
 13 regarding final agency actions are instituted by filing a petition in the  
 14 district court of the county in which:

15        (a) the hearing was held; or

16        (b) the final agency action was taken; or

17        (c) the aggrieved party resides or operates its principal place of  
 18 business in Idaho; or

19        (d) the real property or personal property that was the subject of the  
 20 agency decision is located.

21        (2) When two (2) or more petitions for judicial review of the same  
 22 agency action are filed in different counties or are assigned to different  
 23 district judges in the same county, upon motion filed by any party to any  
 24 of the proceedings for judicial review of the same agency action, the sep-  
 25 arate consideration of the petitions in different counties or by different  
 26 district judges shall be stayed. The administrative judge in the judicial  
 27 district in which the first petition was filed, after appropriate consul-  
 28 tation with the affected district judges and the affected administrative  
 29 judges, shall then order consolidation of the judicial review of the peti-  
 30 tions before one (1) district judge in one (1) county in which a petition for  
 31 judicial review was properly filed, at which time the stay shall be lifted.

32        SECTION 33. That Chapter 52, Title 67, 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 67-5270, Idaho Code, and to read as follows:

35        67-5270. CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS -- POWERS AND  
 36 DUTIES. (1) There is hereby created in the department of self-governing  
 37 agencies the office of administrative hearings.

38        (2) The office of administrative hearings shall:

39        (a) Conduct all contested case proceedings as provided in this act;

40        (b) Subject to section 67-5242(3), Idaho Code, conduct such hearings,  
 41 mediations and arbitrations not required by this chapter if requested  
 42 by agencies at such monetary rates as established by the office; and

43        (c) Promulgate rules pursuant to the procedures set forth in this chap-  
 44 ter to implement provisions relating to duties and actions authorized  
 45 under this chapter.

46        (3) The office of administrative hearings shall be subject to audit in  
 47 the same manner as other agencies of the state.

1       SECTION 34. 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 67-5271, Idaho Code, and to read as follows:

4       67-5271. CHIEF ADMINISTRATIVE HEARING OFFICER -- APPOINTMENT -- QUAL-  
 5 IFICATIONS -- POWERS AND DUTIES -- REMOVAL. (1) A chief administrative hear-  
 6 ing officer shall be appointed on a nonpartisan basis by the governor, and  
 7 confirmed by the senate, to serve a six (6) year term. A person may serve mul-  
 8 tiple terms. Provided however, there is no right to reappointment.

9       (2) A chief administrative hearing officer shall:

10       (a) Conduct contested case proceedings as provided for in this act;

11       (b) Devote full time to the duties of the office, shall not engage in  
 12 the practice of law and shall not hold any other public or private sector  
 13 position except for volunteer positions which are not inconsistent with  
 14 his duties as the chief hearing officer;

15       (c) Serve as the administrator of the office;

16       (d) Subject to applicable law and regulation, appoint, supervise and  
 17 remove hearing officers and staff as he deems appropriate, and as is  
 18 consistent with budgetary authorization and the duties and standards  
 19 required of such positions;

20       (e) Promulgate rules adopting a code of conduct for the chief adminis-  
 21 trative hearing officer and all hearing officers, and monitor hearing  
 22 officer compliance with such code of conduct;

23       (f) Protect and ensure the decisional independence of hearing offi-  
 24 cers;

25       (g) Make training available to hearing officers;

26       (h) Monitor the quality of all contested case proceedings, and any  
 27 other hearings, mediations and arbitrations conducted by the office of  
 28 administrative hearings;

29       (i) Submit a written report on the activities of the office, the quality  
 30 of its work, its compliance with the code of conduct, and such other mat-  
 31 ters as he deems appropriate for the immediately preceding fiscal year  
 32 to the governor, the judiciary, rules and administration committee of  
 33 the house of representatives, the judiciary and rules committee of the  
 34 senate and to the advisory council to the office of administrative hear-  
 35 ings on or before the first day of each legislative session;

36       (j) As he deems appropriate, create specialized subject matter divi-  
 37 sions within the office;

38       (k) At his discretion, when cost effective and necessary for expedi-  
 39 tious and equitable process, retain independent contractor hearing of-  
 40 ficers at such compensation rates as he shall determine necessary and  
 41 reasonable within budgetary authorization;

42       (l) Hire and manage hearing officers and such support staff as may be  
 43 reasonably necessary for operations of the office of administrative  
 44 hearings, including staff support for the advisory council to the of-  
 45 fice of administrative hearings;

46       (m) Purchase or lease necessary office space, furnishings, equipment  
 47 and supplies for the proper functioning of the office of administrative  
 48 hearings;

(n) Contract with agencies to conduct such hearings, mediations and arbitrations permitted under section 67-5270 (2) (b), Idaho Code; and

(o) Have not served in the executive branch of Idaho government for a period of two (2) continuous years preceding his appointment.

(3) The chief administrative hearing officer shall receive the same compensation and benefits as a member of the Idaho industrial commission.

(4) A chief administrative hearing officer may be removed from office only:

(a) By the governor with consent of the senate; or

(b) By the governor upon conviction of a felony, or disbarment or suspension by the Idaho state bar.

SECTION 35. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5272, Idaho Code, and to read as follows:

67-5272. HEARING OFFICER QUALIFICATIONS -- POWERS -- DUTIES. The chief administrative hearing officer and all hearing officers shall:

(1) Comply with the code of conduct adopted pursuant to rule.

(2) Take an oath of office before beginning their duties.

(3) Devote full time to the duties of the office, shall not engage in the practice of law and shall not hold any other public position, except volunteer positions which are not inconsistent with the duties of a hearing officer as set forth in this section. This provision does not apply to contract hearing officers, except to the extent that such employment or volunteer position creates a conflict of interest.

(4) Meet the following qualifications on the effective date of their appointments:

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

(b) Be a citizen of the United States;

(c) Have been a legal resident of the state of Idaho for at least two (2) continuous years immediately preceding such appointment;

(d) Have been in good standing as an active or judicial member of the Idaho state bar for at least two (2) continuous years immediately preceding such appointment; and

(e) Have held a license to practice law or held a judicial office in one (1) or more jurisdictions for at least five (5) continuous years immediately preceding such appointment.

For purposes of this subsection, the following terms have the following meanings:

(a) "Active," "judicial" and "good standing" have the same definitions as those terms are given by rule 301 of the Idaho bar commission rules or any successors to those rules; and

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

(5) Have the power in contested case proceedings pursuant to this chapter to issue subpoenas, administer oaths, control the course of the proceedings, order the use of alternative dispute resolution with the parties' consent, enter such awards for costs and attorney's fees as authorized by law, and perform other necessary and appropriate acts in the performance of their duties.



1 (6) Conduct such contested case proceedings pursuant to this chapter,  
 2 duly promulgated rules, guidelines and practices, as well as other hearings,  
 3 mediations and arbitration as may be assigned by the chief administrative  
 4 hearing officer, and perform such other duties as may be assigned by the  
 5 chief administrative hearing officer.

6 SECTION 36. 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 67-5273, Idaho Code, and to read as follows:

9 67-5273. CHIEF HEARING OFFICER AND HEARING OFFICER COMPENSATION AND  
 10 CLASSIFICATION. Administrative hearing officers shall receive compensation  
 11 and benefits as determined by the chief administrative hearing officer.  
 12 Compensation of a hearing officer shall not be reduced during his term of  
 13 office. The chief hearing officer and hearing officers are nonclassified  
 14 employees.

15 SECTION 37. 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 67-5274, Idaho Code, and to read as follows:

18 67-5274. DISQUALIFICATION. (1) A hearing officer is subject to dis-  
 19 qualification for bias, prejudice, financial interest, ex parte communica-  
 20 tions as provided in section 67-5248, Idaho Code, or any other factor that  
 21 would cause a reasonable person to question the impartiality of the hearing  
 22 officer. A hearing officer, after making a reasonable inquiry, shall dis-  
 23 close to the parties any known facts related to grounds for disqualification  
 24 that are material to the impartiality of the hearing officer in the proceed-  
 25 ing.

26 (2) A party may request the disqualification of a hearing officer  
 27 promptly after notice that the person will preside or, if later, promptly on  
 28 discovering facts establishing a ground for disqualification. The request  
 29 must state with particularity the ground on which it is claimed that a fair  
 30 and impartial hearing cannot be accorded or the applicable rule or canon  
 31 of practice or ethics that requires disqualification. The request may be  
 32 denied if the party fails to exercise due diligence in requesting disquali-  
 33 fication after discovering a ground for disqualification.

34 (3) A hearing officer whose disqualification is requested shall decide  
 35 whether to grant the request and shall state in a record the facts and reasons  
 36 for the decision. The decision to deny disqualification is not subject to  
 37 interlocutory judicial review.

38 (4) If a substitute hearing officer is required, the substitute must be  
 39 appointed by the office of administrative hearings.

40 SECTION 38. That Chapter 52, Title 67, Idaho Code, be, and the same is  
 41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 42 ignated as Section 67-5275, Idaho Code, and to read as follows:

43 67-5275. ADVISORY COUNCIL TO THE OFFICE OF ADMINISTRATIVE HEAR-  
 44 INGS. (1) There is hereby created the advisory council to the office of  
 45 administrative hearings, referred to as "the council" in this section.

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

4       (a) The chairman and most senior minority party member of the senate ju-  
5 diciary and rules committee;

6       (b) The chairman and most senior minority party member of the house ju-  
7 diciary, rules and administration committee;

8       (c) The attorney general or a deputy attorney general designated by the  
9 attorney general;

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

15       (e) One (1) member of the public appointed by the governor, who is not  
16 a member of the Idaho state bar and who has no employment, independent  
17 contractor or financial relationship with the office of administrative  
18 hearings or other branch of state government or a political subdivision  
19 thereof;

20       (f) One (1) member of the Idaho state bar appointed by the president of  
21 the Idaho state bar board of commissioners.

22       (3) The terms of the attorney general or his designee, the agency di-  
23 rectors or their designees, the public member and the Idaho state bar member  
24 shall be four (4) years commencing July 1, 2018. A designee may be replaced  
25 by the designating authority at any time. A vacancy shall exist with respect  
26 to any member who no longer holds the position required to be a member and,  
27 with respect to a public member, who no longer meets the qualifications for  
28 being a public member. Members may serve more than one (1) term.

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

32       (5) Action by the council shall be by a majority of those voting, and a  
33 quorum shall consist of a majority of the members.

34       (6) Members shall elect a chair and vice chair, who shall serve two (2)  
35 year terms. The vice chair shall serve in place of the chair when the chair is  
36 absent or the position otherwise becomes vacant. In the event of a vacancy in  
37 the office of chair or vice chair, the office shall be filled at the next reg-  
38 ularly scheduled meeting of the board, and the new officeholder shall com-  
39 plete the term of the officer being replaced.

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

41       (a) Make recommendations to the chief administrative hearing officer  
42 about:

43       (i) Issues and procedures within the office of administrative  
44 hearings;

45       (ii) Rules, policies, guidelines and practices being considered  
46 for promulgation or adoption by the office of administrative hear-  
47 ings;

48       (iii) The annual report pursuant to section 67-5271, Idaho Code;

49       (iv) Hearing officer training; and

(v) Such other matters as the council deems appropriate to the equitable and efficient operation of the office of administrative hearings;

(b) Make recommendations to the governor, the chief administrative hearing officer and the legislature as it deems appropriate; and

(c) Meet at least annually at such times and places as the council determines. The meetings shall be considered public meetings subject to the open meetings law and there shall be a record of any meeting, which shall be subject to disclosure.

SECTION 39. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5276, Idaho Code, and to read as follows:

67-5276. COOPERATION OF AGENCIES. (1) Every agency shall cooperate with the office of administrative hearings in the discharge of its duties.

