

IN THE SENATE

SENATE BILL NO. 1155

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1  
2 RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURES ACT; AMENDING SECTION  
3 67-5201, IDAHO CODE, TO REVISE A DEFINITION AND TO DEFINE TERMS; REPEAL-  
4 ING SECTION 67-5240, IDAHO CODE, RELATING TO CONTESTED CASES; AMENDING  
5 SECTION 67-5241, IDAHO CODE, TO REMOVE A PROVISION REGARDING EVIDENCE  
6 IN A CONTESTED CASE; REPEALING SECTIONS 67-5242 THROUGH 67-5254, IDAHO  
7 CODE, RELATING TO PROCEDURE AT A HEARING, ORDERS NOT ISSUED BY AN AGENCY  
8 HEAD, REVIEW OF RECOMMENDED ORDERS, REVIEW OF PRELIMINARY ORDERS, FI-  
9 NAL ORDERS AND EFFECTIVENESS OF FINAL ORDERS, EMERGENCY PROCEEDINGS,  
10 CONTENTS OF ORDERS, AN AGENCY RECORD, INDEXING OF PRECEDENTIAL AGENCY  
11 ORDERS AND INDEXING OF AGENCY GUIDANCE DOCUMENTS, EVIDENCE AND OFFICIAL  
12 NOTICE, A PRESIDING OFFICER AND DISQUALIFICATION, EX PARTE COMMUNICA-  
13 TIONS AND AGENCY ACTION AGAINST LICENSEES; REPEALING SECTION 67-5270,  
14 IDAHO CODE, RELATING TO RIGHT OF REVIEW; REPEALING SECTION 67-5271,  
15 IDAHO CODE, RELATING TO EXHAUSTION OF ADMINISTRATIVE REMEDIES; REPEAL-  
16 ING SECTIONS 67-5273 THROUGH 67-5279, IDAHO CODE, RELATING TO TIME FOR  
17 FILING PETITION FOR REVIEW, A STAY, AGENCY RECORD FOR JUDICIAL REVIEW,  
18 ADDITIONAL EVIDENCE, JUDICIAL REVIEW OF ISSUES OF FACT, DECLARATORY  
19 JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES AND SCOPE OF REVIEW AND  
20 TYPE OF RELIEF; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE AD-  
21 DITION OF NEW SECTIONS 67-5242 THROUGH 67-5260, IDAHO CODE, TO PROVIDE  
22 QUALIFICATIONS FOR PRESIDING OFFICERS, TO PROVIDE FOR DISQUALIFICATION  
23 OF A PRESIDING OFFICER IN CERTAIN INSTANCES, TO PROVIDE FOR A SUBSTITUTE  
24 PRESIDING OFFICER IN CERTAIN INSTANCES, TO PROVIDE FOR PROCEDURES IN  
25 CONTESTED CASES, TO PROVIDE FOR EVIDENCE IN CONTESTED CASES, TO PRO-  
26 VIDE FOR NOTICE IN CONTESTED CASES, TO PROVIDE FOR A HEARING RECORD  
27 IN CONTESTED CASES, TO PROVIDE FOR AN EMERGENCY ADJUDICATION PROCEDURE,  
28 TO PROHIBIT EX PARTE COMMUNICATIONS, TO PROVIDE EXEMPTIONS FOR  
29 EX PARTE COMMUNICATIONS, TO PROVIDE PROCEDURES IF PROHIBITED EX PARTE  
30 COMMUNICATIONS OCCUR, TO PROVIDE PROCEDURES FOR INTERVENTION IN A CON-  
31 TESTED CASE, TO PROVIDE FOR SUBPOENAS IN A CONTESTED CASE, TO PROVIDE  
32 FOR DISCOVERY IN A CONTESTED CASE, TO PROVIDE PROCEDURES FOR A DEFAULT  
33 ORDER IN A CONTESTED CASE, TO PROVIDE FOR INITIAL AND FINAL ORDERS, TO  
34 PROVIDE FOR AGENCY REVIEW OF THE INITIAL ORDER, TO PROVIDE FOR RECON-  
35 sideration of a final order, TO PROVIDE FOR A STAY OF A FINAL ORDER, TO  
36 PROVIDE FOR THE AVAILABILITY AND INDEXING OF FINAL ORDERS, TO PROVIDE  
37 AN EXEMPTION FOR INDEXING OF FINAL ORDERS, TO PROVIDE PROCEDURES FOR  
38 ACTIONS AGAINST A LICENSEE AND TO PROVIDE FOR JUDICIAL REVIEW IN CERTAIN  
39 INSTANCES; AMENDING CHAPTER 52, TITLE 67, IDAHO CODE, BY THE ADDITION OF  
40 NEW SECTIONS 67-5262 THROUGH 67-5267, IDAHO CODE, TO PROVIDE FOR WHEN  
41 A PETITION FOR JUDICIAL REVIEW MAY BE FILED, TO PROVIDE LIMITATIONS ON  
42 JUDICIAL REVIEW, TO PROVIDE FOR A STAY PENDING AN APPEAL, TO PROVIDE FOR  
43 WHO HAS STANDING FOR JUDICIAL REVIEW, TO PROVIDE THAT A PERSON SHALL  
44 EXHAUST ADMINISTRATIVE REMEDIES PRIOR TO FILING FOR JUDICIAL REVIEW, TO  
45 PROVIDE THAT CERTAIN FILINGS ARE NOT PREREQUISITES FOR JUDICIAL REVIEW,

