

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 540

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5224, IDAHO CODE,  
2 TO REMOVE LANGUAGE RELATING TO A STATEMENT THAT A PENDING RULE MAY BE  
3 AMENDED OR MODIFIED BY CONCURRENT RESOLUTION AND TO REMOVE LANGUAGE  
4 RELATING TO WHEN THE LEGISLATURE AMENDS OR MODIFIES A PENDING RULE;  
5 AMENDING SECTION 67-5226, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO  
6 RULES AMENDED OR MODIFIED BY CONCURRENT RESOLUTION; AMENDING SECTION  
7 67-5291, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO AMENDING OR MODIFY-  
8 ING AN AGENCY RULE; AND AMENDING SECTION 67-5292, IDAHO CODE, TO REMOVE  
9 LANGUAGE RELATING TO RULES THAT MAY BE EXTENDED IN WHOLE OR IN PART AND  
10 TO REMOVE LANGUAGE RELATING TO THE APPLICATION OF LAW.  
11

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

13 SECTION 1. That Section 67-5224, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the  
16 adoption, amendment, or repeal of a rule, the agency shall consider fully all  
17 written and oral submissions respecting the proposed rule.

18 (2) Subject to the provisions of subsection (3) of this section, the  
19 agency shall publish the text of a pending rule and a notice of adoption of  
20 the pending rule in the bulletin. The notice of adoption of the pending rule  
21 shall consist of a concise explanatory statement containing:

22 (a) Reasons for adopting the rule;

23 (b) A statement of any change between the text of the proposed rule and  
24 the text of the pending rule with an explanation of the reasons for any  
25 changes;

26 (c) The date on which the pending rule will become final and effective,  
27 as provided in subsection (5) of this section, and a statement that the  
28 pending rule may be rejected, ~~amended or modified~~ by concurrent resolu-  
29 tion of the legislature;

30 (d) An identification of any portion of the pending rule imposing or in-  
31 creasing a fee or charge and a statement that this portion of the rule  
32 shall not become final and effective unless affirmatively approved by  
33 concurrent resolution of the legislature;

34 (e) The specific statutory authority for the rulemaking including a ci-  
35 tation to the specific section of the Idaho Code that has occasioned the  
36 rulemaking, or the federal statute or regulation if that is the basis of  
37 authority or requirement for the rulemaking; and

38 (f) Except as otherwise required in paragraph (g) of this subsection,  
39 a specific description, if applicable, of any negative fiscal impact on  
40 the state general fund greater than ten thousand dollars (\$10,000) dur-  
41 ing the fiscal year when the pending rule will become effective; pro-  
42 vided however, that notwithstanding section 67-5231, Idaho Code, the

1 absence or accuracy of a fiscal impact statement provided pursuant to  
 2 this paragraph shall not affect the validity or the enforceability of  
 3 the rule; or

4 (g) If a notice of proposed rulemaking of the Idaho state tax commis-  
 5 sion, a specific description of any negative or positive fiscal impact  
 6 greater than ten thousand dollars (\$10,000) during the fiscal year when  
 7 the pending rule will become effective; provided however, notwith-  
 8 standing section 67-5231, Idaho Code, the absence or accuracy of a  
 9 fiscal impact statement provided pursuant to this paragraph shall not  
 10 affect the validity or the enforceability of the rule.

11 (3) With the permission of the coordinator, the agency need not pub-  
 12 lish in full the text of the pending rule if no significant changes have been  
 13 made from the text of the proposed rule as published in the bulletin, but the  
 14 notice of adoption of the pending rule must cite the volume of the bulletin  
 15 where the text is available and note all changes that have been made.

16 (4) An agency shall not publish a pending rule until at least seven (7)  
 17 days after the close of all public comment.

18 (5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,  
 19 a pending rule shall become final and effective upon the conclusion of  
 20 the legislative session at which the rule was submitted to the legisla-  
 21 ture for review, or as provided in the rule, but no pending rule adopted  
 22 by an agency shall become final and effective before the conclusion of  
 23 the regular or special legislative session at which the rule was sub-  
 24 mitted for review. A rule which is final and effective may be applied  
 25 retroactively, as provided in the rule.

26 (b) When the legislature approves, ~~amends or modifies~~ a pending rule  
 27 pursuant to section 67-5291, Idaho Code, the rule shall become final and  
 28 effective upon adoption of the concurrent resolution or such other date  
 29 specified in the concurrent resolution.

30 (c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code,  
 31 no pending rule or portion thereof imposing a fee or charge of any kind  
 32 shall become final and effective until it has been approved, ~~amended or~~  
 33 ~~modified~~ by concurrent resolution.

34 (6) Each agency shall provide the administrative rules coordinator  
 35 with a description of any pending rule or portion thereof imposing a new fee  
 36 or charge or increasing an existing fee or charge, along with a citation of  
 37 the specific statute authorizing the imposition or increase of the fee or  
 38 charge. The administrative rules coordinator shall provide the legislature  
 39 with a compilation of the descriptions provided by the agencies.

40 (7) At the conclusion of the legislative session or as soon thereafter  
 41 as is practicable, the coordinator shall publish the date upon which the  
 42 legislature adjourned sine die and rules became effective and a list of  
 43 final rules becoming effective on a different date, as provided in section  
 44 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided  
 45 in section 67-5226(3), Idaho Code.