(2) No agency or state officer shall attempt to influence the selection of a hearing officer for a contested case proceeding or any other matter, except mediations, and the chief administrative hearing officer shall not permit any such influence, but agencies and state officers may inform the office of administrative hearings in writing of their views regarding:

(a) Expertise needed or desired with respect to types of potential contested cases;

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

(c) Legislation under consideration or being proposed by the office of administrative hearings.

Nothing in this section shall be deemed to prohibit an agency director, the attorney general or a designee of either of them from carrying out their duties as a member of the advisory council to the office of administrative hearings.

(3) Upon filing of a request for a contested case proceeding, and at the time a contested case proceeding is considered initiated in the office of administrative hearings, the agency shall take no further action with respect to such matter except as otherwise authorized by this act or pursuant to other law.

SECTION 40. That Chapter 52, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5277, Idaho Code, and to read as follows:

67-5277. OFFICE OF ADMINISTRATIVE HEARINGS -- COST ESTIMATES -- ASSESSMENT OF RECIPIENT AGENCIES. (1) The office of administrative hearings shall prepare an estimate of costs for state budgeting purposes for services provided by the office of administrative hearings. The office of administrative hearings shall notify the division of financial management of such estimated costs by October 1. The division of financial management shall notify all state agencies of these cost estimates for the next fiscal year on or before November 1. The division of financial management and the legislative services office shall allow state agencies to modify their budget requests in response to such estimates.

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

SECTION 41. That Section 67-5279, Idaho Code, be, and the same is hereby amended to read as follows:

67-5279. SCOPE OF REVIEW -- TYPE OF RELIEF. (1) ~~The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.~~

~~(2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:~~

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; or
- (d) arbitrary, capricious, or an abuse of discretion.

~~(2) If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.~~

~~(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:~~

- ~~(a) in violation of constitutional or statutory provisions;~~
- ~~(b) in excess of the statutory authority of the agency;~~
- ~~(c) made upon unlawful procedure;~~
- ~~(d) not supported by substantial evidence on the record as a whole; or~~
- ~~(e) arbitrary, capricious, or an abuse of discretion.~~

~~If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.~~

~~(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.~~

SECTION 42. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

- (a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as

1 provided by chapter 29, title 25, Idaho Code; Idaho cherry commission,  
2 as provided by chapter 37, title 22, Idaho Code; Idaho dairy products  
3 commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea  
4 and lentil commission, as provided by chapter 35, title 22, Idaho Code;  
5 Idaho potato commission, as provided by chapter 12, title 22, Idaho  
6 Code; the Idaho wheat commission, as provided by chapter 33, title 22,  
7 Idaho Code; and the Idaho alfalfa and clover seed commission, as pro-  
8 vided in chapter 42, title 22, Idaho Code.

9 (b) Professional and occupational licensing boards: Idaho state board  
10 of accountancy, as provided by chapter 2, title 54, Idaho Code; board  
11 of acupuncture, as provided by chapter 47, title 54, Idaho Code; board  
12 of architectural examiners, as provided by chapter 3, title 54, Idaho  
13 Code; state athletic commission, as provided by chapter 4, title 54,  
14 Idaho Code; board of commissioners of the Idaho state bar, as provided  
15 by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as  
16 provided by chapter 7, title 54, Idaho Code; Idaho state licensing board  
17 of professional counselors and marriage and family therapists, as pro-  
18 vided by chapter 34, title 54, Idaho Code; state board of dentistry, as  
19 provided by chapter 9, title 54, Idaho Code; state board of dentistry,  
20 as provided by chapter 33, title 54, Idaho Code; Idaho board of licen-  
21 sure of professional engineers and professional land surveyors, as pro-  
22 vided by chapter 12, title 54, Idaho Code; state board of registration  
23 for professional geologists, as provided by chapter 28, title 54, Idaho  
24 Code; speech and hearing services licensure board, as provided by chap-  
25 ter 29, title 54, Idaho Code; Idaho physical therapy licensure board, as  
26 provided by chapter 22, title 54, Idaho Code; Idaho state board of land-  
27 scape architects, as provided by chapter 30, title 54, Idaho Code; liq-  
28 uefied petroleum gas safety board, as provided by chapter 53, title 54,  
29 Idaho Code; state board of medicine, as provided by chapter 18, title  
30 54, Idaho Code; state board of morticians, as provided by chapter 11,  
31 title 54, Idaho Code; board of naturopathic medical examiners, as pro-  
32 vided by chapter 51, title 54, Idaho Code; board of nursing, as provided  
33 by chapter 14, title 54, Idaho Code; board of examiners of nursing home  
34 administrators, as provided by chapter 16, title 54, Idaho Code; state  
35 board of optometry, as provided by chapter 15, title 54, Idaho Code;  
36 Idaho outfitters and guides licensing board, as provided by chapter 21,  
37 title 36, Idaho Code; board of pharmacy, as provided by chapter 17, ti-  
38 tle 54, Idaho Code; state board of podiatry, as provided by chapter 6,  
39 title 54, Idaho Code; Idaho state board of psychologist examiners, as  
40 provided by chapter 23, title 54, Idaho Code; Idaho real estate commis-  
41 sion, as provided by chapter 20, title 54, Idaho Code; real estate ap-  
42 praiser board, as provided by chapter 41, title 54, Idaho Code; board  
43 of social work examiners, as provided by chapter 32, title 54, Idaho  
44 Code; the board of veterinary medicine, as provided by chapter 21, ti-  
45 tle 54, Idaho Code; the board of examiners of residential care facil-  
46 ity administrators, as provided by chapter 42, title 54, Idaho Code; the  
47 certified shorthand reporters board, as provided by chapter 31, title  
48 54, Idaho Code; the driving businesses licensure board, as provided by  
49 chapter 54, title 54, Idaho Code; the board of drinking water and waste-  
50 water professionals, as provided by chapter 24, title 54, Idaho Code;

1 the board of midwifery, as provided by chapter 55, title 54, Idaho Code;  
 2 and the barber and cosmetology services licensing board, as provided by  
 3 chapter 58, title 54, Idaho Code.

4 (c) The board of examiners, pursuant to section 67-2001, Idaho Code.

5 (d) The division of building safety: building code board, chapter 41,  
 6 title 39, Idaho Code; electrical board, chapter 10, title 54, Idaho  
 7 Code; public works contractors license board, chapter 19, title 54,  
 8 Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public  
 9 works construction management, chapter 45, title 54, Idaho Code; the  
 10 heating, ventilation and air conditioning board, chapter 50, title 54,  
 11 Idaho Code; and factory built structures advisory board, chapter 43,  
 12 title 39, Idaho Code.

13 (e) The division of veterans services to be headed by a division ad-  
 14 ministrator who shall be a nonclassified employee exempt from the pro-  
 15 visions of chapter 53, title 67, Idaho Code. The administrator of the  
 16 division shall administer the provisions of chapter 2, title 65, Idaho  
 17 Code, and chapter 9, title 66, Idaho Code, with the advice of the vet-  
 18 erans affairs commission established under chapter 2, title 65, Idaho  
 19 Code, and shall perform such additional duties as are imposed upon him  
 20 by law.

21 (f) The board of library commissioners, pursuant to section 33-2502,  
 22 Idaho Code.

23 (g) The Idaho state historical society, pursuant to section 67-4123,  
 24 Idaho Code.

25 (h) The state public defense commission, pursuant to section 19-849,  
 26 Idaho Code.

27 (i) The office of administrative hearings, pursuant to section  
 28 67-5270, Idaho Code.

29 (3) The bureau of occupational licenses is hereby created within the  
 30 department of self-governing agencies.

31 SECTION 43. 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.

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

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

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

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

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

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

12 (i) Assistant attorneys general attached to the office of the attorney  
 13 general.

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

31 (k) Employees of the military division.

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

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

42 (n) Temporary employees.

43 (o) All employees and officers of the following named commodity commis-  
 44 sions, and all employees and officers of any commodity commission created  
 45 hereafter: the Idaho potato commission, as provided in chapter 12, title 22,  
 46 Idaho Code; the Idaho honey commission, as provided in chapter 28, title 22,  
 47 Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22,  
 48 Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, ti-  
 49 tle 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33,  
 50 title 22, Idaho Code; the Idaho pea and lentil commission, as provided in

chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint commission, as provided in chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as provided in chapter 1, title 25, Idaho Code; the state brand inspector, and all district supervisors, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

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

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

(r) All deputy administrators and wardens employed by the department of correction. Deputy administrators are defined as only the deputy administrators working directly for the nonclassified division administrators under the director of the department of correction.

(s) All public information positions, with the exception of secretarial positions, in any department.

(t) Any division administrator.

(u) Any regional administrator or division administrator in the department of environmental quality.

(v) All employees of the division of financial management, all employees of the STEM action center, all employees of the office of species conservation, all employees of the office of drug policy and all employees of the office of energy resources.

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

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

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

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

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

(bb) Chief administrative hearing officers and hearing officers in the office of administrative hearings as provided for in sections 67-5270 through 67-5276, Idaho Code.

SECTION 44. That Chapter 9, Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 6-930, Idaho Code, and to read as follows:

6-930. RETALIATION FOR SEEKING APPEAL OR ADMINISTRATIVE REVIEW. (1) In any case against a governmental entity wherein the finder of fact de-



1 terminates the governmental entity retaliated against the plaintiff or com-  
 2 plainant for exercising his right to appeal or to seek administrative review  
 3 of an administrative decision by that governmental entity, the aggrieved  
 4 party is entitled to the greater of one thousand dollars (\$1,000) in presumed  
 5 damages or actual damages, subject to the limitations in this chapter.

6 (2) It shall be a rebuttable presumption that, in any case where re-  
 7 taliation by a governmental entity is found by the finder of fact, the acts  
 8 amounting to retaliation were undertaken in bad faith for the purposes of  
 9 Idaho Code section 6-918A, Idaho Code.

10 (3) It shall be a rebuttable presumption that retaliation for seeking  
 11 an appeal or administrative review has occurred in any case where the con-  
 12 sequences of the governmental entity's decision are made less favorable for  
 13 the aggrieved party following an appeal or an administrative review than the  
 14 consequences enumerated at the time the governmental entity's initial deci-  
 15 sion was rendered.

16 SECTION 45. That Section 16-107, Idaho Code, be, and the same is hereby  
 17 amended to read as follows:

18 16-107. RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND WELFARE. The  
 19 department of health and welfare, as the lead agency for administration of  
 20 the provisions of this chapter, shall have primary responsibility for:

21 (a) The administration of all funds appropriated to implement the pro-  
 22 visions of this chapter;

23 (b) The identification and coordination of all available financial  
 24 resources within the state from federal, state, local and private  
 25 sources;

26 (c) The entry into formal intra-agency and interagency agreements  
 27 with other agencies involved in early intervention services. The  
 28 agreement(s) must include programmatic and financial responsibility,  
 29 procedures for resolving disputes and additional components necessary  
 30 to ensure effective cooperation and coordination among all agencies  
 31 involved in the state's early intervention system. Agreements are to  
 32 include statements addressing nonsubstitution or commingling of funds,  
 33 interim payments and reimbursements, nonreduction of benefits and con-  
 34 fidentiality. Agreements are to be signed by the administrators of:

35 (i) ~~the~~ Title V, social security act (relating to maternal and child  
 36 health);

37 (ii) ~~the~~ Title XIX, social security act (relating to medicaid and  
 38 EPSDT);

39 (iii) ~~the~~ Head Start act;

40 (iv) ~~the~~ Parts B and H of the Individuals with Disabilities Education  
 41 act;

42 (v) ~~the~~ Subpart 2, part B, chapter I of title I of the elementary and  
 43 secondary education act, 1964, as amended;

44 (vi) ~~the~~ Developmentally Disabled Assistance and Bill of Rights  
 45 act (P.L. 100-146);

46 (vii) ~~the~~ Other federal programs.