1 TO PROVIDE THAT A COURT MAY RELIEVE A PARTY FROM EXHAUSTING ADMINISTRA-  
 2 TIVE REMEDIES PRIOR TO FILING FOR JUDICIAL REVIEW IN CERTAIN INSTANCES,  
 3 TO PROVIDE THAT A COURT SHALL REVIEW AN AGENCY RECORD IN ITS REVIEW, TO  
 4 PROVIDE EXCEPTIONS FOR REVIEWING AN AGENCY RECORD AND TO PROVIDE A STAN-  
 5 DARD OF REVIEW; AMENDING SECTION 67-5255, IDAHO CODE, TO REDESIGNATE  
 6 THE SECTION; AMENDING SECTION 67-5272, IDAHO CODE, TO REDESIGNATE THE  
 7 SECTION; AMENDING SECTION 7-1417, IDAHO CODE, TO PROVIDE A CORRECT CODE  
 8 REFERENCE; AMENDING SECTION 26-31-208, IDAHO CODE, TO PROVIDE CORRECT  
 9 CODE REFERENCES; AMENDING SECTION 26-31-309, IDAHO CODE, TO PROVIDE A  
 10 CORRECT CODE REFERENCE; AMENDING SECTION 28-46-302, IDAHO CODE, TO PRO-  
 11 VIDE CORRECT CODE REFERENCES; AMENDING SECTION 28-46-404, IDAHO CODE,  
 12 TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 32-1612, IDAHO  
 13 CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 33-5209C,  
 14 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION  
 15 40-709A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SEC-  
 16 TION 41-227, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE  
 17 A TECHNICAL CORRECTION; AMENDING SECTION 47-324, IDAHO CODE, TO PROVIDE  
 18 A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING  
 19 SECTION 50-222, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMEND-  
 20 ING SECTION 54-2509, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND  
 21 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 58-122, IDAHO CODE, TO  
 22 PROVIDE CORRECT CODE REFERENCES AND TO REMOVE A CODE REFERENCE; AMEND-  
 23 ING SECTION 67-2317, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE;  
 24 AND AMENDING SECTION 67-5206, IDAHO CODE, TO PROVIDE CORRECT CODE REF-  
 25 ERENCES.

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

27 SECTION 1. That Section 67-5201, Idaho Code, be, and the same is hereby  
 28 amended to read as follows:

29 67-5201. DEFINITIONS. As used in this act:

30 (1) "Administrative code" means the Idaho administrative code estab-  
 31 lished in this chapter.

32 (2) "Agency" means each state board, commission, department or officer  
 33 authorized by law to make rules or to determine contested cases, but does not  
 34 include the legislative or judicial branches, executive officers listed in  
 35 section 1, article IV, of the constitution of the state of Idaho in the exer-  
 36 cise of powers derived directly and exclusively from the constitution, the  
 37 state militia or the state board of correction.

38 (3) "Agency action" means:

39 (a) The whole or part of a rule or order;

40 (b) The failure to issue a rule or order; or

41 (c) An agency's performance of, or failure to perform, any duty placed  
 42 on it by law.

43 (4) "Agency head" means an individual or body of individuals in whom the  
 44 ultimate legal authority of the agency is vested by any provision of law.

45 (5) "Bulletin" means the Idaho administrative bulletin established in  
 46 this chapter.

47 (6) "Contested case" means a proceeding an adjudication arising out of  
 48 an agency action in which results in the issuance of an order an opportu-

1 nity for an evidentiary hearing is required by the federal constitution, a  
 2 federal statute or the constitution or a statute of this state. "Contested  
 3 case" shall not mean a proceeding by the public utilities commission or the  
 4 industrial commission or another agency for which an alternative adjudica-  
 5 tion process is provided by statute.

6 (7) "Coordinator" means the administrative rules coordinator pre-  
 7 scribed in section 67-5202, Idaho Code.

8 (8) "Document" means any executive order, notice, rule or statement of  
 9 policy of an agency.

10 (9) "Final rule" means a rule that has been adopted by an agency under  
 11 the regular rulemaking process and is in effect.

12 (10) "License" means the whole or part of any agency permit, certifi-  
 13 cate, approval, registration, charter, or similar form of authorization re-  
 14 quired by law, but does not include a license required solely for revenue  
 15 purposes.

16 (11) "Official text" means the text of a document issued, prescribed,  
 17 or promulgated by an agency in accordance with this chapter, and is the only  
 18 legally enforceable text of such document. Judicial notice shall be taken  
 19 of all documents issued, prescribed, or promulgated in accordance with this  
 20 chapter.

21 (12) "Order" means an agency action of particular applicability that  
 22 determines the legal rights, duties, privileges, immunities, or other legal  
 23 interests of one (1) or more specific persons.

24 (13) "Party" means each person or agency named or admitted as a party, or  
 25 properly seeking and entitled as of right to be admitted as a party.

26 (14) "Pending rule" means a rule that has been adopted by an agency under  
 27 the regular rulemaking process and remains subject to legislative review.

28 (15) "Person" means any individual, partnership, corporation, associa-  
 29 tion, governmental subdivision or agency, or public or private organization  
 30 or entity of any character.

