

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 489

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE PERSONNEL SYSTEM; AMENDING SECTION 67-5309, IDAHO CODE,
2 TO REMOVE A PROVISION REGARDING RULEMAKING AUTHORITY FOR PROVISIONAL
3 APPOINTMENTS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION
4 67-5316, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.
5

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

7 SECTION 1. That Section 67-5309, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 67-5309. RULES OF THE DIVISION OF HUMAN RESOURCES AND THE PERSONNEL
10 COMMISSION. The administrator of the division of human resources shall have
11 the power and authority to adopt, amend, or rescind such rules as may be nec-
12 essary for proper administration of this chapter. Such rules shall include:

13 (a) A rule requiring the administrator, after consulting with each de-
14 partment, to develop, adopt, and make effective, a job classification sys-
15 tem for positions covered by this chapter, based upon an analysis of the du-
16 ties and responsibilities of the positions. The job classification shall
17 include an appropriate title for each class, and a description of duties and
18 responsibilities of positions in the classes and the requirements of minimum
19 training, experience and other qualifications, suitable for the performance
20 of duties of the position.

21 (b) A rule describing the relevant labor markets and benchmark job
22 classifications used in the administrator's salary surveys.

23 (c) A rule requiring that all classes of positions which are common to
24 the departments concerned shall have the same titles, minimum requirements
25 and compensation ranges.

26 (d) A rule providing for review by the administrator of the personnel
27 system including classifications and compensation policies and procedures.

28 (e) A rule that, notwithstanding the procedure for examination and
29 ranking of eligibles on a register provided in subsection (f) of this sec-
30 tion, an agency may appoint an individual directly into an entrance or
31 promotional probation if the division of vocational rehabilitation, Idaho
32 commission for the blind and visually impaired or the industrial commission
33 certifies, with the concurrence of division of human resources staff, that
34 the individual: (1) has a disability or handicap as defined under state or
35 federal law; (2) is qualified to perform the essential functions of a par-
36 ticular classified position with or without reasonable accommodation; and
37 (3) lacks competitiveness in the examination process due to the disability
38 or handicap. The probationary period as provided in subsection (j) of this
39 section shall be the sole examination for such individuals.

40 (f) A rule requiring fair and impartial selection of appointees to all
41 positions other than those defined as nonclassified in this chapter, on the
42 basis of open competitive merit examinations or evaluations. An application

1 for an examination will be accepted after the closing date of the examina-
2 tion from a person who was serving in the armed forces, or undergoing ser-
3 vice-connected hospitalization up to one (1) year following discharge. The
4 application must be submitted within one hundred twenty (120) days of separa-
5 tion from the armed forces or hospitalization and prior to the expiration
6 of the register established as a result of the examination. A disabled vet-
7 eran may file an application at any time up until a selection has been made
8 for any position for which the division maintains a register as a source for
9 future job openings or for which a register is about to be established, pro-
10 vided he or she has not already been examined twice for the same position and
11 grade for which application is made, does not have current eligibility on
12 that register, or is not serving in a competitive position in the same grade
13 for which application is made. Examinations may be assembled or unassembled
14 and may include various examining techniques such as rating of training and
15 experience, written tests, oral interviews, recognition of professional li-
16 censing, performance tests, investigations and any other measure of ability
17 to perform the duties of the position. Examinations shall be scored objec-
18 tively. Five (5) points shall be added to the earned rating of any veteran as
19 defined in section 65-502, Idaho Code, and the widow or widower of any vet-
20 eran as defined in section 65-502, Idaho Code, as long as he or she remains
21 unmarried. Pursuant to section 65-504, Idaho Code, ten (10) points shall
22 be added to the earned rating of any disabled veteran as defined in section
23 65-502, Idaho Code, the widow or widower of any disabled veteran as long as he
24 or she remains unmarried, or the spouse of any eligible disabled veteran who
25 cannot qualify for any public employment because of a service-connected dis-
26 ability. Employment registers shall be established in order of final score
27 except that the names of all five (5) and ten (10) point preference eligibles
28 resulting from any merit system or civil service examination shall be placed
29 on the register in accordance with their augmented rating. Certification
30 of eligibility for appointment to vacancies shall be in accordance with a
31 formula ~~which~~ that limits selection by the hiring department from among the
32 twenty-five (25) top ranking available eligibles plus the names of all in-
33 dividuals with scores identical to the twenty-fifth ranking eligible on the
34 register. A register with at least five (5) eligibles shall be adequate. Se-
35 lective certification shall be permitted when justified by the hiring de-
36 partment, under rules to be made by the division defining adequate justifi-
37 cation based on the duties and requirements of the positions. Such examina-
38 tions need not be held until after the rules have been adopted, the service
39 classified and a pay plan established, but shall be held not later than one
40 (1) year after departments commence participation in the personnel system.

41 (g) A rule that, whenever practicable, a vacancy in a classified posi-
42 tion shall be filled by the promotion of a qualified employee of the agency
43 in which the vacancy occurs. An interagency promotion shall be made through
44 competitive examination and all qualified state employees shall have the
45 opportunity to compete for such promotions. If an employee's name appears
46 within certifiable range on a current register for a higher class of posi-
47 tion, he shall be eligible for a transfer and promotion.