47 (d) The entry into contracts with service provider agencies within a  
 48 local community ~~which~~ that have been identified by the regional commit-  
 49 tee;

1 (e) The development of procedures to monitor services that are provided  
2 to infants and toddlers with disabilities and their families;

3 (f) The development of procedures to ensure that services are provided  
4 to infants and toddlers with disabilities and their families in a timely  
5 manner pending resolution of any disputes among public agencies or ser-  
6 vice providers;

7 (g) The writing of all policy and procedures and administrative rules  
8 in conjunction with the council ~~which~~ that are necessary for implemen-  
9 tation of the provisions of this chapter;

10 (h) Providing staff and services as may be necessary to carry out the  
11 functions of the interagency coordinating council.

12 Nothing in this section shall exempt the department of health and welfare  
13 from complying with the requirements of chapter 52, title 67, Idaho Code.

14 SECTION 46. That Section 26-31-208, Idaho Code, be, and the same is  
15 hereby amended to read as follows:

16 26-31-208. RECORDS -- REPORTS -- RENEWAL AND REINSTATEMENT OF LI-  
17 CENSE. (1) Every licensee under this part shall maintain records in the  
18 United States, including financial records in conformity with generally  
19 accepted accounting principles, in a manner that will enable the director  
20 to determine whether the licensee is complying with the provisions of this  
21 part. The recordkeeping system of the licensee shall be sufficient if it  
22 makes the required information reasonably available to the director. The  
23 records need not be kept in the place of business where residential mortgage  
24 loans are made, if the director is given free access to the records wherever  
25 located. The records pertaining to any loan need not be preserved for more  
26 than three (3) years after making the final entry relating to the loan.

27 (2) Every mortgage broker or mortgage lender licensed under this part  
28 that employs or contracts with a mortgage loan originator licensed under  
29 part 3 of this chapter, for the purpose of conducting mortgage loan origina-  
30 tion activities in Idaho, shall:

31 (a) Notify the director through the NMLSR, or as otherwise prescribed  
32 by the director, of the employment of, or contractual relationship  
33 with, a mortgage loan originator licensee within thirty (30) days of  
34 such employment or contract;

35 (b) Notify the director through the NMLSR, or as otherwise prescribed  
36 by the director, of the termination of employment of, or contractual re-  
37 lationship with, a mortgage loan originator licensee within thirty (30)  
38 days of such termination; and

39 (c) Maintain any records relating to the employment of, or contractual  
40 relationship with, a mortgage loan originator licensee, for a period  
41 not to exceed three (3) years.

42 (3) On or before December 31 of each year, every mortgage broker and  
43 mortgage lender licensee under this part shall pay through the NMLSR, or  
44 as otherwise prescribed by the director, a nonrefundable annual license  
45 renewal fee of one hundred fifty dollars (\$150), and file with the director  
46 through the NMLSR, or as otherwise prescribed by the director, a renewal  
47 application containing such information as the director may require.  
48 Notwithstanding the provisions of section 67-5254~~9~~, Idaho Code, a license  
49 issued under this part automatically expires if not timely renewed accord-

ing to the requirements of this section. Notwithstanding the provisions of section 67-52549, Idaho Code, branch licenses issued under this part also expire upon the expiration, relinquishment or revocation of a license issued under this part to a licensee's designated home office.

(4) The director may reinstate an expired license during the time period of January 1 through February 28, immediately following license expiration if the director finds that the applicant meets the requirements for licensure under this part after submission to the director of:

(a) A complete application for renewal;

(b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and

(c) A reinstatement fee of two hundred dollars (\$200).

(5) Within forty-five (45) days of the end of each calendar quarter, each mortgage broker and mortgage lender licensee under this part shall submit quarterly mortgage call reports through the NMLSR, which shall be in such form and shall contain such information as the director may require.

(6) Within forty-five (45) days of the end of each calendar year, each mortgage broker and mortgage lender licensee under this part shall submit an annual report of financial condition through the NMLSR, which shall be in such form and shall contain such information as the director may require.

SECTION 47. That Section 26-31-309, Idaho Code, be, and the same is hereby amended to read as follows:

26-31-309. LICENSE RENEWAL AND REINSTATEMENT REQUIREMENTS. (1) The minimum standards for license renewal for mortgage loan originators licensed under this part shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance pursuant to section 26-31-306, Idaho Code;

(b) The mortgage loan originator has satisfied the annual continuing education requirements pursuant to section 26-31-310, Idaho Code; and

(c) The mortgage loan originator has filed with the director through the NMLSR, on or before December 31 of each year, a renewal application containing such information as the director may require, accompanied by a nonrefundable annual license renewal fee of one hundred dollars (\$100).

(2) If a mortgage loan originator fails to timely satisfy the provisions of subsection (1) of this section, notwithstanding the provisions of section 67-52549, Idaho Code, then his license automatically and immediately expires.

(3) The director may reinstate an expired license during the time period of January 1 through February 28, immediately following license expiration if the director finds that the former licensee meets the requirements for licensure under this part after submission to the director of:

(a) A complete application for renewal;

(b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and

(c) A reinstatement fee of one hundred dollars (\$100).

SECTION 48. That Section 28-46-302, Idaho Code, be, and the same is hereby amended to read as follows:

1        28-46-302. LICENSE TO MAKE REGULATED CONSUMER LOANS. (1) The adminis-  
 2 trator shall receive and act on all applications for a license to do busi-  
 3 ness as a regulated lender. Applications shall be filed in the manner pre-  
 4 scribed by the administrator, shall contain such information as the admin-  
 5 istrator may reasonably require, shall be updated as necessary to keep the  
 6 information current, and shall be accompanied by an application fee of three  
 7 hundred fifty dollars (\$350). When an application for licensure is denied  
 8 or withdrawn, the administrator shall retain all fees paid by the applicant.  
 9 The administrator may deny an application for a license if the administrator  
 10 finds that:

11        (a) The financial responsibility, character, and fitness of the appli-  
 12 cant, and of the officers and directors thereof (if the applicant is a  
 13 corporation) are not such as to warrant belief that the business will be  
 14 operated honestly and fairly within the purposes of this act;

15        (b) The applicant does not maintain at least thirty thousand dollars  
 16 (\$30,000) in liquid assets, as determined in accordance with generally  
 17 accepted accounting principles, available for the purpose of making  
 18 loans under this chapter;

19        (c) The applicant has had a license, substantially equivalent to a  
 20 license under this chapter and issued by any state, denied, revoked or  
 21 suspended under the law of such state;

22        (d) The applicant has filed an application for a license which is false  
 23 or misleading with respect to any material fact;

24        (e) The application does not contain all of the information required by  
 25 the administrator; or

26        (f) The application is not accompanied by an application fee of three  
 27 hundred fifty dollars (\$350).

28        (2) A licensee under this chapter shall meet the requirements of sub-  
 29 section (1) of this section at all times while licensed pursuant to this  
 30 chapter. The administrator is empowered to conduct investigations as he may  
 31 deem necessary, to enable him to determine the existence of the requirements  
 32 set out in subsection (1) of this section.

33        (3) Upon written request, the applicant is entitled to a hearing on the  
 34 question of his qualifications for a license if:

35        (a) The administrator has notified the applicant in writing that his  
 36 application has been denied, or objections filed; or

37        (b) The administrator has not issued a license within sixty (60) days  
 38 after the application for the license was filed.

39        If a hearing is held, the applicant and those filing objections shall  
 40 reimburse, pro rata, the administrator for his reasonable and necessary ex-  
 41 penses incurred as a result of the hearing. A request for a hearing may not be  
 42 made more than fifteen (15) days after the administrator has mailed a writing  
 43 to the applicant notifying him that the application has been denied and stat-  
 44 ing in substance the administrator's finding supporting denial of the appli-  
 45 cation or that objections have been filed and the substance thereof.

46        (4) The administrator may issue additional licenses to the same li-  
 47 censee upon application by the licensee, in the manner prescribed by the  
 48 administrator, and payment of the required application fee. A separate  
 49 license shall be required for each place of business. Each license shall  
 50 remain in full force and effect unless the licensee does not satisfy the

1 renewal requirements of subsection (8) of this section, or the license is  
2 relinquished, suspended or revoked.

3 (5) No licensee shall change the location of any place of business, or  
4 consolidate, or close any locations, without giving the administrator at  
5 least fifteen (15) days' prior written notice.

6 (6) A licensee shall not engage in the business of making regulated con-  
7 sumer loans at any place of business for which he does not hold a license nor  
8 shall he engage in business under any other name than that in the license.

9 (7) A license application shall be deemed withdrawn and void if an ap-  
10 plicant submits an incomplete license application and, after receipt of a  
11 written notice of the application deficiency, fails to provide the direc-  
12 tor with information necessary to complete the application within sixty (60)  
13 days of receipt of the deficiency notice. A written deficiency notice shall  
14 be deemed received by a license applicant when:

15 (a) Placed in regular U.S. mail by the director or his agent using an  
16 address provided by the applicant on the license application; or

17 (b) E-mailed to the applicant using an e-mail address provided by the  
18 applicant on the license application; or

19 (c) Posted by the director or his agent on the NMLSR if the license ap-  
20 plication was submitted through the NMLSR.

21 (8) On or before May 31 of each year, every licensee under this chap-  
22 ter shall pay a nonrefundable annual license renewal fee of one hundred fifty  
23 dollars (\$150) per licensed location, and shall file with the administrator  
24 a renewal form containing such information as the administrator may require.  
25 Notwithstanding the provisions of section 67-52549, Idaho Code, a license  
26 issued under this part automatically expires if not timely renewed according  
27 to the requirements of this section. Notwithstanding the provisions of sec-  
28 tion 67-52549, Idaho Code, branch licenses issued under this part also ex-  
29 pire upon the expiration, relinquishment or revocation of a license issued  
30 under this part to a licensee's designated home office.

31 (9) For a period of time not to exceed sixty (60) days following license  
32 expiration, the director may reinstate an expired license if he finds that  
33 the applicant meets the requirements for licensure under this part and the  
34 applicant has submitted to the director:

35 (a) A complete application for renewal;

36 (b) The fees required to apply for license renewal unless previously  
37 paid for the period for which the license renewal applies; and

38 (c) A reinstatement fee of two hundred dollars (\$200).

39 SECTION 49. That Section 28-46-404, Idaho Code, be, and the same is  
40 hereby amended to read as follows:

41 28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application  
42 for a license shall be in writing and under oath to the administrator, in a  
43 form prescribed by the administrator, and shall include at least the follow-  
44 ing:

45 (a) The legal name, residence and business address of the applicant  
46 and, if the applicant is an entity, of every member, partner, director,  
47 senior officer or twenty-five percent (25%) or more equity owner of the  
48 applicant;

1 (b) The location at which the principal place of business of the appli-  
2 cant is located; and

3 (c) Other data and information the administrator may require with re-  
4 spect to the applicant, and if the applicant is an entity, such data and  
5 information of its members, partners, directors, senior officers, or  
6 twenty-five percent (25%) or more equity owners of the applicant.

7 (2) Each application for a license shall be accompanied by an applica-  
8 tion fee in the amount of three hundred fifty dollars (\$350). Such fee shall  
9 not be subject to refund.

10 (3) The fee set forth in subsection (2) of this section shall be re-  
11 quired for each location for which an application is submitted.