31 (16) "Presiding officer" means an individual, appointed by the agency  
 32 head or his designee, who presides over the evidentiary hearing in a con-  
 33 tested case.

34 (17) "Proposed rule" means a rule published in the bulletin as provided  
 35 in section 67-5221, Idaho Code.

36 (178) "Provision of law" means the whole or a part of the state or fed-  
 37 eral constitution, or of any state or federal:

38 (a) Statute; or

39 (b) Rule or decision of court.

40 (189) "Publish" means to bring before the public by publication in the  
 41 bulletin or administrative code, by electronic means or as otherwise specif-  
 42 ically provided by law.

43 (20) "Record" means information that is inscribed on a tangible medium  
 44 or that is stored in an electronic or other medium and is retrievable in per-  
 45 ceivable form.

46 (1921) "Rule" means the whole or a part of an agency statement of general  
 47 applicability that has been promulgated in compliance with the provisions of  
 48 this chapter and that implements, interprets, or prescribes:

49 (a) Law or policy; or

1 (b) The procedure or practice requirements of an agency. The term in-  
 2 cludes the amendment, repeal, or suspension of an existing rule, but  
 3 does not include:

- 4 (i) Statements concerning only the internal management or in-  
 5 ternal personnel policies of an agency and not affecting private  
 6 rights of the public or procedures available to the public; or  
 7 (ii) Declaratory rulings issued pursuant to section 67-5232,  
 8 Idaho Code; or  
 9 (iii) Intra-agency memoranda; or  
 10 (iv) Any written statements given by an agency which pertain to  
 11 an interpretation of a rule or to the documentation of compliance  
 12 with a rule.

13 (202) "Rulemaking" means the process for formulation, adoption, amend-  
 14 ment or repeal of a rule.

15 (213) "Standard" means a manual, guideline, criterion, specification,  
 16 requirement, measurement or other authoritative principle providing a model  
 17 or pattern in comparison with which the correctness or appropriateness of  
 18 specified actions, practices or procedures may be determined.

19 (224) "Submitted for review" means that a rule has been provided to the  
 20 legislature for review at a regular or special legislative session as pro-  
 21 vided in section 67-5291, Idaho Code.

22 (235) "Temporary rule" means a rule authorized by the governor to be-  
 23 come effective before it has been submitted to the legislature for review and  
 24 which expires by its own terms or by operation of law no later than the con-  
 25 clusion of the next succeeding regular legislative session unless extended  
 26 or replaced by a final rule as provided in section 67-5226, Idaho Code.

27 SECTION 2. That Section [67-5240](#), Idaho Code, be, and the same is hereby  
 28 repealed.

29 SECTION 3. That Section 67-5241, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 67-5241. INFORMAL DISPOSITION. (1) Unless prohibited by other provi-  
 32 sions of law:

33 (a) an agency or a presiding officer may decline to initiate a contested  
 34 case;

35 ~~(b) any part of the evidence in a contested case may be received in writ-~~  
 36 ~~ten form if doing so will expedite the case without substantially preju-~~  
 37 ~~dicating the interests of any party;~~

38 ~~(e)~~ informal disposition may be made of any contested case by negotia-  
 39 tion, stipulation, agreed settlement, or consent order. Informal set-  
 40 tlement of matters is to be encouraged;

41 ~~(d)~~ the parties may stipulate as to the facts, reserving the right to  
 42 appeal to a court of competent jurisdiction on issues of law.

43 (2) An agency or a presiding officer may request such additional in-  
 44 formation as required to decide whether to initiate or to decide a contested  
 45 case as provided in subsection (1) of this section.

46 (3) If an agency or a presiding officer declines to initiate or decide  
 47 a contested case under the provisions of this section, the agency or the of-  
 48 ficer shall furnish a brief statement of the reasons for the decision to all

1 persons involved. This subsection does not apply to investigations or in-  
2 quiries directed to or performed by law enforcement agencies defined in sec-  
3 tion 74-101(7), Idaho Code.

4 (4) The agency may not abdicate its responsibility for any informal  
5 disposition of a contested case. Disposition of a contested case as provided  
6 in this section is a final agency action.

7 SECTION 4. That Sections [67-5242](#) through [67-5254](#), Idaho Code, be, and  
8 the same are hereby repealed.

9 SECTION 5. That Sections [67-5270](#) and [67-5271](#), Idaho Code, be, and the  
10 same are hereby repealed.

11 SECTION 6. That Sections [67-5273](#) through [67-5279](#), Idaho Code, be, and  
12 the same are hereby repealed.

13 SECTION 7. That Chapter 52, Title 67, Idaho Code, be, and the same is  
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
15 ignated as Section 67-5242, Idaho Code, and to read as follows:

16 67-5242. PRESIDING OFFICER. (1) A presiding officer must be an indi-  
17 vidual admitted to the practice of law in this state for at least three (3)  
18 years and shall not be the agency head or a member of the multimember body  
19 of individuals that is the agency head, or a member of the agency governing  
20 board.

21 (2) An individual who has served as investigator, prosecutor or advo-  
22 cate at any stage in a contested case or who is subject to the authority, di-  
23 rection or discretion of an individual who has served as investigator, pros-  
24 ecutor or advocate at any stage in a contested case may not serve as the pre-  
25 siding officer in the same case.