48 (h) A rule for development and maintenance of a system of service rat-
49 ings and the use of such ratings by all departments in connection with pro-
50 motions, demotions, retentions, separations and reassignments. The rule

1 shall require that an evaluation of each classified employee shall be made
 2 after each two thousand eighty (2,080) hour period of credited state ser-
 3 vice, and that a copy of the evaluation shall be filed with the division.

4 (i) A rule prohibiting disqualification of any person from taking an
 5 examination, from appointment to a position, from promotion, or from holding
 6 a position because of race or national origin, color, sex, age, political or
 7 religious opinions or affiliations, and providing for right of appeal.

8 (j) A rule establishing a probation period not to exceed one thousand
 9 forty (1,040) hours of credited state service for all appointments and pro-
 10 motions, except that peace officers as defined in section 19-5101, Idaho
 11 Code, shall be subject to a probation period of two thousand eighty (2,080)
 12 hours of credited state service, and for the appointing authority to pro-
 13 vide the employee and the administrator a performance evaluation indicating
 14 satisfactory or unsatisfactory performance not later than thirty (30) days
 15 after the expiration of the probationary period. The rule shall provide that
 16 if the appointing authority fails to provide a performance evaluation within
 17 thirty (30) days after the expiration of the probationary period, the em-
 18 ployee shall be deemed to have satisfactorily completed the probation unless
 19 the appointing authority receives approval from the administrator to extend
 20 the probationary period for good cause for an additional specified period
 21 not to exceed one thousand forty (1,040) hours of credited state service. If
 22 an employee is performing in an unsatisfactory manner during the entrance
 23 probationary period, the appointing authority shall ask the employee to re-
 24 sign, and, if no resignation is submitted, shall terminate the employment of
 25 such employee without the right of grievance or appeal.

26 (k) ~~A rule concerning provisional appointments.~~

27 ~~(l)~~ A rule concerning temporary appointments.

28 (~~m~~l) A rule governing the employment of consultants and persons re-
 29 tained under independent contract.

30 (~~m~~m) A rule for the disciplinary dismissal, demotion, suspension or
 31 other discipline of employees only for cause with reasons given in writing.
 32 Such rule shall provide that any of the following reasons shall be proper
 33 cause for the disciplinary dismissal, demotion or suspension of any employee
 34 in the state classified service:

- 35 1. Failure to perform the duties and carry out the obligations imposed
 36 by the state constitution, state statutes and rules of the employee's
 37 department, or rules of the administrator or the division.
- 38 2. Inefficiency, incompetency, or negligence in the performance of
 39 duties, or job performance that fails to meet established performance
 40 standards.
- 41 3. Physical or mental incapability for performing assigned duties.
- 42 4. Refusal to accept a reasonable and proper assignment from an autho-
 43 rized supervisor.
- 44 5. Insubordination or conduct unbecoming a state employee or conduct
 45 detrimental to good order and discipline in the employee's department.
- 46 6. Intoxication on duty.
- 47 7. Careless, negligent, or improper use or unlawful conversion of state
 48 property, equipment or funds.

1 8. Use of any influence ~~which~~ that violates the principles of the merit
2 system in an attempt to secure a promotion or privileges for individual
3 advantage.

4 9. Conviction of official misconduct in office, or conviction of any
5 felony, or conviction of any other crime involving moral turpitude.

6 10. Acceptance of gifts in exchange for influence or favors given in the
7 employee's official capacity.

8 11. Habitual pattern of failure to report for duty at the assigned place
9 and time.

10 12. Habitual improper use of sick leave privileges.

11 13. Unauthorized disclosure of confidential information from official
12 records.

13 14. Absence without leave.

14 15. Misstatement or deception in the application for the position.

15 16. Failure to obtain or maintain a current license or certificate law-
16 fully required as a condition for performing the duties of the job.

17 17. Prohibited participation in political activities.

18 (~~en~~) A rule to establish procedures for maintenance of a record of the
19 employment history and appropriate information relating to performance of
20 all employees under the personnel system. For the purposes of this rule, the
21 state shall be considered one (1) employer.

22 (~~po~~) Rules to provide for recruitment programs in cooperation with de-
23 partment heads and the employment security agency in keeping with current
24 employment conditions and labor market trends.

25 (~~ep~~) Rules to establish procedures for examinations as necessary for
26 the purpose of maintaining current registers from which to fill employment
27 vacancies.

28 (~~rg~~) Other rules not inconsistent with the foregoing provisions of this
29 section as may be necessary and proper for the administration and enforce-
30 ment of this chapter.

31 (~~sr~~) A rule concerning "project exempt" appointments.

32 (~~ts~~) Rules relating to leave for state employees from official duties
33 including, but not limited to, sick leave, military leave, jury duty, leaves
34 of absence without compensation and such other forms of absence from perfor-
35 mance of duties in the course of state employment as may be necessary.

36 (~~ut~~) A rule providing up to twenty-five percent (25%) shift differen-
37 tial pay based on local market practices.