12 (4) Within sixty (60) days of the filing of an application in a form  
13 prescribed by the administrator, accompanied by the fee required in subsec-  
14 tion (2) of this section, the administrator shall investigate to ascertain  
15 whether the qualifications prescribed by subsection (1) of section 28-46-  
16 403, Idaho Code, have been satisfied. If the administrator finds that the  
17 qualifications have been satisfied and approves the documents, the adminis-  
18 trator shall issue to the applicant a license to engage in the payday loan  
19 business.

20 (5) Notwithstanding the provisions of section 67-52549, Idaho Code,  
21 a license issued pursuant to this part automatically expires if not timely  
22 renewed according to the requirements of subsection (7) of this section,  
23 or the license is relinquished, suspended or revoked pursuant to this act.  
24 Notwithstanding the provisions of section 67-52549, Idaho Code, branch  
25 licenses issued under this part also expire upon the expiration, relin-  
26 quishment or revocation of a license issued under this part to a licensee's  
27 designated home office.

28 (6) A license application shall be deemed withdrawn and void if an ap-  
29 plicant submits an incomplete license application and, after receipt of a  
30 written notice of the application deficiency, fails to provide the direc-  
31 tor with information necessary to complete the application within sixty (60)  
32 days of receipt of the deficiency notice. A written deficiency notice shall  
33 be deemed received by a license applicant when:

34 (a) Placed in regular U.S. mail by the director or his agent using an  
35 address provided by the applicant on the license application; or

36 (b) E-mailed to the applicant using an e-mail address provided by the  
37 applicant on the license application; or

38 (c) Posted by the director or his agent on the NMLSR if the license ap-  
39 plication was submitted through the NMLSR.

40 (7) On or before May 31 of each year, every licensee under this part 4  
41 shall pay a nonrefundable annual license renewal fee of one hundred fifty  
42 dollars (\$150) per licensed location, and shall file with the administrator  
43 a renewal form containing such information as the administrator may require.

44 (8) For a period of time not to exceed sixty (60) days following license  
45 expiration, the director may reinstate an expired license if he finds that  
46 the applicant meets the requirements for licensure under this part and the  
47 applicant has submitted to the director:

48 (a) A complete application for renewal;

49 (b) The fees required to apply for license renewal unless previously  
50 paid for the period for which the license renewal applies; and

1 (c) A reinstatement fee of two hundred dollars (\$200).

2 SECTION 50. That Section 33-5209C, Idaho Code, be, and the same is  
3 hereby amended to read as follows:

4 33-5209C. ENFORCEMENT -- REVOCATION -- APPEAL. (1) An authorized  
5 chartering entity shall continually monitor the performance and legal com-  
6 pliance of the public charter schools it oversees, including collecting and  
7 analyzing data to support ongoing evaluation according to the performance  
8 certificate. Every authorized chartering entity shall have the authority  
9 to conduct or require oversight activities that enable the authorized char-  
10 tering entity to fulfill its responsibilities pursuant to the provisions  
11 of this chapter, including conducting appropriate inquiries and investiga-  
12 tions, ~~so~~ as long as those activities are consistent with the intent of this  
13 chapter, adhere to the terms of the performance certificate and do not unduly  
14 inhibit the autonomy granted to public charter schools.

15 (2) Each authorized chartering entity shall annually publish and make  
16 available to the public a performance report for each public charter school  
17 it oversees, in accordance with the performance framework set forth in the  
18 performance certificate and section 33-5209A, Idaho Code. The authorized  
19 chartering entity may require each public charter school it oversees to sub-  
20 mit an annual report to assist the authorized chartering entity in gather-  
21 ing complete information about each school consistent with the performance  
22 framework. Each public charter school shall publish its annual performance  
23 report on the school's website.

24 (3) If an authorized chartering entity has reason to believe that a  
25 public charter school cannot remain fiscally sound for the remainder of its  
26 certificate term, it shall provide the state department of education with  
27 written notification of such concern. Upon receiving such notification,  
28 the state department of education shall have the authority to modify the  
29 percentage of the total appropriation to be paid to the public charter school  
30 pursuant to the provisions of section 33-1009(1), Idaho Code, such that  
31 equal percentages are paid on each of the prescribed dates.

32 (4) If an authorized chartering entity has reason to believe that a  
33 charter holder or public charter school has violated any provision of law, it  
34 shall notify the charter holder and the entity responsible for administering  
35 said law of the possible violation.

36 (5) If an authorized chartering entity revokes or does not renew a char-  
37 ter, the authorized chartering entity shall clearly state, in a resolution  
38 of its governing board, the reasons for the revocation or nonrenewal.

39 (6) Within fourteen (14) days of taking action to renew, not renew or  
40 revoke a charter, the authorized chartering entity shall report to the state  
41 board of education the action taken and shall provide a copy of the report to  
42 the charter holder at the same time that the report is submitted to the state  
43 board of education. The report shall include a copy of the authorized char-  
44 tering entity's resolution setting forth the action taken and reasons for  
45 the decision and assurances as to compliance with all of the requirements set  
46 forth in this chapter.

47 (7) A charter may be revoked by the authorized chartering entity if the  
48 public charter school has failed to meet any of the specific, written con-  
49 ditions for necessary improvements established pursuant to the provisions

of section 33-5209B(1), Idaho Code, by the dates specified. Revocation may not occur until the charter holder has been afforded a public hearing, unless the authorized chartering entity determines that the continued operation of the public charter school presents an imminent public safety issue, in which case the charter may be revoked immediately. Public hearings shall be conducted by the authorized chartering entity or such other person or persons appointed by the authorized chartering entity to conduct public hearings and receive evidence as a contested case in accordance with the provisions of ~~section 67-5242~~ chapter 52, title 67, Idaho Code. Notice and opportunity to reply shall include, at a minimum, written notice setting out the basis for consideration of revocation, a period of not less than thirty (30) days within which the charter holder can reply in writing, and a public hearing within thirty (30) days of the receipt of the written reply.

(8) A decision to revoke or nonrenew a charter or to deny a revision of a charter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in section 33-5207(5)(b), Idaho Code. In the event the state board of education reverses a decision of revocation or nonrenewal, the charter holder subject to such action shall then be placed under the chartering authority of the public charter school commission.

SECTION 51. That Section 40-709A, Idaho Code, be, and the same is hereby amended to read as follows:

40-709A. PETITION FOR HIGHWAY MAINTENANCE. (1) Any county or highway district may petition the Idaho transportation board to take action, as provided in this section, to provide for the maintenance of a highway or portion thereof under the jurisdiction of a county or highway district.

(2) The petition and supporting materials shall establish the following facts:

(a) That the subject highway or relevant portion thereof provides the only practical access to a city, town or other developed area;

(b) That the county or highway district with jurisdiction over the subject highway, or relevant portion thereof, is obligated to maintain the highway or relevant portion thereof;

(c) That said county or highway district historically has provided maintenance to the subject highway or relevant portion thereof sufficient to allow safe motorist access to the city, town or other developed area; and

(d) Said county or highway district is now failing to provide maintenance sufficient to allow safe motorist access to the city, town or other developed area.

The petition shall not be based on failure to improve the highway or to expand maintenance beyond what historically has been provided. The petition shall also document the petitioner's efforts to communicate its concerns to the subject county or highway district and explain why the issue could not be resolved. The petitioner shall provide notice to the subject county or highway district, including a copy of the petition and all supporting materials.

(3) The Idaho transportation department shall publish notice of the petition as set forth in section 40-206, Idaho Code, and shall provide the subject county or highway district a reasonable opportunity to respond to



1 the petition, to take corrective action, to explain any extenuating cir-  
2 cumstances or to otherwise address the concerns presented in the petition.  
3 Based on all information available to it, including such independent inves-  
4 tigation as it deems appropriate, the Idaho transportation department shall  
5 make a recommendation for action to the Idaho transportation board.

6 (4) The Idaho transportation board shall review the petition and the  
7 recommendation of the Idaho transportation department.

8 (5) If the Idaho transportation board determines that the petition is  
9 without merit, it may deny the petition without hearing and issue written  
10 findings and conclusions stating its reasons therefor.

11 (6) If the Idaho transportation board determines that the petition may  
12 have merit, it shall hold a hearing on the matter and allow all affected enti-  
13 ties and interested persons an opportunity to be heard.

14 (7) Following the hearing provided in subsection (6) of this section,  
15 the Idaho transportation board shall either grant or deny the petition and  
16 issue findings and conclusions stating its reasons therefor. The petition  
17 shall be granted only upon a finding that the public safety, health or wel-  
18 fare would be endangered because the subject county or highway district is  
19 inappropriately and unreasonably failing to maintain a highway or portion  
20 thereof that it is obligated to maintain and that the facts set out in subsec-  
21 tion (2) (a), (b), (c) and (d) of this section have been established. In de-  
22 termining the reasonableness of the subject county or highway district's ac-  
23 tions with respect to the highway, the Idaho transportation board shall take  
24 into account the authority of the county or highway district to temporarily  
25 close a highway, the availability of funding and other considerations ad-  
26 dressed in sections 40-1311 and 40-1315, Idaho Code. The Idaho transporta-  
27 tion board shall not approve a petition with respect to a highway or portion  
28 thereof that has been vacated or is subject to an ongoing vacation or valida-  
29 tion proceeding.

30 (8) If the petition is granted, the transportation department may un-  
31 dertake itself the maintenance of the highway or portion thereof or it may  
32 contract with another political subdivision to undertake the maintenance.  
33 In either case, the transportation department shall certify to the state  
34 controller the actual cost of maintenance undertaken by the transportation  
35 department or by the contracted political subdivision. The state controller  
36 shall pay into the state highway account of the Idaho transportation depart-  
37 ment, or directly to the contracted political subdivision, the actual costs  
38 incurred as certified by the transportation department. Such funds shall be  
39 deducted from the funds that would otherwise have been allocated pursuant to  
40 section 40-709, Idaho Code, to the county or highway district that failed to  
41 provide adequate maintenance.

42 (9) Political subdivisions that acquire funds for roadwork of any type,  
43 either pursuant to this section or by separate voluntary agreement with an-  
44 other political subdivision or the state, are hereby authorized to expend  
45 such funds outside of their jurisdictional boundaries notwithstanding any  
46 other provision of law.

47 (10) A county or highway district that has been the subject of a peti-  
48 tion granted pursuant to this section may request a termination or modifi-  
49 cation of the arrangement authorized by the Idaho transportation department  
50 for maintenance by the Idaho transportation department or another entity. A

request for termination shall be accompanied by appropriate documentation showing that the requesting entity is prepared to resume its maintenance responsibility for the highway. The Idaho transportation board shall consider the request for termination or modification, taking into account the information presented by the requesting entity and any other information available to the Idaho transportation board. If the Idaho transportation board determines that the concerns giving rise to the petition have been addressed and the entity is committed to resume maintenance of the highway, the Idaho transportation board shall terminate its prior action and allow the entity to resume responsibility for maintenance of the highway upon the beginning of the next fiscal year. The Idaho transportation board may also modify the existing arrangement for funding of maintenance.

(11) A decision by the Idaho transportation board granting or denying a petition or request under this section is a final agency action for purposes of section 67-5270(2)~~60~~, Idaho Code.

SECTION 52. That Section 41-227, Idaho Code, be, and the same is hereby amended to read as follows:

41-227. EXAMINATION REPORT. (1) The director or his examiner shall make a full and true written report of every examination made by him under this chapter, and shall verify the report by his oath.

(2) The report shall comprise only facts appearing upon the books, papers, records or documents of the person being examined, or ascertained from testimony of individuals under oath concerning the affairs of such person, together with such conclusions and recommendations as may reasonably be warranted from such facts.

