

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature Second Regular Session - 2012

IN THE SENATE

SENATE BILL NO. 1366

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5220, IDAHO CODE, TO
PROVIDE STATUTORY PROCEDURES FOR NEGOTIATED RULEMAKING; AMENDING SEC-
TION 67-5221, IDAHO CODE, TO REVISE NOTICE FOR NEGOTIATED RULEMAKING,
TO PROVIDE FOR AN AGENCY TO POST NOTICE OF RULEMAKING ONTO ITS WEBSITE IF
THE AGENCY HAS A WEBSITE AND TO MAKE TECHNICAL CORRECTIONS; AND DECLAR-
ING AN EMERGENCY.

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

SECTION 1. That Section 67-5220, Idaho Code, be, and the same is hereby
amended to read as follows:

67-5220. NOTICE OF INTENT TO PROMULGATE RULES -- NEGOTIATED RULEMAK-
ING. (1) Prior to the adoption, amendment or repeal of a rule, an agency may
shall determine whether negotiated rulemaking is feasible. The agency's
determination of whether negotiated rulemaking is feasible is not subject
to judicial review. If the agency determines that negotiated rulemaking is
feasible, it shall publish in the bulletin a notice of intent to promulgate a
rule. The notice shall contain a brief, nontechnical statement of the sub-
ject matter to be addressed in the proposed rulemaking, and shall include the
purpose of the rule, the statutory authority for the rulemaking, citation to
a specific federal statute or regulation if that is the basis of authority
or requirement for the rulemaking, and the principal issues involved. The
notice shall also state that interested persons have the opportunity to
participate with the agency in negotiated rulemaking as provided in this
section and shall identify an individual to whom comments on the proposal may
be sent. If the agency determines that negotiated rulemaking is not feasi-
ble, it shall explain why negotiated rulemaking is not feasible in a notice
of proposed rulemaking published pursuant to section 67-5221, Idaho Code,
and shall proceed with rulemaking as provided pursuant to this chapter. Each
agency that has a website shall cause the notice of intent to promulgate
rules to be placed onto or accessible from the home page of the agency's web-
site.

(2) The notice of intent to promulgate a rule is intended to facilitate
negotiated rulemaking, a process in which all interested parties persons and
the agency seek consensus on the content of a rule. Agencies are encouraged
to shall proceed through such informal rulemaking whenever it is feasible
to do so in order to improve the substance of proposed rules by drawing upon
shared information, knowledge, expertise and technical abilities possessed
by interested persons and to expedite formal rulemaking.

(3) To facilitate the achievement of the purposes of this section,
agencies shall, at a minimum:

(a) Provide a reasonable period of time for interested persons to re-
spond to the notice of intent to promulgate rules;

1 (b) Provide notice of meetings to interested persons who responded to
 2 the notice of intent to promulgate rules;

3 (c) Upon request, make available to persons attending the meetings
 4 all information that is considered by the agency in connection with the
 5 formulation of the proposed rule and that is not exempt from disclosure
 6 pursuant to chapter 3, title 9, Idaho Code;

7 (d) Consider the recommendations of interested persons concerning the
 8 subject of the proposed rule;

9 (e) Establish, maintain and timely update the negotiated rulemaking
 10 schedule and a list of written comments and other documents and informa-
 11 tion pertinent to the proposed rule and make that information available
 12 to persons attending the negotiated rulemaking meeting;

13 (f) Prepare a written summary of unresolved issues, key information
 14 considered and conclusions reached during and as a result of the negoti-
 15 ated rulemaking and make that summary available to persons who attended
 16 the negotiated rulemaking meetings.

17 SECTION 2. That Section 67-5221, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adop-
 20 tion, amendment, or repeal of a rule, the agency shall publish notice of pro-
 21 posed rulemaking in the bulletin. The notice of proposed rulemaking shall
 22 include:

23 (a) The specific statutory authority for the rulemaking, including a
 24 citation to the specific section of the Idaho Code that has occasioned
 25 the rulemaking, or the federal statute or regulation if that is the ba-
 26 sis of authority or requirement for the rulemaking;

27 (b) A statement in nontechnical language of the substance of the pro-
 28 posed rule, including a specific description of any fee or charge im-
 29 posed or increased;

30 (c) A specific description, if applicable, of any negative fiscal
 31 impact on the state general fund greater than ten thousand dollars
 32 (\$10,000) during the fiscal year when the pending rule will become
 33 effective; provided, however, that notwithstanding section 67-5231,
 34 Idaho Code, the absence or accuracy of a fiscal impact statement pro-
 35 vided pursuant to this subsection shall not affect the validity or the
 36 enforceability of the rule;

37 (d) The text of the proposed rule prepared in legislative format;

38 (e) The location, date, and time of any public hearings the agency in-
 39 tends to hold on the proposed rule;

40 (f) The manner in which persons may make written comments on the pro-
 41 posed rule, including the name and address of a person in the agency to
 42 whom comments on the proposal may be sent;

43 (g) The manner in which persons may request an opportunity for an oral
 44 presentation as provided in section 67-5222, Idaho Code; and

45 (h) The deadline for public comments on the proposed rule; and

46 (i) If negotiated rulemaking was not conducted, an explanation of the
 47 agency's determination that negotiated rulemaking was not feasible.

48 (2) (a) Coinciding with each issue of the bulletin, the coordinator
 49 shall cause the publication of an abbreviated notice with a brief de-

1 scription of the subject matter, showing any agency's intent to propose
2 a new or changed rule that is a new addition to that issue of the bul-
3 letin. The notice shall be in the form of an official legal notice, as
4 provided for in section 60-105, Idaho Code, and subject to the rates set
5 forth therein.

6 The notice shall include the agency name and address, rule number,
7 rule subject matter as provided in ~~paragraph subsection~~ (1) (b) of this
8 section, and the comment deadline. The notice shall also include a
9 brief statement that informs citizens where they can view the adminis-
10 trative bulletin in electronic form.

11 (b) The coordinator shall cause the notice required in ~~paragraph~~
12 subsection (2) (a) of this ~~subsection~~ to be published in at least the ac-
13 cepting newspaper of largest paid circulation that is published in each
14 county in Idaho or, if no newspaper is published in the county, then in
15 an accepting newspaper of largest paid circulation published in Idaho
16 and circulated in the county. The newspaper of largest circulation
17 shall be established by the sworn statement of average annual paid week-
18 day issue circulation that has been filed by a newspaper with the United
19 States post office for the calendar year immediately preceding the cal-
20 endar year during which the advertisement in this section is required to
21 be published.

22 (3) Each agency that has a website shall cause the notice required by
23 either subsection (1) or (2) of this section to be placed onto or be accessi-
24 ble from the home page of the agency's website so that interested persons can
25 view it online.

26 SECTION 3. An emergency existing therefor, which emergency is hereby
27 declared to exist, this act shall be in full force and effect on and after its
28 passage and approval.