26 (3) A presiding officer is subject to disqualification for bias, prej-  
27 udice, financial interest, ex parte communications as provided in section  
28 67-5248, Idaho Code, or any other factor that would cause a reasonable per-  
29 son to question the impartiality of the presiding officer. A presiding of-  
30 ficer, after making a reasonable inquiry, shall disclose to the parties any  
31 known facts related to grounds for disqualification that are material to the  
32 impartiality of the presiding officer in the proceeding.

33 (4) A party may petition for the disqualification of a presiding offi-  
34 cer promptly after notice that the person will preside or, if later, promptly  
35 on discovering facts establishing a ground for disqualification. The peti-  
36 tion must state with particularity the ground on which it is claimed that a  
37 fair and impartial hearing cannot be accorded or the applicable rule or canon  
38 of practice or ethics that requires disqualification. The petition may be  
39 denied if the party fails to exercise due diligence in requesting disquali-  
40 fication after discovering a ground for disqualification.

41 (5) A presiding officer whose disqualification is requested shall de-  
42 cide whether to grant the petition and shall state in a record the facts and  
43 reasons for the decision. The decision to deny disqualification is not sub-  
44 ject to interlocutory judicial review.

45 (6) If a substitute presiding officer is required, the substitute must  
46 be appointed by the appointing authority.

1 SECTION 8. That Chapter 52, Title 67, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 67-5243, Idaho Code, and to read as follows:

4 67-5243. CONTESTED CASE PROCEDURE. (1) This section does not apply to  
5 an emergency adjudication under section 67-5247, Idaho Code.

6 (2) An agency shall give notice of the agency decision to a person when  
7 the agency takes an action as to which the person has a right to a contested  
8 case hearing. The notice must be in writing, set forth the agency action, in-  
9 form the person of the right, procedure and time limit to file a contested-  
10 case petition, and provide a copy of the agency procedures governing the con-  
11 tested case.

12 (3) In a contested case, the presiding officer shall give all parties a  
13 timely opportunity to file pleadings, motions and objections. The presiding  
14 officer may give all parties the opportunity to file briefs, proposed find-  
15 ings of fact and conclusions of law, and proposed initial or final orders.  
16 The presiding officer, with the consent of all parties, may refer the parties  
17 in a contested case to mediation or other dispute resolution procedure.

18 (4) In a contested case, to the extent necessary for full disclosure of  
19 all relevant facts and issues, the presiding officer shall give all parties  
20 the opportunity to respond, present evidence and argument, conduct cross-  
21 examination and submit rebuttal evidence.

22 (5) Except as otherwise provided by law other than this act, the presid-  
23 ing officer may conduct all or part of an evidentiary hearing or a prehearing  
24 conference by telephone, television, video conference or other electronic  
25 means. The hearing may be conducted by telephone or other method by which  
26 the witnesses may not be seen only if all parties consent or the presiding of-  
27 ficer finds that this method will not impair reliable determination of the  
28 credibility of testimony. Each party must be given an opportunity to attend,  
29 hear and be heard at the proceeding as it occurs. This subsection does not  
30 prevent an agency from providing by rule for electronic hearings that other-  
31 wise comply with the requirements of this section.

32 (6) Except as otherwise provided in subsection (7) of this section, a  
33 hearing in a contested case must be open to the public. A hearing conducted  
34 by telephone, television, video conference or other electronic means is open  
35 to the public if members of the public have an opportunity to attend the hear-  
36 ing at the place where the presiding officer is located or to hear or see the  
37 proceeding as it occurs.

38 (7) A presiding officer may close a hearing to the public on a ground on  
39 which a court of this state may close a judicial proceeding to the public or  
40 pursuant to law of this state other than this act.

41 (8) Unless prohibited by law of this state other than this act, a party,  
42 at the party's expense, may be represented by counsel. If allowed by admin-  
43 istrative rule, a party may be advised or represented by another individual.

44 (9) A presiding officer shall ensure that a hearing record is created  
45 that complies with section 67-5246, Idaho Code.

46 (10) The decision in a contested case must be based on the hearing record  
47 and contain a statement of the factual and legal bases of the decision. If  
48 a finding of fact is set forth in language of a statute of this state other  
49 than this act, it must be accompanied by a concise and explicit statement of

1 the underlying facts supporting the finding of fact. The decision must be  
2 prepared electronically and, on request, made available in writing.

3 (11) Subject to all applicable procedural rules, the rules by which an  
4 agency conducts a contested case may include provisions more protective of  
5 the rights of parties other than the agency.

6 (12) Unless prohibited by law of this state other than this act, an  
7 agency may dispose of a contested case without a hearing by stipulation,  
8 agreed settlement, consent order or default.

9 SECTION 9. That Chapter 52, Title 67, Idaho Code, be, and the same is  
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
11 ignated as Section 67-5244, Idaho Code, and to read as follows:

12 67-5244. EVIDENCE IN CONTESTED CASES. The following rules apply in a  
13 contested case:

14 (1) Except as otherwise provided in subsection (2) of this section, all  
15 relevant evidence is admissible, including hearsay evidence, if it is of a  
16 type commonly relied on by a reasonably prudent individual in the conduct of  
17 the affairs of the individual.