(3) Prior to a hearing and prior to any modifications, the report shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

(4) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(5) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers, and enter an order:

(a) Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the director, the director may order the company to take any action the director considers necessary and appropriate to cure such violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection (24) of this section; or

1 (c) Calling for an investigatory hearing with no less than twenty (20)  
2 days' notice to the company for purposes of obtaining additional docu-  
3 mentation, data, information and testimony.

4 (6) (a) All orders entered pursuant to subsection (5) (a) of this sec-  
5 tion shall be accompanied by findings and conclusions resulting from  
6 the director's consideration and review of the examination report, rel-  
7 evant examiner work papers and any written submissions or rebuttals.  
8 Any such order shall be considered a final order and may be appealed  
9 pursuant to sections 67-5270~~60~~<sup>60</sup> through 67-5279~~69~~<sup>69</sup>, Idaho Code, and shall  
10 be served upon the company by certified mail, together with a copy of the  
11 adopted examination report. Within thirty (30) days of the issuance of  
12 the adopted report, the company shall file affidavits executed by each  
13 of its directors stating under oath that they have received a copy of the  
14 adopted report and related orders.

15 (b) Any hearing conducted under subsection (5) (c) of this section by  
16 the director or authorized representative, shall be conducted in accor-  
17 dance with the provisions of chapter 52, title 67, Idaho Code, as a non-  
18 adversarial confidential investigatory proceeding as necessary for the  
19 resolution of any inconsistencies, discrepancies or disputed issues  
20 apparent upon the face of the filed examination report or raised by, or  
21 as a result of, the director's review of relevant work papers or by the  
22 written submission or rebuttal of the company. Within twenty (20) days  
23 of the conclusion of any such hearing, the director shall enter an order  
24 pursuant to the provisions of subsection (5) (a) of this section.

25 (c) The director shall not appoint a contract examiner or an employee of  
26 the department as an authorized representative to conduct the hearing.  
27 Nothing contained in this section shall require the department to dis-  
28 close any information or records which would indicate or show the con-  
29 tent of any investigation or activity of a criminal justice agency, ex-  
30 cept to the extent that the director relied upon information furnished  
31 to the director by such criminal justice agency in making his decision.

32 (7) The report when so verified and filed shall be admissible in evi-  
33 dence in any action or proceeding brought by the director against the person  
34 examined, or against its officers, employees or agents, and shall be pre-  
35 sumptive evidence of the material facts stated therein. The director or his  
36 examiners may at any time testify and offer other proper evidence as to in-  
37 formation secured or matters discovered during the course of an examination,  
38 whether or not a written report of the examination has been either made, fur-  
39 nished or filed in the department.

40 (8) After an order is entered under the provisions of subsection (5) (a)  
41 of this section, the director may publish the report or the results of the  
42 examination as contained therein which report or results are a public record  
43 and shall be exempt from the exemptions from disclosure provided in chapter  
44 1, title 74, Idaho Code.

45 (9) Nothing contained in this chapter shall prevent or be construed  
46 as prohibiting the director from disclosing the content of an examination  
47 report, preliminary examination report or results, or any matter relating  
48 thereto, to the insurance department of this or any other state or country,  
49 or to law enforcement officials of this or any other state or agency of the  
50 federal government at any time, so long as the agency or office receiving the

1 report or matters relating thereto agrees in writing to hold it confidential  
2 and in a manner consistent with this chapter.

3 (10) All working papers, recorded information, documents and copies  
4 thereof produced by, obtained by or disclosed to the director or any other  
5 person in the course of an examination made under the provisions of this  
6 chapter shall be made available to the person or company which was the sub-  
7 ject of the examination in proceedings pursuant to chapter 52, title 67,  
8 Idaho Code, but shall otherwise be held by the director as a record not re-  
9 quired to be made public pursuant to exemptions from disclosure provided in  
10 chapter 1, title 74, Idaho Code.

11 SECTION 53. That Section 47-328, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 47-328. RULES FOR COMMISSION -- ADMINISTRATIVE PROCEDURES. (1) The  
14 commission shall have authority to hear rulemaking proceedings, complaints  
15 filed with it pursuant to this chapter and appeals from the oil and gas ad-  
16 ministrator's decision on an application filed pursuant to this chapter, and  
17 any other matter the commission decides should be heard by the commission.  
18 The commission may act on its own motion. The commission may prescribe rules  
19 governing the procedure before it, subject to the provisions of the adminis-  
20 trative procedure act, chapter 52, title 67, Idaho Code. Provided however,  
21 that no rulemaking except for that done under section 67-5226, Idaho Code,  
22 may be conducted for twelve (12) months beginning on July 1, 2017.

23 (2) In all cases where a complaint is made by the commission or any per-  
24 son that any provision of this act or any rule or order of the commission  
25 is being violated, the commission shall serve notice of any hearing to be  
26 held on such application or complaint to the interested persons by certified  
27 mail, return receipt requested, or in the same manner as is provided in the  
28 rules of civil procedure for the service of summons in civil actions. Where  
29 the interested person is unknown or cannot be located, the commission shall  
30 serve notice by publishing at least one (1) notice of the hearing to such per-  
31 son in a newspaper of general circulation in the county where the affected  
32 tract is located. Such notice must be sent, delivered or published, as ap-  
33 propriate, at least five (5) business days before the date of the hearing.

34 (3) Except as provided in section 47-316(1)(a), Idaho Code, and sub-  
35 section (2) of this section, any request for an order related to oil and gas  
36 activities within the commission's jurisdiction, other than a civil penalty  
37 proceeding pursuant to section 47-329, Idaho Code, or other enforcement ac-  
38 tion by the department of lands or the commission, shall be made by applica-  
39 tion to the department of lands and processed as provided in this section.

40 (a) The department shall notify the applicant within five (5) business  
41 days of receipt of an application if additional information is required  
42 for the department to evaluate the application.

43 (b) For applications involving an order regarding unit operations or  
44 integration of a drilling unit, the applicant shall send a copy of the  
45 application and supporting documents to all known and located uncommi-  
46 tted owners, to all working interest owners within the unit, and to the  
47 respective city or county where the proposed unit is located. The mail-  
48 ing shall be sent by certified mail within seven (7) calendar days of  
49 filing the application and include notice of the hearing date on which

1 the oil and gas administrator will consider the application. For any  
2 uncommitted owners and working interest owners who cannot be located,  
3 an applicant shall publish notice of any application for an order, no-  
4 tice of hearing and response deadline once in a newspaper of general  
5 circulation in the county in which the affected property is located and  
6 request the department publish notice on its website within seven (7)  
7 calendar days of filing of the application. Only an uncommitted owner  
8 in the affected unit may file an objection or other response to the ap-  
9 plication, and the uncommitted owner shall file at least fourteen (14)  
10 calendar days before the hearing date provided in the notice.

11 (c) For applications not involving paragraph (b) of this subsection,  
12 the department and any uncommitted owner within the area defined in the  
13 application may file objections or other responses to the application  
14 and shall file at least fourteen (14) calendar days before the hearing  
15 date provided in the notice.

16 (d) The oil and gas administrator shall hear the application and make  
17 a decision on the application's merits. The oil and gas administrator  
18 shall set regular hearing dates. Applications shall be filed at least  
19 forty-five (45) calendar days before a desired hearing date. Untimely  
20 applications shall be continued until the next hearing. The oil and gas  
21 administrator may for good cause continue any hearing. The oil and gas  
22 administrator may appoint a hearing officer, who shall have the power  
23 and authority to conduct hearings. Discovery is not permitted. The de-  
24 partment may appear and testify at the hearing. When applications are  
25 uncontested, the applicant may request, and the oil and gas administra-  
26 tor may allow, approval without a hearing based on review of the merits  
27 of a verified application and the supporting exhibits.

28 (e) The oil and gas administrator shall issue a written decision on any  
29 such application within thirty (30) calendar days of the hearing. The  
30 oil and gas administrator's decision shall not be subject to any motion  
31 for reconsideration or further review, except for appeal to the commis-  
32 sion provided in subsection (4) of this section.

33 (4) The oil and gas administrator's decision on an application or a re-  
34 quest for an order may be appealed to the commission by the applicant or any  
35 owner who filed an objection or other response to the application within the  
36 time required. An appeal must be filed with the oil and gas administrator  
37 within fourteen (14) calendar days of the date of issuance of the oil and  
38 gas administrator's written decision. The date of issuance shall be three  
39 (3) calendar days after the oil and gas administrator deposits the decision  
40 in the U.S. mail, or the date on which he remits a decision electronically.  
41 Such appeal shall include the reasons and authority for the appeal and shall  
42 identify any facts in the record supporting the appeal. Any person appeal-  
43 ing shall serve a copy of the appeal materials on any other person who par-  
44 ticipated in the proceedings, by certified mail, or by personal service. Any  
45 person who participated in the proceeding may file a response to the appeal  
46 within five (5) business days of service of a copy of the appeal materials.  
47 The appellant shall provide the oil and gas administrator with proof of ser-  
48 vice of the appeal materials on other persons as required in this section.  
49 The commission shall make a decision based on the record as set forth in the  
50 written submittals of only the appellant and any other participating quali-

1   fied person, the oil and gas administrator's decision, and any oral argument  
2   taken by the commission at an appeal hearing.

3       (5) Appeals to the commission shall be heard at the next regularly  
4   scheduled commission hearing, or at a special meeting of the commission if  
5   determined by the commission. In no case will a hearing be later than thirty  
6   (30) calendar days after the filing of an appeal. The commission may take  
7   argument from, but not new testimony of, the appellant and other qualified  
8   participating persons at the hearing. The commission shall make a deci-  
9   sion on the appeal at the hearing and issue a written order within five (5)  
10   business days of the hearing. The prevailing party shall draft a proposed  
11   written order and submit it within two (2) business days. The final order of  
12   the commission shall not be subject to any motion for reconsideration.

13       (6) If no appeal is filed with the commission within the required time,  
14   the decision of the oil and gas administrator shall become the final order.

15       (7) Judicial review of actions taken by the commission shall be gov-  
16   erned by the provisions of chapter 52, title 67, Idaho Code.

17       (8) For an application or request for an order submitted under subsec-  
18   tion (3) of this section, only a person qualified under subsection (4) of  
19   this section who has completed the appeal procedures set forth in this sec-  
20   tion shall be considered to have exhausted administrative remedies as re-  
21   quired in section 67-5271~~65~~<sup>65</sup>, Idaho Code.

22       (9) Each order shall include a reasoned statement in support of the  
23   decision, including a concise statement of facts supporting any findings,  
24   a statement of available procedures and time limits for appeals. Findings  
25   must be based exclusively on materials in the record. The applicant and any  
26   participating qualified person shall be served with a copy of the order. The  
27   order shall include or be accompanied by a certificate of service.

28       (10) Every application shall be signed by the applicant or his represen-  
29   tative, and his address shall be stated thereon. The signature of the ap-  
30   plicant or his representative constitutes a certificate by him that he has  
31   read the application and that to the best of his knowledge, information and  
32   belief there is good ground to support the same. Each application shall be  
33   of such form and content and accompanied by the number of copies required by  
34   rule of the commission. Each application shall be accompanied by a fee as es-  
35   tablished in statute or rule.

36       SECTION 54. That Section 50-222, Idaho Code, be, and the same is hereby  
37   amended to read as follows:

38       50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legisla-  
39   ture hereby declares and determines that it is the policy of the state of  
40   Idaho that cities of the state should be able to annex lands which are reason-  
41   ably necessary to assure the orderly development of Idaho's cities in order  
42   to allow efficient and economically viable provision of tax-supported and  
43   fee-supported municipal services, to enable the orderly development of pri-  
44   vate lands which benefit from the cost-effective availability of municipal  
45   services in urbanizing areas and to equitably allocate the costs of public  
46   services in management of development on the urban fringe.