46 SECTION 2. That Section 67-5226, Idaho Code, be, and the same is hereby  
 47 amended to read as follows:

48 67-5226. TEMPORARY RULES. (1) If the governor finds that:

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

1 (b) Compliance with deadlines in amendments to governing law or federal  
2 programs; or

3 (c) Conferring a benefit;

4 requires a rule to become effective before it has been submitted to the leg-  
5 islature for review the agency may proceed with such notice as is practi-  
6 cable and adopt a temporary rule, except as otherwise provided in section  
7 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immedi-  
8 ately effective. The agency shall incorporate the required finding and a  
9 concise statement of its supporting reasons in each rule adopted in reliance  
10 upon the provisions of this subsection.

11 (2) A rule adopted pursuant to subsection (1) of this section which im-  
12 poses a fee or charge may become effective under this section before it has  
13 been approved, ~~amended or modified~~ by concurrent resolution only if the gov-  
14 ernor finds that the fee or charge is necessary to avoid immediate danger  
15 which justifies the imposition of the fee or charge.

16 (3) In no case shall a rule adopted pursuant to this section remain in  
17 effect beyond the conclusion of the next succeeding regular session of the  
18 legislature unless the rule is approved, ~~amended or modified~~ by concurrent  
19 resolution, in which case the rule may remain in effect until the time spec-  
20 ified in the resolution or until the rule has been replaced by a final rule  
21 which has become effective as provided in section 67-5224(5), Idaho Code.

22 (4) Temporary rules shall be published in the first available issue of  
23 the bulletin.

24 (5) Temporary rules are not subject to the requirements of section  
25 67-5223, Idaho Code, provided that the administrative rules coordinator  
26 sends a copy of the temporary rules to the director of the legislative ser-  
27 vices office.

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

34 SECTION 3. That Section 67-5291, Idaho Code, be, and the same is hereby  
35 amended to read as follows:

36 67-5291. LEGISLATIVE REVIEW OF RULES. The standing committees of the  
37 legislature may review temporary, pending and final rules which have been  
38 published in the bulletin or in the administrative code. If reviewed, the  
39 standing committee which reviewed the rules shall report to the membership  
40 of the body its findings and recommendations concerning its review of the  
41 rules. If ordered by the presiding officer, the report of the committee  
42 shall be printed in the journal. A concurrent resolution may be adopted  
43 approving the rule, or rejecting, ~~amending or modifying~~ the rule where it  
44 is determined that the rule violates the legislative intent of the statute  
45 under which the rule was made, or where it is determined that any rule pre-  
46 viously promulgated and reviewed by the legislature shall be deemed to  
47 violate the legislative intent of the statute under which the rule was made.  
48 The rejection, ~~amendment or modification~~ of a rule by the legislature via  
49 concurrent resolution shall prevent the agency's intended action from re-

1     maintaining in effect beyond the date of the legislative action. It shall be the  
 2     responsibility of the secretary of state to immediately notify the affected  
 3     agency of the filing and effective date of any concurrent resolution enacted  
 4     to approve, ~~amend, modify,~~ or reject an agency rule and to transmit a copy  
 5     of the concurrent resolution to the director of the agency for promulga-  
 6     tion. The agency shall be responsible for implementing legislative intent  
 7     as expressed in the concurrent resolution, including, as appropriate, the  
 8     reinstatement of the prior rule, if any, in the case of legislative rejection  
 9     of a new rule, ~~or the incorporation of any legislative amendments to a new~~  
 10    ~~rule. If a rule has been amended or modified by the legislature, the agency~~  
 11    ~~shall republish the rule in accordance with the provisions of chapter 52,~~  
 12    ~~title 67, Idaho Code, reflecting the action taken by the legislature and the~~  
 13    ~~effective date thereof. If a rule has been rejected by the legislature, the~~  
 14    agency shall publish notice of such rejection in the bulletin. Except as  
 15    provided in section 67-5226, Idaho Code, with respect to temporary rules,  
 16    every rule promulgated within the authority conferred by law, and in ac-  
 17    cordance with the provisions of chapter 52, title 67, Idaho Code, and made  
 18    effective pursuant to section 67-5224(5), Idaho Code, shall remain in full  
 19    force and effect until the same is rejected, ~~amended or modified~~ by concur-  
 20    rent resolution, or until it expires as provided in section 67-5292, Idaho  
 21    Code, or by its own terms.

22           SECTION 4. That Section 67-5292, Idaho Code, be, and the same is hereby  
 23    amended to read as follows:

24           67-5292. EXPIRATION OF ADMINISTRATIVE RULES. (1) Notwithstanding any  
 25    other provision of this chapter to the contrary, every rule adopted and be-  
 26    coming effective after June 30, 1990, shall automatically expire on July 1  
 27    of the following year unless the rule is extended by statute. Extended rules  
 28    shall then continue to expire annually on July 1 of each succeeding year un-  
 29    less extended by statute in each such succeeding year.

30           (2) All rules adopted prior to June 30, 1990, shall expire on July 1,  
 31    1991, unless extended by statute. Thereafter, any rules which are extended  
 32    shall then continue to expire annually on July 1 of each succeeding year un-  
 33    less extended by statute in each succeeding year.

34           ~~(3) Rules adopted and becoming effective pursuant to this chapter may~~  
 35    ~~be extended in whole or in part. When any part of an existing rule is amended,~~  
 36    ~~then that entire rule shall be subject to the provisions of this section.~~

37           ~~(4) This section is a critical and integral part of this chapter. If any~~  
 38    ~~portion of this section or the application thereof to any person or circum-~~  
 39    ~~stance is held invalid, the invalidity shall be deemed to affect all rules~~  
 40    ~~adopted subsequent to the effective date of this act and such rules shall be~~  
 41    ~~deemed null, void and of no further force and effect.~~