18 (2) The presiding officer may exclude evidence in the absence of an ob-  
19 jection if the evidence is irrelevant, immaterial, unduly repetitious, or  
20 excludable on constitutional or statutory grounds or on the basis of an ev-  
21 identiary privilege recognized in the courts of this state. The presiding  
22 officer shall exclude the evidence if objection is made at the time the evi-  
23 dence is offered.

24 (3) If the presiding officer excludes evidence with or without objec-  
25 tion, the offering party may make an offer of proof before further evidence  
26 is presented or at a later time determined by the presiding officer.

27 (4) Evidence may be received in a record if doing so will expedite the  
28 hearing without substantial prejudice to a party. Documentary evidence may  
29 be received in the form of a copy if the original is not readily available or  
30 by incorporation by reference. On request, parties must be given an opportu-  
31 nity to compare the copy with the original.

32 (5) Testimony must be made under oath or affirmation.

33 (6) Evidence must be made part of the hearing record of the case. In-  
34 formation or evidence may not be considered in determining the case unless  
35 it is part of the hearing record. If the hearing record contains information  
36 that is confidential, the presiding officer may conduct a closed hearing to  
37 discuss the information, issue necessary protective orders, and seal all or  
38 part of the hearing record.

39 (7) The presiding officer may take official notice of all facts of which  
40 judicial notice may be taken and of scientific, technical or other facts  
41 within the specialized knowledge of the agency. A party must be notified at  
42 the earliest practicable time of the facts proposed to be noticed and their  
43 source, including any staff memoranda or data. The party must be afforded  
44 an opportunity to contest any officially noticed fact before the decision  
45 becomes final.

46 SECTION 10. That Chapter 52, Title 67, Idaho Code, be, and the same is  
47 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
48 ignated as Section 67-5245, Idaho Code, and to read as follows:

1           67-5245. NOTICE IN CONTESTED CASES. (1) Except as otherwise provided  
2 in an emergency adjudication under section 67-5247, Idaho Code, an agency  
3 shall give notice in a contested case that complies with this section.

4           (2) In a contested case initiated by a person other than an agency, not  
5 later than seven (7) days after the filing of the contested case petition,  
6 the agency shall give notice to all parties that the case has been commenced.  
7 A contested case does not commence until notice is given pursuant to this  
8 section. The notice must contain:

9           (a) The official file or other reference number, the name of the pro-  
10 ceeding, and a general description of the subject matter;

11           (b) Contact information for communicating with the agency, including  
12 the agency mailing address and telephone number;

13           (c) A statement of the date, time, place and nature of the prehearing  
14 conference or hearing, if any;

15           (d) The name, official title, mailing address and telephone number  
16 of any attorney or employee who has been designated to represent the  
17 agency; and

18           (e) The names and last known addresses of all parties and other persons  
19 to which notice is being given by the agency.

20           (3) In a contested case initiated by an agency, the agency shall give  
21 notice to the party against which the action is brought. A contested case  
22 does not commence until notice is given pursuant to this section. The notice  
23 must contain:

24           (a) A statement that a case that may result in an order has been com-  
25 menced against the party;

26           (b) A short and plain statement of the matters asserted, including the  
27 issues involved;

28           (c) A statement of the legal authority under which the hearing will be  
29 held citing the statutes and any rules involved;

30           (d) The official file or other reference number and the name of the pro-  
31 ceeding;

32           (e) The name, official title and mailing address of the presiding offi-  
33 cer and the name, official title, mailing address and telephone number  
34 of the agency's representative;

35           (f) A statement that a party that fails to attend or participate in any  
36 subsequent proceeding in the case may be held in default;

37           (g) A statement that the party served may request a hearing and includes  
38 instructions in plain English about how to request a hearing; and

39           (h) The names and last known addresses of all parties and other persons  
40 to which notice is being given by the agency.

41           (4) When a hearing or a prehearing conference is scheduled, the agency  
42 shall give parties notice that contains the information required by subsec-  
43 tion (3) of this section at least thirty (30) days before the hearing or pre-  
44 hearing conference.

45           (5) A notice under this section may include other matters that the pre-  
46 siding officer considers desirable to expedite the proceedings.

47           SECTION 11. That Chapter 52, Title 67, Idaho Code, be, and the same is  
48 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
49 ignated as Section 67-5246, Idaho Code, and to read as follows:



1           67-5246. HEARING RECORD IN CONTESTED CASES. (1) An agency shall main-  
2           tain the hearing record created under section 67-5243(9), Idaho Code, in  
3           each contested case for a period of not less than six (6) months after the  
4           expiration of the last date for judicial review, unless otherwise provided  
5           by law.

6           (2) The hearing record must contain:

7           (a) A recording of each proceeding;

8           (b) Notice of each proceeding;

9           (c) Any prehearing order;

10          (d) Any motion, pleading, brief, petition, request and intermediate  
11          ruling;

12          (e) Evidence admitted;

13          (f) A statement of any matter officially noticed;

14          (g) Any proffer of proof and objection and ruling thereon;

15          (h) Any proposed finding, requested order, and exception;

16          (i) Any transcript of the proceeding prepared at the direction of the  
17          agency;

18          (j) Any final order or order on reconsideration; and

19          (k) Any matter placed on the record after an ex parte communication un-  
20          der section 67-5248(6), Idaho Code.