47       (2) General authority. Cities have the authority to annex land into a  
48   city upon compliance with the procedures required in this section. In any  
49   annexation proceeding, all portions of highways lying wholly or partially

1 within an area to be annexed shall be included within the area annexed unless  
 2 expressly agreed between the annexing city and the governing board of the  
 3 highway agency providing road maintenance at the time of annexation. Pro-  
 4 vided further, that said city council shall not have the power to declare  
 5 such land, lots or blocks a part of said city if they will be connected to such  
 6 city only by a shoestring or strip of land which comprises a railroad or high-  
 7 way right-of-way.

8 (3) Annexation classifications. Annexations shall be classified and  
 9 processed according to the standards for each respective category set forth  
 10 herein. The three (3) categories of annexation are:

11 (a) Category A: Annexations wherein:

12 (i) All private landowners have consented to annexation. Annex-  
 13 ation where all landowners have consented may extend beyond the  
 14 city area of impact provided that the land is contiguous to the  
 15 city and that the comprehensive plan includes the area of annexa-  
 16 tion;

17 (ii) Any residential enclaved lands of less than one hundred (100)  
 18 privately-owned parcels, irrespective of surface area, which are  
 19 surrounded on all sides by land within a city or which are bounded  
 20 on all sides by lands within a city and by the boundary of the  
 21 city's area of impact; or

22 (iii) The lands are those for which owner approval must be given  
 23 pursuant to subsection (5) (b) (v) of this section.

24 (b) Category B: Annexations wherein:

25 (i) The subject lands contain less than one hundred (100) sepa-  
 26 rate private ownerships and platted lots of record and where not  
 27 all such landowners have consented to annexation; or

28 (ii) The subject lands contain more than one hundred (100) sepa-  
 29 rate private ownerships and platted lots of record and where  
 30 landowners owning more than fifty percent (50%) of the area of the  
 31 subject private lands have consented to annexation prior to the  
 32 commencement of the annexation process; or

33 (iii) The lands are the subject of a development moratorium or a  
 34 water or sewer connection restriction imposed by state or local  
 35 health or environmental agencies; provided such lands shall not be  
 36 counted for purposes of determining the number of separate private  
 37 ownerships and platted lots of record aggregated to determine the  
 38 appropriate category.

39 (c) Category C: Annexations wherein the subject lands contain more  
 40 than one hundred (100) separate private ownerships and platted lots of  
 41 record and where landowners owning more than fifty percent (50%) of the  
 42 area of the subject private lands have not consented to annexation prior  
 43 to commencement of the annexation process.

44 (4) (a) Evidence of consent to annexation. For purposes of this sec-  
 45 tion, and unless excepted in paragraph (b) of this subsection (4),  
 46 consent to annex shall be valid only when evidenced by written instru-  
 47 ment consenting to annexation executed by the owner or the owner's  
 48 authorized agent. Written consent to annex lands must be recorded in  
 49 the county recorder's office to be binding upon subsequent purchasers,  
 50 heirs, or assigns of lands addressed in the consent. Lands need not be

contiguous or adjacent to the city limits at the time the landowner consents to annexation for the property to be subject to a valid consent to annex; provided however, no annexation of lands shall occur, irrespective of consent, until such land becomes contiguous or adjacent to such city.

(b) Exceptions to the requirement of written consent to annexation. The following exceptions apply to the requirement of written consent to annexation provided for in subsection (4) (a) of this section:

(i) Enclaved lands: In category A annexations, no consent is necessary for enclaved lands meeting the requirements of subsection (3) (a) (ii) of this section;

(ii) Implied consent: In category B and C annexations, valid consent to annex is implied for the area of all lands connected to a water or wastewater collection system operated by the city if the connection was requested in writing by the owner, or the owner's authorized agent, or completed before July 1, 2008.

(5) Annexation procedures. Annexation of lands into a city shall follow the procedures applicable to the category of lands as established by this section. The implementation of any annexation proposal wherein the city council determines that annexation is appropriate shall be concluded with the passage of an ordinance of annexation.

(a) Procedures for category A annexations: Lands lying contiguous or adjacent to any city in the state of Idaho may be annexed by the city if the proposed annexation meets the requirements of category A. Upon determining that a proposed annexation meets such requirements, a city may initiate the planning and zoning procedures set forth in chapter 65, title 67, Idaho Code, to establish the comprehensive planning policies, where necessary, and zoning classification of the lands to be annexed.

(b) Procedures for category B annexations: A city may annex lands that would qualify under the requirements of category B annexation if the following requirements are met:

(i) The lands are contiguous or adjacent to the city and lie within the city's area of city impact;

(ii) The land is laid off into lots or blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres, or whenever the land is surrounded by the city. Splits of ownership which occurred prior to January 1, 1975, and which were the result of placement of public utilities, public roads or highways, or railroad lines through the property shall not be considered as evidence of an intent to develop such land and shall not be sufficient evidence that the land has been laid off or subdivided in lots or blocks. A single sale after January 1, 1975, of five (5) acres or less to a family member of the owner for the purpose of constructing a residence shall not constitute a sale within the meaning of this section. For purposes of this section, "family member" means a natural person or



1 the spouse of a natural person who is related to the owner by blood,  
 2 adoption or marriage within the first degree of consanguinity;

3 (iii) Preparation and publication of a written annexation plan,  
 4 appropriate to the scale of the annexation contemplated, which in-  
 5 cludes, at a minimum, the following elements:

6 (A) The manner of providing tax-supported municipal ser-  
 7 vices to the lands proposed to be annexed;

8 (B) The changes in taxation and other costs, using examples,  
 9 which would result if the subject lands were to be annexed;

10 (C) The means of providing fee-supported municipal ser-  
 11 vices, if any, to the lands proposed to be annexed;

12 (D) A brief analysis of the potential effects of annexation  
 13 upon other units of local government which currently provide  
 14 tax-supported or fee-supported services to the lands pro-  
 15 posed to be annexed; and

16 (E) The proposed future land use plan and zoning designation  
 17 or designations, subject to public hearing, for the lands  
 18 proposed to be annexed;

19 (iv) Compliance with the notice and hearing procedures governing  
 20 a zoning district boundary change as set forth in section 67-6511,  
 21 Idaho Code, on the question of whether the property should be  
 22 annexed and, if annexed, the zoning designation to be applied  
 23 thereto; provided however, the initial notice of public hearing  
 24 concerning the question of annexation and zoning shall be pub-  
 25 lished in the official newspaper of the city and mailed by first  
 26 class mail to every property owner with lands included in such  
 27 annexation proposal not less than twenty-eight (28) days prior  
 28 to the initial public hearing. All public hearing notices shall  
 29 establish a time and procedure by which comments concerning the  
 30 proposed annexation may be received in writing and heard and,  
 31 additionally, public hearing notices delivered by mail shall in-  
 32 clude a one (1) page summary of the contents of the city's proposed  
 33 annexation plan and shall provide information regarding where the  
 34 annexation plan may be obtained without charge by any property  
 35 owner whose property would be subject to the annexation proposal.

36 (v) In addition to the standards set forth elsewhere in this sec-  
 37 tion, annexation of the following lands must meet the following  
 38 requirements:

39 (A) Property, owned by a county or any entity within the  
 40 county, that is used as a fairgrounds area under the pro-  
 41 visions of chapter 8, title 31, Idaho Code, or chapter 2,  
 42 title 22, Idaho Code, must have the consent of a majority of  
 43 the board of county commissioners of the county in which the  
 44 property lies; and

45 (B) Property, owned by a nongovernmental entity, that is  
 46 used to provide outdoor recreational activities to the pub-  
 47 lic and that has been designated as a planned unit develop-  
 48 ment of fifty (50) acres or more and does not require or uti-  
 49 lize any city services must have the express written permis-  
 50 sion of the nongovernmental entity owner.

(vi) After considering the written and oral comments of property owners whose land would be annexed and other affected persons, the city council may proceed with the enactment of an ordinance of annexation and zoning. In the course of the consideration of any such ordinance, the city must make express findings, to be set forth in the minutes of the city council meeting at which the annexation is approved, as follows:

(A) The land to be annexed meets the applicable requirements of this section and does not fall within the exceptions or conditional exceptions contained in this section;

(B) The annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city;

(C) The annexation is reasonably necessary for the orderly development of the city;

(vii) Notwithstanding any other provision of this section, railroad right-of-way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right-of-way.

(c) Procedures for category C annexations: A city may annex lands that would qualify under the requirements of category C annexation if the following requirements are met:

(i) Compliance with the procedures governing category B annexations; and

(ii) Evidence of consent to annexation based upon the following procedures:

(A) Following completion of all procedures required for consideration of a category B annexation, but prior to enactment of an annexation ordinance and upon an affirmative action by the city council, the city shall mail notice to all private landowners owning lands within the area to be annexed, exclusive of the owners of lands that are subject to a consent to annex which complies with subsection (4) (a) of this section defining consent. Such notice shall invite property owners to give written consent to the annexation, include a description of how that consent can be made and where it can be filed, and inform the landowners where the entire record of the subject annexation may be examined. Such mailed notice shall also include a legal description of the lands proposed for annexation and a simple map depicting the location of the subject lands.

(B) Each landowner desiring to consent to the proposed annexation must submit the consent in writing to the city clerk by a date specified in the notice, which date shall not be later than forty-five (45) days after the date of the mailing of such notice.

(C) After the date specified in the notice for receipt of written consent, the city clerk shall compile and present to the city council a report setting forth: (i) the total physical area sought to be annexed, and (ii) the total physical area of the lands, as expressed in acres or square feet,

1 whose owners have newly consented in writing to the annexa-  
 2 tion, plus the area of all lands subject to a prior consent to  
 3 annex which complies with subsection (4) (a) of this section  
 4 defining consent. The clerk shall immediately report the  
 5 results to the city council.

6 (D) Upon receiving such report, the city council shall re-  
 7 view the results and may thereafter confirm whether consent  
 8 was received from the owners of a majority of the land. The  
 9 results of the report shall be reflected in the minutes of  
 10 the city council. If the report as accepted by the city coun-  
 11 cil confirms that owners of a majority of the land area have  
 12 consented to annexation, the city council may enact an ordi-  
 13 nance of annexation, which thereafter shall be published and  
 14 become effective according to the terms of the ordinance.  
 15 If the report confirms that owners of a majority of the land  
 16 area have not consented to the annexation, the category C  
 17 annexation shall not be authorized.

18 (6) The decision of a city council to annex and zone lands as a category  
 19 B or category C annexation shall be subject to judicial review in accordance  
 20 with the procedures provided in chapter 52, title 67, Idaho Code, and pur-  
 21 suant to the standards set forth in section 67-5279~~67~~, Idaho Code. Any such  
 22 appeal shall be filed by an affected person in the appropriate district court  
 23 no later than twenty-eight (28) days after the date of publication of the an-  
 24 nexation ordinance. All cases in which there may arise a question of the va-  
 25 lidity of any annexation under this section shall be advanced as a matter of  
 26 immediate public interest and concern, and shall be heard by the district  
 27 court at the earliest practicable time.

28 (7) Annexation of noncontiguous municipal airfield. A city may annex  
 29 land that is not contiguous to the city and is occupied by a municipally owned  
 30 or operated airport or landing field. However, a city may not annex any other  
 31 land adjacent to such noncontiguous facilities which is not otherwise annex-  
 32 able pursuant to this section.

