

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 461

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION  
2 67-5206, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO MAKE A TECHNICAL  
3 CORRECTION; AMENDING SECTION 67-5240, IDAHO CODE, TO REVISE A PROVI-  
4 SION REGARDING CONTESTED CASES; AMENDING SECTION 67-5280, IDAHO CODE,  
5 TO REVISE A PROVISION REGARDING CONTESTED CASES, TO REVISE A PROVISION  
6 REGARDING RULES, AND TO PROVIDE THAT SERVICES OFFERED BY THE OFFICE OF  
7 ADMINISTRATIVE HEARINGS SHALL BE AVAILABLE IN CERTAIN INSTANCES; PRO-  
8 VIDING SEVERABILITY; AND DECLARING AN EMERGENCY.  
9

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

11 SECTION 1. That Section 67-5206, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE  
14 ACT. (1) In accordance with the rulemaking requirements of this chapter, the  
15 attorney general shall promulgate rules implementing the provisions of sec-  
16 tions 67-5240 through 67-5255, Idaho Code. The rules shall specify:

17 (a) Form and content to be employed in giving notice of a contested  
18 case;

19 (b) Procedures and standards required for intervention in a contested  
20 case;

21 (c) Procedures for prehearing conferences;

22 (d) Format for pleadings, briefs, and motions;

23 (e) The method by which service shall be made;

24 (f) Procedures for the issuance of subpoenas, discovery orders, and  
25 protective orders if authorized by other provisions of law;

26 (g) Qualifications for persons seeking to act as a representative for  
27 parties to contested cases;

28 (h) Procedures to facilitate informal settlement of matters; and

29 (i) Procedures for placing ex parte contacts on the record.

30 (2) (a) After July 1, 1993, the rules promulgated by the attorney gen-  
31 eral under this section shall apply to all agencies that do not affirma-  
32 tively promulgate alternative procedures after the promulgation of the  
33 rules by the attorney general. The rules promulgated by the attorney  
34 general shall supersede the procedural rules of any agency in effect on  
35 June 30, 1993, unless that agency promulgates its own procedures as pro-  
36 vided in paragraph (b) of this subsection.

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

41 (3) With respect to contested cases and other proceedings conducted by  
42 the office of administrative hearings as authorized by this chapter, rules

1 promulgated by the attorney general or any agency pursuant to subsection (1)  
 2 or (2) of this section shall remain in full force and effect, except with re-  
 3 spect to hearing officer qualifications, until such time as the office of  
 4 administrative hearings promulgates replacement rules, and thereafter such  
 5 rules of the office of administrative hearings shall govern unless otherwise  
 6 required by governing federal law.

7 SECTION 2. That Section 67-5240, Idaho Code, be, and the same is hereby  
 8 amended to read as follows:

9 67-5240. CONTESTED CASES. A proceeding by an agency other than the  
 10 public utilities commission, or the industrial commission, ~~the Idaho per-~~  
 11 ~~sonnel commission, and the Idaho transportation department's driver's~~  
 12 ~~license suspension contested case hearings, which that~~ may result in the  
 13 issuance of an order, is a contested case and is governed by the provisions of  
 14 this chapter, except as provided by other provisions of law.

15 SECTION 3. That Section 67-5280, Idaho Code, be, and the same is hereby  
 16 amended to read as follows:

17 67-5280. CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS -- POWERS AND  
 18 DUTIES. (1) There is hereby created in the department of self-governing  
 19 agencies the office of administrative hearings.

20 (2) ~~For agencies not excluded in this section, the~~ The office of admin-  
 21 istrative hearings shall:

22 (a) Unless otherwise specified by law, conduct all contested case pro-  
 23 ceedings that arise from an appeal of an agency order, except for con-  
 24 tested case proceedings involving:

25 (i) The Idaho personnel commission; and

26 (ii) The Idaho transportation department's driver's license sus-  
 27 pension contested case proceedings pursuant to section 18-8002A,  
 28 Idaho Code;

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

33 (c) ~~Promulgate~~ Have the authority to promulgate rules consistent with  
 34 state and federal law to implement provisions relating to its duties and  
 35 actions authorized by this chapter.

36 (3) The provisions of subsection (2) (a) of this section shall not be  
 37 construed to prohibit any agency from requesting any service offered by the  
 38 office of administrative hearings pursuant to subsection (2) (b) of this sec-  
 39 tion.

40 ~~(3)~~ (4) The office of administrative hearings shall not hear and shall  
 41 not have authority over or oversight of any action by the department of water  
 42 resources or the water resource board.

43 ~~(4)~~ (5) The office of administrative hearings shall be subject to audit  
 44 in the same manner as other agencies of the state.

45 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared  
 46 to be severable and if any provision of this act or the application of such

1 provision to any person or circumstance is declared invalid for any reason,  
2 such declaration shall not affect the validity of the remaining portions of  
3 this act.

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