

IN THE SENATE

SENATE BILL NO. 1243

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-107,  
2 IDAHO CODE, TO REVISE PROVISIONS REGARDING THE COMPOSITION OF THE BOARD  
3 AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PRO-  
4 VIDING AN EFFECTIVE DATE.  
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6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 39-107, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 39-107. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS --  
10 SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES.

11 (1) (a) The board of environmental quality shall consist of seven (7)  
12 members who shall be appointed by the governor, with the advice and con-  
13 sent of the senate. The members shall serve at the pleasure of the gov-  
14 ernor. Each member of the board shall be a citizen of the United States,  
15 a resident of the state of Idaho, and a qualified elector, and shall be  
16 appointed to assure appropriate geographic representation of the state  
17 of Idaho. Not more than four (4) members of the board shall be from any  
18 one (1) political party. Two (2) members of the board shall be chosen  
19 with due regard to their knowledge of and interest in solid waste; two  
20 (2) members shall be chosen for their knowledge of and interest in air  
21 quality; two (2) members shall be chosen for their knowledge of and in-  
22 terest in water quality; and one (1) member shall be chosen with due re-  
23 gard for his knowledge of and interest in air, water and solid waste is-  
24 sues. At least four (4) of the board members shall represent the pub-  
25 lic's interest and not derive any significant portion of their income  
26 from persons subject to air quality permits or enforcement orders.

27 (b) The members of the board of environmental quality shall be ap-  
28 pointed for a term of four (4) years. In appointing members whose terms  
29 begin in 2000, the governor shall designate three (3) members to be ap-  
30 pointed for a term of three (3) years, two (2) members appointed for a  
31 term of four (4) years, and two (2) members appointed for a term of two  
32 (2) years. Successors to the members appointed for a term of less than  
33 four (4) years shall be appointed for a term of four (4) years there-  
34 after.

35 (2) The board annually shall elect a chairman, a vice chairman, and a  
36 secretary, and shall hold such meetings as may be necessary for the orderly  
37 conduct of its business, and such meetings shall be held from time to time on  
38 seventy-two (72) hours' notice of the chairman or a majority of the members.  
39 Five (5) members shall be necessary to constitute a quorum at any regular or  
40 special meeting, and the action of the majority of members present shall be  
41 the action of the board. The members of the board shall be compensated as  
42 provided in section 59-509(h), Idaho Code.

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

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

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

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

1 (7) The board, by the affirmative vote of four (4) of its members, may  
2 adopt, amend or repeal the rules, codes, and standards of the department,  
3 that are necessary and feasible in order to carry out the purposes and provi-  
4 sions of this act and to enforce the laws of this state. The rules and orders  
5 so adopted and established shall have the force and effect of law and may deal  
6 with any matters deemed necessary and feasible for protecting the environ-  
7 ment of the state.

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

10 (9) The board shall adopt contested case rules ~~that are~~ consistent with  
11 the rules adopted by the attorney general under section 67-5206(4), Idaho  
12 Code, the provisions of this act and other statutory authority of the depart-  
13 ment.

14 (10) All rules, permits and other actions heretofore adopted, issued  
15 or taken by the board of health and welfare pertaining to the environmental  
16 protection functions administered by the division of environmental quality  
17 shall remain in full force and effect until superseded.

18 (11) The board of environmental quality shall be the successor to all  
19 rights, powers and duties of the board of health and welfare regarding all  
20 rulemaking proceedings, administrative proceedings, contested cases, civil  
21 actions, contracts, delegations, authority and other matters pertaining to  
22 environmental protection functions administered by the division of environ-  
23 mental quality.

24 (12) Upon creation of the board of environmental quality, all pending  
25 business before the board of health and welfare relating to environmental  
26 protection functions administered by the division of environmental quality  
27 shall be transferred to and determined by the board of environmental qual-  
28 ity.

29 SECTION 2. An emergency existing therefor, which emergency is hereby  
30 declared to exist, this act shall be in full force and effect on and after  
31 July 1, 2022.