33 SECTION 55. That Section 54-2509, Idaho Code, be, and the same is hereby  
 34 amended to read as follows:

35 54-2509. PENALTY FOR VIOLATIONS OF LAW -- POWER OF COMMISSION. (1) Any  
 36 person holding a race meet, and any other person required by this act or the  
 37 rules of the commission to be licensed, participating, directly or indi-  
 38 rectly, in a race meet, without first being licensed by the commission, and  
 39 any person violating any of the terms or provisions of this act is guilty of a  
 40 misdemeanor.

41 (a) There shall be an absolute prohibition of the use of live lures in  
 42 the state of Idaho for the training of or racing of racing dogs. Any  
 43 violation of the provisions of this section shall be a felony punish-  
 44 able by a fine not exceeding twenty-five thousand dollars (\$25,000),  
 45 or by a prison term not to exceed seven (7) years, or by both such fine  
 46 and imprisonment. In addition the state racing commission shall not  
 47 license any breeder, trainer or kennel whose dogs have been trained or  
 48 raced with the use of live lures. The Idaho state racing commission

1 shall adopt rules that will provide for the humane treatment of the dogs  
2 involved in any aspect of training for or engaging in dog racing.

3 (2) The commission shall have the power to exclude from any and all race  
4 courses in this state any person who the commission deems detrimental to the  
5 best interests of racing, or any person who violates any of the provisions of  
6 this act or any rule or order of the commission.

7 (3) It shall be lawful to conduct race meets on or at a race track, or  
8 otherwise, at any time during the week.

9 (4) Any person maintaining a license issued by the commission, who vio-  
10 lates the provisions of this act or the rules of the commission, may have such  
11 license suspended or revoked. In addition to such suspension or revocation  
12 the commission may levy a monetary penalty commensurate with the gravity of  
13 the offense, not to exceed two thousand five hundred dollars (\$2,500). The  
14 commission, by rule shall provide a summary procedure for such determination  
15 at the track, the penalty amount for specified violations, and shall provide  
16 for an appeal of any summary decision to the commission. At-the-track sum-  
17 mary proceedings shall not be subject to the provisions of chapter 52, ti-  
18 tle 67, Idaho Code. Hearings and appeals before the commission as allowed by  
19 this act or the rules of the commission shall be subject to chapter 52, ti-  
20 tle 67, Idaho Code, except the provisions of section 67-5254(2) 59(1), Idaho  
21 Code, which is inconsistent with the unique requirements of racing.

22 (5) All law enforcement officers in this state shall assist in the en-  
23 forcement of this act and the rules of the commission.

24 SECTION 56. That Section 56-133, Idaho Code, be, and the same is hereby  
25 repealed.

26 SECTION 57. That Chapter 1, Title 56, Idaho Code, be, and the same is  
27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
28 ignated as Section 56-133, Idaho Code, and to read as follows:

29 56-133. ADMINISTRATIVE APPEALS. Administrative appeals shall be han-  
30 dled in accordance with chapter 52, title 67, Idaho Code.

31 SECTION 58. That Section 56-202, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33 56-202. DUTIES OF DIRECTOR OF STATE DEPARTMENT OF HEALTH AND WEL-  
34 FARE. The director of the state department of health and welfare shall:

35 (a) Administer public assistance and social services to eligible peo-  
36 ple;

37 (b) Promulgate, adopt and enforce such rules and such methods of admin-  
38 istration as may be necessary or proper to carry out the provisions of title  
39 56, Idaho Code, except as provided in section 56-203A, Idaho Code;

40 (c) Conduct research and compile statistics relating to public wel-  
41 fare;

42 (d) Prepare for the governor and legislature an annual report of activ-  
43 ities and expenditures; make such reports in such form and containing such  
44 information as the federal government may from time to time require; and com-  
45 ply with such provisions as the federal government may from time to time find  
46 necessary to assure the correctness and verification of such reports;

1 (e) Cooperate with the federal government through its appropriate  
 2 agency or instrumentality in establishing, extending, and strengthening  
 3 services for the protection and care of homeless, dependent, and neglected  
 4 children, ~~and for~~ children in danger of becoming delinquent; and to under-  
 5 take other services for children authorized by law;

6 (f) Cooperate with the federal government through its appropriate  
 7 agency or instrumentality in establishing and maintaining a comprehensive  
 8 system of in-home services as defined in section 67-5006, Idaho Code, de-  
 9 signed to assist older persons, as defined in section 67-5006, Idaho Code,  
 10 of Idaho to continue living in an independent and dignified home environment  
 11 and to undertake other services for older persons as authorized by law;

12 (g) Exercise the opt-out provision in section 115 of the personal re-  
 13 sponsibility and work opportunity reconciliation act of 1996, P.L. 104-193.  
 14 Consistent with this, the department may provide food stamps and services  
 15 funded under title 4A (including cash assistance, TANF supportive services  
 16 and at-risk payments) to a person who has been convicted of a felony involv-  
 17 ing a controlled substance as defined in chapter 27, title 37, Idaho Code, if  
 18 ~~they comply~~ the person complies with the terms of a withheld judgment, proba-  
 19 tion or parole.

20 Nothing in this section shall exempt the department of health and welfare  
 21 from complying with the requirements of chapter 52, title 67, Idaho Code.

22 SECTION 59. That Section [56-216](#), Idaho Code, be, and the same is hereby  
 23 repealed.

24 SECTION 60. That Chapter 2, Title 56, Idaho Code, be, and the same is  
 25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 26 ignated as Section 56-216, Idaho Code, and to read as follows:

27 56-216. ADMINISTRATIVE APPEALS. Administrative appeals shall be han-  
 28 dled in accordance with chapter 52, title 67, Idaho Code.

29 SECTION 61. That Section 56-1003, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 56-1003. POWERS AND DUTIES OF THE DIRECTOR. The director shall have  
 32 the following powers and duties:

33 (1) All of the powers and duties of the department of public health, the  
 34 department of health, the board of health and all nonenvironmental protec-  
 35 tion duties of the department of health and welfare are hereby vested to the  
 36 director of the department of health and welfare. Provided however, that  
 37 oversight of the department and rulemaking and hearing functions relating  
 38 to public health and licensure and certification standards shall be vested  
 39 in the board of health and welfare. Except when the authority is vested in  
 40 the board of health and welfare under law, the director shall have all such  
 41 powers and duties as may have been or could have been exercised by his pre-  
 42 decessors in law, including the authority to adopt, promulgate, and enforce  
 43 rules, and shall be the successor in law to all contractual obligations en-  
 44 tered into by predecessors in law. All rulemaking proceedings and hearings  
 45 of the director shall be governed by the provisions of chapter 52, title 67,  
 46 Idaho Code.

1       (2) The director shall, pursuant and subject to the provisions of the  
2 Idaho Code, and the provisions of this chapter, formulate and recommend to  
3 the board rules, codes and standards, as may be necessary to deal with prob-  
4 lems related to personal health, and licensure and certification require-  
5 ments pertinent thereto, which shall, upon adoption by the board, have the  
6 force of law relating to any purpose which may be necessary and feasible for  
7 enforcing the provisions of this chapter including, but not limited to, the  
8 maintenance and protection of personal health. Any such rule or standard may  
9 be of general application throughout the state or may be limited as to times,  
10 places, circumstances or conditions in order to make due allowance for vari-  
11 ations therein.

12       (3) The director, under the rules, codes or standards adopted by him,  
13 shall have the general supervision of the promotion and protection of the  
14 life, health and mental health of the people of this state. The powers and  
15 duties of the director shall include, but not be limited to, the following:

16       (a) The issuance of licenses and permits as prescribed by law and by the  
17 rules of the board;

18       (b) The supervision and administration of laboratories and the super-  
19 vision and administration of standards of tests for environmental pol-  
20 lution, chemical analyses and communicable diseases. The director may  
21 require that laboratories operated by any city, county, institution,  
22 person, firm or corporation for health or environmental purposes con-  
23 form to standards set by the board of health and welfare and the board of  
24 environmental quality;

25       (c) The supervision and administration of a mental health program,  
26 which shall include services for the evaluation, screening, custody and  
27 treatment of the mentally ill and those persons suffering from a mental  
28 defect or mental defects, and services for the prevention of suicide;

29       (d) The enforcement of minimum standards of health, safety and sanita-  
30 tion for all public swimming pools within the state;

31       (e) The supervision and administration of the various schools, hos-  
32 pitals and institutions that were the responsibility of the board of  
33 health;

34       (f) The supervision and administration of services dealing with the  
35 problems of alcoholism including, but not limited to, the care and reha-  
36 bilitation of persons suffering from alcoholism;

37       (g) The establishment of liaison with other governmental departments,  
38 agencies and boards in order to effectively assist other governmental  
39 entities with the planning for the control of or abatement of health  
40 problems. All of the rules and standards adopted by the board shall  
41 apply to state institutions;

42       (h) The supervision and administration of an emergency medical service  
43 program including, but not limited to, assisting other governmental  
44 agencies and local governmental units, in providing first aid emergency  
45 medical services and for transportation of the sick and injured;

46       (i) The supervision and administration of administrative units whose  
47 responsibility shall be to assist and encourage counties, cities, other  
48 governmental units, and industries in the control of and/or abatement  
49 of health problems; and

1 (j) The enforcement of all laws, rules, codes and standards relating to  
2 health.

3 (4) The director, when so designated by the governor, shall have the  
4 power to apply for, receive on behalf of the state, and utilize any federal  
5 aid, grants, gifts, gratuities, or moneys made available through the federal  
6 government.

7 (5) The director shall have the power to enter into and make contracts  
8 and agreements with any public agencies or municipal corporations for fa-  
9 cilities, land, and equipment when such use will have a beneficial, recre-  
10 ational, or therapeutic effect or be in the best interest in carrying out the  
11 duties imposed upon the department.

12 The director shall also have the power to enter into contracts for the  
13 expenditure of state matching funds for local purposes. This subsection  
14 will constitute the authority for public agencies or municipal corporations  
15 to enter into such contracts and expend money for the purposes delineated in  
16 such contracts.

17 (6) The director is authorized to adopt an official seal to be used on  
18 appropriate occasions, in connection with the functions of the department or  
19 the board, and such seal shall be judicially noticed. Copies of any books,  
20 records, papers and other documents in the department shall be admitted in  
21 evidence equally with the originals thereof when authenticated under such  
22 seal.

23 (7) The director, under rules adopted by the board of health and wel-  
24 fare, shall have the power to impose and enforce orders of isolation and  
25 quarantine to protect the public from the spread of infectious or communi-  
26 cable diseases or from contamination from chemical or biological agents,  
27 whether naturally occurring or propagated by criminal or terrorist act.

28 (a) An order of isolation or quarantine issued pursuant to this section  
29 shall be a final agency action for purposes of judicial review. How-  
30 ever, this shall not prevent the director from reconsidering, amend-  
31 ing or withdrawing the order. Judicial review of orders of isolation or  
32 quarantine shall be de novo. The court may affirm, reverse or modify the  
33 order and shall affirm the order if it appears by a preponderance of the  
34 evidence that the order is reasonably necessary to protect the public  
35 from a substantial and immediate danger of the spread of an infectious  
36 or communicable disease or from contamination by a chemical or biologi-  
37 cal agent.

38 (b) If the director has reasonable cause to believe a chemical or bi-  
39 ological agent has been released in an identifiable place, including a  
40 building or structure, an order of quarantine may be imposed to prevent  
41 the movement of persons into or out of that place, for a limited period  
42 of time, for the purpose of determining whether a person or persons at  
43 that place have been contaminated with a chemical or biological agent  
44 which may create a substantial and immediate danger to the public.

45 (c) Any person who violates an order of isolation or quarantine shall be  
46 guilty of a misdemeanor.