21          (3) The hearing record constitutes the exclusive basis for agency ac-  
22          tion in a contested case.

23           SECTION 12. That Chapter 52, Title 67, Idaho Code, be, and the same is  
24           hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
25           ignated as Section 67-5247, Idaho Code, and to read as follows:

26           67-5247. EMERGENCY ADJUDICATION PROCEDURE. (1) Unless prohibited by  
27           law of this state other than this act, an agency may conduct an emergency ad-  
28           judication in a contested case under this section.

29           (2) An agency may take action and issue an order under this section only  
30           to deal with an imminent peril to the public health or safety.

31           (3) Before issuing an order under this section, an agency, if practica-  
32           ble, shall give notice and an opportunity to be heard to the person to which  
33           the agency action is directed. The notice of the hearing and the hearing may  
34           be oral or written and may be by telephone, facsimile or other electronic  
35           means.

36           (4) An order issued under this section must briefly explain the factual  
37           and legal reasons for using emergency adjudication procedures.

38           (5) To the extent practicable, an agency shall give notice to the person  
39           to which the agency action is directed that an order has been issued. The or-  
40           der is effective when signed by the agency head or the designee of the agency  
41           head.

42           (6) After issuing an order pursuant to this section, an agency shall  
43           proceed as soon as practicable, but not less than thirty (30) days or, if an  
44           objection is received by an agency head, two (2) business days, to provide  
45           notice and an opportunity for a hearing following the procedure under sec-  
46           tion 67-5243, Idaho Code, to determine the issues underlying the order. If  
47           an objection is received by an agency head, the notice provided pursuant to  
48           this subsection shall be sent to the non-objecting party.

1 (7) An order issued under this section may be effective for not longer  
2 than one hundred twenty (120) days or until the effective date of any order  
3 issued under subsection (6) of this section, whichever is shorter.

4 SECTION 13. That Chapter 52, Title 67, Idaho Code, be, and the same is  
5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
6 ignated as Section 67-5248, Idaho Code, and to read as follows:

7 67-5248. EX PARTE COMMUNICATIONS. (1) Except as otherwise provided in  
8 subsection (2) or (3) of this section, while a contested case is pending,  
9 the presiding officer and the final decision maker may not make to or receive  
10 from any person any communication concerning the case without notice and op-  
11 portunity for all parties to participate in the communication. For the pur-  
12 pose of this section, a contested case is pending from the issuance of the  
13 agency's pleading or from an application for an agency decision, whichever  
14 is earlier.

15 (2) A presiding officer or final decision maker may communicate about a  
16 pending contested case with any person if the communication is required for  
17 the disposition of ex parte matters authorized by statute or concerns an un-  
18 contested procedural issue.

19 (3) A presiding officer or final decision maker may communicate about a  
20 pending contested case with an individual authorized by law to provide legal  
21 advice to the presiding officer or final decision maker and may communicate  
22 on ministerial matters with an individual who serves on the staff of the pre-  
23 siding officer or final decision maker if the individual providing legal ad-  
24 vice or ministerial information has not served as investigator, prosecutor  
25 or advocate at any stage of the case and if the communication does not aug-  
26 ment, diminish or modify the evidence in the record.

27 (4) If a presiding officer or final decision maker makes or receives a  
28 communication in violation of this section, the presiding officer or final  
29 decision maker:

30 (a) If the communication is in a record, shall make the record of the  
31 communication a part of the hearing record and prepare and make part  
32 of the hearing record a memorandum that contains the response of the  
33 presiding officer or final decision maker to the communication, and the  
34 identity of the person that communicated; or

35 (b) If the communication is oral, shall prepare a memorandum that con-  
36 tains the substance of the verbal communication, the response of the  
37 presiding officer or final decision maker to the communication, and the  
38 identity of the person that communicated.

39 (5) If a communication prohibited by this section is made, the presid-  
40 ing officer or final decision maker shall notify all parties of the prohib-  
41 ited communication and permit parties to respond in a record not later than  
42 fifteen (15) days after the notice is given. For good cause, the presiding  
43 officer or final decision maker may permit additional testimony in response  
44 to the prohibited communication.

45 (6) If necessary to eliminate the effect of a communication received in  
46 violation of this section, a presiding officer or final decision maker may be  
47 disqualified under section 67-5242(4) and (5), Idaho Code, the parts of the  
48 record pertaining to the communication may be sealed by protective order, or

1 other appropriate relief may be granted, including an adverse ruling on the  
2 merits of the case or dismissal of the application.

3 SECTION 14. That Chapter 52, Title 67, Idaho Code, be, and the same is  
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
5 ignated as Section 67-5249, Idaho Code, and to read as follows:

6 67-5249. INTERVENTION. (1) A presiding officer shall grant a timely  
7 petition for intervention in a contested case, with notice to all parties,  
8 if:

9 (a) The petitioner has a statutory right under law of this state other  
10 than this act to initiate or to intervene in the case; or

11 (b) The petitioner has an interest that may be adversely affected by the  
12 outcome of the case and that interest is not adequately represented by  
13 existing parties.

14 (2) A presiding officer may grant a timely petition for intervention in  
15 a contested case, with notice to all parties, if the petitioner has a permis-  
16 sive statutory right to intervene under law of this state other than this act  
17 or if the petitioner's claim or defense is based on the same transaction or  
18 occurrence as the case.