38 (~~vu~~) A rule to establish guidelines for awarding employee suggestion
39 awards set forth in sections 59-1603 and 67-5309D, Idaho Code.

40 (~~wv~~) A rule to establish the reimbursement of moving expenses for a cur-
41 rent or ~~newly-hired~~ newly hired state employee.

42 (~~xw~~) A rule to allow, at the request of the hiring agency, temporary
43 service time to count toward fulfilling entrance probationary requirements
44 as established in subsection (j) of this section.

45 (~~yx~~) A rule to allow, at the request of the hiring agency, acting ap-
46 pointment service time to count toward fulfilling promotional probationary
47 requirements as established in subsection (j) of this section.

48 SECTION 2. That Section 67-5316, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 67-5316. APPEAL PROCEDURE. (1) Appeals shall be limited to the follow-
2 ing:

3 (a) Any classified employee who has successfully completed the en-
4 trance probationary period may, after completing the departmental due
5 process procedure, appeal a disciplinary dismissal, demotion or sus-
6 pension.

7 (b) Any classified employee may, after completing the departmental
8 problem solving procedure, appeal the failure of an appointing author-
9 ity to provide a right and/or benefit to which the employee is entitled
10 by law.

11 (c) Any interested person may appeal any decision or action taken by the
12 administrator of the division of human resources or the staff of the di-
13 vision of human resources in the performance of their official duties.

14 (d) Any interested person may appeal any other matters as may now or
15 later be assigned to the personnel commission by law.

16 (2) The decision or action of the appointing authority shall be fi-
17 nal and conclusive unless a classified employee files an appeal within
18 thirty-five (35) days after completing the departmental problem solving
19 or due process procedure concerning the actions referred to in subsection
20 (1) (a), (b), (c) and (d) of this section. A decision of the administrator
21 shall be final and conclusive as to any other interested person unless an
22 appeal is filed within thirty-five (35) days of written notice of that deci-
23 sion.

24 (3) The commission shall assign the matter for hearing to a duly ap-
25 pointed hearing officer, who may be a member of the commission.

26 (4) Where the action in dispute was the discharge, demotion, or suspen-
27 sion, upon determination that proper cause did not in fact exist within the
28 definitions set forth in section 67-5309 (~~nm~~), Idaho Code, or that the action
29 was taken by reason of illegal discrimination, the commission or the hearing
30 officer shall order the reinstatement of the employee in the same position or
31 a position of like status and pay, with or without loss of pay for the period
32 of discharge, demotion, or suspension, or may order such other remedy as may
33 be determined to be appropriate. In all other disputed matters, the commis-
34 sion and the hearing officer may order such action as may be appropriate.

35 (5) Process and procedure under this act shall be as summary and simple
36 as reasonably may be. The hearing officer appointed by the commission shall
37 have the power to subpoena witnesses, administer oaths, and examine such of
38 the books and records of the parties to a proceeding as relate to the ques-
39 tions in dispute. A verbatim record of the proceedings at hearings before
40 the commission or a hearing officer shall be maintained either by electri-
41 cal devices or by stenographic means, as the commission or hearing officer
42 may direct, but if any party to the action requests a stenographic record of
43 the proceedings, the record shall be done stenographically. The requesting
44 party shall pay the costs of transcribing the proceedings.

45 The district court, in and for the county in which any proceedings be-
46 fore the Idaho personnel commission are held, shall have the power to enforce
47 by proper proceedings the attendance and testimony of witnesses, and produc-
48 tion and examination of books, papers, and records.

1 (6) If the parties reach an agreement in regard to the matters of dis-
2 pute, a memorandum of the agreement shall be filed with the commission and,
3 if approved by it, the memorandum shall be enforceable for all purposes.

4 (7) The hearing officer shall give written notice of the time and place
5 of hearing, either by personal service or by mail. Service by mail shall be
6 deemed complete when a copy of such notice is deposited in the United States
7 post office, with postage prepaid, addressed to a party's last known ad-
8 dress, as shown in the records and files of the commission. An affidavit of
9 personal service shall be filed by the person making the same.

10 (8) The hearing officer to whom the matter has been assigned shall make
11 such inquiry and investigations as shall be deemed necessary. The hearings
12 shall be held in such place as the hearing officer may designate. The de-
13 cision of the hearing officer, consisting of such findings of fact, conclu-
14 sions of law and orders as are necessary, together with the record of the pro-
15 ceedings, shall be filed in the office of the Idaho personnel commission. A
16 copy of the hearing officer's decision shall be immediately sent to the par-
17 ties by United States mail. The decision of the hearing officer shall be fi-
18 nal and conclusive between the parties, unless a petition for review is filed
19 with the commission within thirty-five (35) days. The petition for review
20 shall specifically cite the alleged errors of fact or law made by the hearing
21 officer.

22 (9) Any party in interest may file in the district court for the county
23 in which any party to the proceedings resides, a certified copy of the fi-
24 nal decision of the hearing officer, which the district court shall have the
25 power to enforce by proper proceedings.

26 (10) Where the decision and order of the hearing officer directed the
27 reinstatement of an employee, the employee shall be reinstated upon receipt
28 of a copy of the decision unless a petition for review is filed.