47 (8) The director shall develop safeguards necessary to ensure the se-  
48 curity of nonpublic personal information in the department's possession and  
49 to prevent undue disclosure of such information. The director shall estab-  
50 lish a process to authenticate requests made by a person, entity or jurisdic-

tion arising under the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. In the event the department becomes aware of any improper disclosure, the director shall take all actions required under section 28-51-105, Idaho Code.

Nothing in this section shall exempt the department of health and welfare from complying with the requirements of chapter 52, title 67, Idaho Code.

SECTION 62. That Section 56-1005, Idaho Code, be, and the same is hereby amended to read as follows:

56-1005. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS -- SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES. (1) The board of health and welfare shall consist of eleven (11) members, seven (7) members ~~of which~~ who shall be appointed by the governor, with the advice and consent of the senate. The members appointed by the governor may be removed by the governor for cause. Each member of the board appointed by the governor shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector. Not more than four (4) members of the board appointed by the governor shall be from any one (1) political party. Of the members of the board appointed by the governor, four (4) members shall be chosen with due regard to their knowledge and interest in health and social services, two (2) members shall be chosen based on their experience in business or finance, and one (1) member shall be selected as a representative of the public at large. The voting members shall be appointed to assure appropriate geographic representation of the state of Idaho. The other four (4) members of the board, who shall be nonvoting members, shall be:

(a) The chairperson of the senate health and welfare committee, or the chair's designee;

(b) The chairperson of the house of representatives health and welfare committee, or the chair's designee;

(c) The director of the department of health and welfare, who shall serve as the board's secretary; and

(d) A representative of the office of the governor, as designated by the governor.

(2) The members of the board of health and welfare appointed by the governor, serving on the effective date of this act shall continue in office as members of the board of health and welfare. All members of the board of health and welfare appointed by the governor shall serve four (4) year terms.

(3) The voting members of the board annually shall elect a chairman and a vice chairman, who shall be voting members of the board. The board shall hold meetings no less than once every quarter. Special meetings of the board may be called by the chairman of the board, by a majority of the voting members of the board or, on written request, by the director of the department of health and welfare. A majority of the voting 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(p), Idaho Code.

(4) The board, in furtherance of its duties under law 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



1 of papers, books, accounts, documents and testimony. The board may, if a  
 2 witness refuses to attend or testify, or to produce any papers required by  
 3 such subpoenas, report to the district court in and for the county in which  
 4 the proceeding is pending, by petition, setting forth that due notice has  
 5 been given of the time and place of attendance of said witnesses, or the pro-  
 6 duction of said papers, that the witness has been properly summoned, and that  
 7 the witness has failed and refused to attend or produce the papers required  
 8 by ~~this~~ such subpoena before the board, or has refused to answer questions  
 9 propounded to him in the course of said proceedings, and ask an order of said  
 10 court compelling the witness to attend and testify and produce said papers  
 11 before the board. The court, upon the petition of the board, shall enter an  
 12 order directing the witness to appear before the court at a time and place to  
 13 be fixed by the court in such order, the time to be not more than ten (10) days  
 14 from the date of the order, and then and there shall show cause why he has not  
 15 attended and testified or produced said papers before the board. A copy of  
 16 said order shall be served upon said witness. If it shall appear to the court  
 17 that said subpoena was regularly issued by the board and regularly served,  
 18 the court shall thereupon order that said witness appear before the board at  
 19 the time and place fixed in said order, and testify or produce the required  
 20 papers. Upon failure to obey said order, said witness shall be dealt with for  
 21 contempt of court.

22 (5) The director, his designee, or any party to the action may, in an  
 23 investigation or hearing before the board, cause the deposition or inter-  
 24 rogatory of witnesses or parties residing within or without the state, to be  
 25 taken in the manner prescribed by law for like depositions and interrogato-  
 26 ries in civil actions in the district court of this state, and to that end may  
 27 compel the attendance of said witnesses and production of books, documents,  
 28 papers and accounts.

29 (6) Any person aggrieved by an action or inaction of the department of  
 30 health and welfare shall be afforded an opportunity for a fair hearing upon  
 31 request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and  
 32 the rules promulgated thereunder. In those cases where the board has been  
 33 granted the authority to hold such a hearing pursuant to a provision of ~~the~~  
 34 Idaho Code, the hearing may be conducted by the board at a regular or spe-  
 35 cial meeting, or the board may designate hearing officers, who shall have the  
 36 power and authority to conduct hearings in the name of the board at any time  
 37 and place. In any hearing, a member of the board or hearing officer desig-  
 38 nated by it, shall have the power to administer oaths, examine witnesses, and  
 39 issue in the name of the board subpoenas requiring the testimony of witnesses  
 40 and the production of evidence relevant to any matter in the hearing.

41 (7) Any person adversely affected by a final determination of the  
 42 board, may secure judicial review by filing a petition for review as pre-  
 43 scribed under the provisions of chapter 52, title 67, Idaho Code. The peti-  
 44 tion for review shall be served upon the chairman of the board, the director  
 45 of the department, and upon the attorney general of the state of Idaho. Such  
 46 service shall be jurisdictional and ~~the provisions of this section shall be~~  
 47 ~~the exclusive procedure for appeal~~ procedures for appeal shall be governed  
 48 by chapter 52, title 67, Idaho Code.

49 (8) The board, by the affirmative vote of four (4) of its voting mem-  
 50 bers, may adopt, amend or repeal the rules, codes, and standards of the de-

1 department, that are necessary and feasible in order to carry out its duties  
2 and responsibilities and to enforce the laws of this state.

3 The rules and orders so adopted and established shall have the force and  
4 effect of law and may deal with any matters deemed necessary and feasible for  
5 protecting the health of the state.

6 (9) All rulemaking proceedings and hearings of the board shall be gov-  
7 erned by the provisions of chapter 52, title 67, Idaho Code.

8 (10) In addition to any other powers and duties granted to the board un-  
9 der law, the board shall:

10 (a) Advise the director and the governor on department fiscal, policy  
11 and administrative matters;

12 (b) Review and advise the director regarding the department's strate-  
13 gic plan and performance measures;

14 (c) Develop goals and standards to measure department efficiency and  
15 effectiveness; and

16 (d) Review and advise the director and the governor on department ini-  
17 tiatives.

18 (11) The board shall provide an annual report to the governor and to the  
19 legislature prior to the start of each legislative session, addressing:

20 (a) The key department fiscal and policy issues;

21 (b) The department's managerial and overall performance; and

22 (c) The major proposed and ongoing departmental initiatives.

23 (12) Nothing in this section shall exempt the department of health and  
24 welfare from complying with the requirements of chapter 52, title 67, Idaho  
25 Code.

26 SECTION 63. That Section 58-122, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 58-122. CONTESTED CASES -- PROCEDURE. It shall be the duty of the  
29 director of the department of lands in any or all contested cases, at the  
30 direction of the board, to appoint hearing officers, receive evidence, issue  
31 subpoenas and to hold contested case hearings in accordance with sections  
32 67-52402 through 67-527169, Idaho Code, when hearings are necessary and  
33 witnesses may be required to be examined. Provided however, that when the  
34 state board of land commissioners is exercising its duties and authorities  
35 concerning the direction, control or disposition of the public lands of the  
36 state pursuant to sections 7 and 8, article IX, of the constitution of the  
37 state of Idaho, such actions shall not be considered to be contested cases  
38 as defined in subsection (67) of section 67-5201, Idaho Code, and section  
39 67-52403, Idaho Code, unless the board, in its discretion, determines that  
40 a contested case hearing would be of assistance to the board in the exercise  
41 of its duties and authorities.

42 SECTION 64. That Section 67-2317, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 67-2317. HEARING AND DECISION OF DISPUTED ISSUES. Upon the failure  
45 or refusal of the official or agency in charge of any state public building  
46 to comply with the recommendations of the administrator of the division  
47 of building safety, the administrator may hold a hearing, pursuant to the

1 provisions for contested cases under the administrative procedure act, as  
 2 provided in sections 67-5240~~1~~ et seq., Idaho Code.

3 The administrator is empowered to conduct such hearing and render a de-  
 4 cision. The administrator shall transmit a copy of the decision to the offi-  
 5 cial or agency in direct control of the public building and to the governor.

6 SECTION 65. That Section 67-5206, Idaho Code, be, and the same is hereby  
 7 amended to read as follows:

8 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE  
 9 ACT. (1) In accordance with the rulemaking requirements of this chapter, the  
 10 administrative rules coordinator shall promulgate rules implementing the  
 11 provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules  
 12 shall:

13 (a) establish a uniform numbering system applicable to rules adopted by  
 14 all agencies;

15 (b) establish a uniform style and format applicable to rules adopted by  
 16 all agencies;

17 (c) establish a publication schedule for the bulletin and the adminis-  
 18 trative code, including deadlines for the submission of documents to be  
 19 included within each publication;

20 (d) establish a uniform indexing system for agency orders; and

21 (e) include such other rules as the coordinator deems necessary to im-  
 22 plement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho  
 23 Code, and this section.

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

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

31 (a) the form and content for petitions requesting an opportunity for an  
 32 oral presentation in a substantive rulemaking;

33 (b) procedures for the creation of a record of comments received at any  
 34 oral presentation;

35 (c) the standards by which exemptions from regular rulemaking require-  
 36 ments will be authorized to correct typographical errors, transcrip-  
 37 tion errors, or clerical errors;

38 (d) the form and content for a petition for the adoption of rules and the  
 39 procedure for its submission, consideration and disposition;

40 (e) procedures to facilitate negotiated rulemaking;

41 (f) the form and content of a petition for a declaratory ruling on the  
 42 applicability of statutes or regulations; and

43 (g) such other provisions as may be necessary or useful.

44 (4) In accordance with the ~~rule-making~~ rulemaking requirements of this  
 45 chapter, the attorney general shall promulgate rules implementing the pro-  
 46 visions of sections 67-5240~~1~~ through 67-5255~~9~~, Idaho Code. The rules shall  
 47 specify:

48 (a) form and content to be employed in giving notice of a contested  
 49 case;

- 1 (b) procedures and standards required for intervention in a contested  
2 case;  
3 (c) procedures for prehearing conferences;  
4 (d) format for pleadings, briefs, and motions;  
5 (e) the method by which service shall be made;  
6 (f) procedures for the issuance of subpoenas, discovery orders, and  
7 protective orders if authorized by other provisions of law;  
8 (g) qualifications for persons seeking to act as a hearing officer;  
9 (h) qualifications for persons seeking to act as a representative for  
10 parties to contested cases;  
11 (i) procedures to facilitate informal settlement of matters;  
12 (j) procedures for placing ex parte contacts on the record; and  
13 (k) such other provisions as may be necessary or useful.  
14 (5) (a) After July 1, 1993, the rules promulgated by the attorney gen-  
15 eral under this section shall apply to all agencies that do not affirma-  
16 tively promulgate alternative procedures after the promulgation of the  
17 rules by the attorney general. The rules promulgated by the attorney  
18 general shall supersede the procedural rules of any agency in effect on  
19 June 30, 1993, unless that agency promulgates its own procedures as pro-  
20 vided in paragraph (b) of this subsection.  
21 (b) After July 1, 1993, an agency that promulgates its own procedures  
22 shall include in the rule adopting its own procedures a finding that  
23 states the reasons why the relevant portion of the attorney general's  
24 rules were inapplicable to the agency under the circumstances.

25 SECTION 66. Sections 33 through 43 of this act shall be in full force and  
26 effect on and after July 1, 2019. Section 38 of this act shall be null, void,  
27 and of no force and effect on and after July 1, 2024. Sections 1 through 32  
28 and sections 44 through 65 of this act shall be in full force and effect on and  
29 after January 1, 2020.