19 (3) A presiding officer may impose conditions at any time on an inter-  
20 vener's participation in the contested case.

21 (4) A presiding officer may permit intervention provisionally and, at  
22 any time later in the contested case or at the end of the case, may revoke the  
23 provisional intervention.

24 (5) On request by the petitioners or a party or by action of the presid-  
25 ing officer, the presiding officer may hold a hearing on the intervention pe-  
26 tition.

27 (6) A presiding officer shall promptly give notice of an order grant-  
28 ing, denying, or revoking intervention to the petitioner for intervention  
29 and to the parties. The notice must allow parties a reasonable time to pre-  
30 pare for the hearing on the merits.

31 SECTION 15. That Chapter 52, Title 67, Idaho Code, be, and the same is  
32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
33 ignated as Section 67-5250, Idaho Code, and to read as follows:

34 67-5250. SUBPOENAS. (1) On a request in a record by a party in a con-  
35 tested case, the presiding officer or any other officer to whom the power to  
36 issue a subpoena is delegated pursuant to law, on a showing of general rel-  
37 evance and reasonable scope of the evidence sought for use at the hearing,  
38 shall issue a subpoena for the attendance of a witness and the production of  
39 books, records and other evidence.

40 (2) Unless otherwise provided by law or agency rule, a subpoena issued  
41 under subsection (1) of this section shall be served and, on application to  
42 the court by a party or the agency, enforced in the manner provided by law for  
43 the service and enforcement of a subpoena in a civil action.

44 (3) Witness fees shall be paid by the party requesting a subpoena in the  
45 manner provided by law for witness fees in a civil action.

1 SECTION 16. That Chapter 52, Title 67, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 67-5251, Idaho Code, and to read as follows:

4 67-5251. DISCOVERY. (1) In this section, "statement" includes a  
5 record of a person's written statement signed by the person and a record that  
6 summarizes an oral statement made by the person.

7 (2) Except in an emergency hearing under section 67-5247, Idaho Code,  
8 a party, on written notice to another party at least thirty (30) days before  
9 an evidentiary hearing, unless otherwise ordered by the presiding officer  
10 under subsection (7) of this section, may:

11 (a) Obtain the names and addresses of witnesses the other party will  
12 present at the hearing to the extent known to the other party; and

13 (b) Inspect and copy any of the following materials in the possession,  
14 custody or control of the other party:

15 (i) Statements of parties and witnesses proposed to be called by  
16 the other party;

17 (ii) All records, including reports of mental, physical, and  
18 blood examinations, and other evidence the other party proposes to  
19 offer;

20 (iii) Investigative reports made by or on behalf of the agency or  
21 other party pertaining to the subject matter of the adjudication;

22 (iv) Statements of expert witnesses proposed to be called by the  
23 other party;

24 (v) Any exculpatory material in the possession of the agency; and

25 (vi) Other materials for good cause.

26 (3) Parties to a contested case have a duty to supplement responses pro-  
27 vided under subsection (2) of this section to include information thereafter  
28 acquired, to the extent that the information will be relied on in the hear-  
29 ing.

30 (4) On petition, the presiding officer may issue a protective order for  
31 any material for which discovery is sought under this section that is exempt,  
32 privileged, or otherwise made confidential or protected from disclosure by  
33 law of this state other than this act and material the disclosure of which  
34 would result in annoyance, embarrassment, oppression or undue burden or ex-  
35 pense to any person.

36 (5) On petition, the presiding officer may issue an order compelling  
37 discovery for refusal to comply with a discovery request unless good cause  
38 exists for refusal. Failure to comply with the order may be enforced accord-  
39 ing to the rules of civil procedure.

40 (6) On petition and for good cause, the presiding officer may issue an  
41 order authorizing additional discovery tools allowed under the Idaho rules  
42 of civil procedure.

43 (7) An agency may provide by rule that some or all discovery procedures  
44 under this section do not apply to a specified program or category of cases if  
45 it finds that:

46 (a) The availability of discovery would unduly complicate or interfere  
47 with the hearing process in the program or cases, because of the volume  
48 of the applicable caseload and the need for expedition and informality  
49 in that process; and

1 (b) Alternative procedures for the sharing of relevant information are  
2 sufficient to ensure the fundamental fairness of the proceedings.

3 SECTION 17. That Chapter 52, Title 67, Idaho Code, be, and the same is  
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
5 ignated as Section 67-5252, Idaho Code, and to read as follows:

6 67-5252. DEFAULT. (1) Unless otherwise provided by law of this state  
7 other than this act, if a party without good cause fails to attend or partici-  
8 pate in a prehearing conference or hearing in a contested case, the presiding  
9 officer may issue a default order.

10 (2) If a default order is issued, the presiding officer may conduct any  
11 further proceedings necessary to complete the adjudication without the de-  
12 faulting party and shall determine all issues in the adjudication, including  
13 those affecting the defaulting party.

14 (3) An initial or final order issued against a defaulting party may be  
15 based on the defaulting party's admissions or other evidence that may be used  
16 without notice to the defaulting party. If the burden of proof is on the de-  
17 faulting party to establish that the party is entitled to the agency action  
18 sought, the presiding officer may issue an initial or final order without  
19 taking evidence.

20 (4) Not later than fifteen (15) days after notice to a party subject to  
21 a default order that an initial or final order has been rendered against the  
22 party, the party may petition the presiding officer to vacate the initial or  
23 final order. If good cause is shown for the party's failure to appear, the  
24 presiding officer shall vacate the decision and, after proper service of no-  
25 tice, conduct another evidentiary hearing. If good cause is not shown for  
26 the party's failure to appear, the presiding officer shall deny the motion to  
27 vacate.

28 SECTION 18. That Chapter 52, Title 67, Idaho Code, be, and the same is  
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
30 ignated as Section 67-5253, Idaho Code, and to read as follows:

31 67-5253. ORDERS -- INITIAL -- FINAL. (1) The presiding officer shall  
32 issue a final order if delegated by an agency head.

33 (2) Unless the presiding officer has been delegated final decisional  
34 authority, the presiding officer shall issue an initial order that becomes  
35 a final order thirty (30) days after issuance, unless reviewed by the agency  
36 head on its own initiative or on petition of a party.

37 (3) An initial or final order must be served in a record on each party  
38 and the agency head not later than ninety (90) days after the hearing ends,  
39 the record closes, or memoranda, briefs, or proposed findings are submitted,  
40 whichever is latest. The presiding officer may extend the time by stipula-  
41 tion, waiver, or for good cause. The order shall be accompanied by proof of  
42 service stating the service date, each party who was served and the method of  
43 service.

44 (4) An initial or final order must separately state findings of fact and  
45 conclusions of law on all material issues of fact, law, or discretion, the  
46 remedy prescribed, and, if applicable, the action taken on a petition for  
47 a stay. The presiding officer may permit a party to submit proposed find-

1 ings of fact and conclusions of law. An initial order must state any circum-  
2 stances under which the order, without further notice, may become a final or-  
3 der.

4 (5) Findings of fact must be based exclusively on the evidence and mat-  
5 ters officially noticed in the hearing record in the contested case.

6 (6) Hearsay evidence may be used to supplement or explain other ev-  
7 idence but, on timely objection, is not sufficient by itself to support a  
8 finding of fact unless it would be admissible over objection in a civil ac-  
9 tion.

10 (7) An order is issued under this section when it is signed by the agency  
11 head, presiding officer, or an individual authorized by law of this state  
12 other than this act to sign the order.

13 (8) A final order is effective thirty (30) days after its service date  
14 unless reconsideration is granted under section 67-5256, Idaho Code, or a  
15 stay is granted under section 67-5257, Idaho Code.

16 (9) The agency shall attach to the order the available procedures and  
17 time limits for seeking reconsideration or other administrative relief and  
18 must state the time limits for seeking judicial review of the agency order.

19 SECTION 19. That Chapter 52, Title 67, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 67-5254, Idaho Code, and to read as follows:

22 67-5254. AGENCY REVIEW OF INITIAL ORDER. (1) An agency head may review  
23 an initial order on its own initiative.

24 (2) A party may petition an agency head to review an initial order. On  
25 petition by a party, the agency head may review an initial order.

26 (3) A petition for review of an initial order must be filed with the  
27 agency head or with any person designated for this purpose by agency rule  
28 not later than fifteen (15) days after the service date of the order. If the  
29 agency head decides to review an initial order on its own initiative, the  
30 agency head shall give notice in a record to the parties that it intends to  
31 review the order. The notice must be given not later than fifteen (15) days  
32 after the service date of the order. If a petition for review is not filed  
33 or the agency head does not elect to review the initial order within the pre-  
34 scribed time limit, the initial order becomes a final order.

35 (4) The period in subsection (3) of this section for a party to file a  
36 petition or for the agency head to notify the parties of its intention to re-  
37 view an initial order is tolled by the submission of a timely petition under  
38 section 67-5256, Idaho Code, for reconsideration of the order. A new fifteen  
39 (15) day period begins on disposition of the petition for reconsideration.  
40 If an order is subject both to a timely petition for reconsideration and a pe-  
41 tition for review by the agency head, the petition for reconsideration must  
42 be disposed of first, unless the agency head determines that action on the  
43 petition for reconsideration has been unreasonably delayed.

44 (5) When reviewing an initial order, the agency head shall exercise the  
45 decision-making power that the agency head would have had if the agency head  
46 had conducted the hearing that produced the order, except to the extent that  
47 the issues subject to review are limited by law of this state other than this  
48 act or by order of the agency head on notice to the parties.

1 (6) If an agency head reviews an initial order, the agency head shall  
2 issue a final order disposing of the proceeding not later than one hundred  
3 twenty (120) days after the decision to review the initial order or remand  
4 the matter for further proceedings with instructions to the presiding offi-  
5 cer who issued the initial order. On remanding a matter, the agency head may  
6 order a review of the conclusions of law, but not the findings of fact, and  
7 may order such temporary relief as is authorized and appropriate.

8 (7) A final order or an order remanding the matter for further proceed-  
9 ings must identify any difference between the order and the initial order and  
10 must state the law that supports any difference in legal conclusions and the  
11 policy reasons that support any difference in the exercise of discretion.  
12 Findings of fact must be based exclusively on the evidence and matters of-  
13 ficially noticed in the hearing record in the contested case. A final order  
14 under this section must include, or incorporate by express reference to the  
15 initial order, the matters required by section 67-5253(4), Idaho Code. The  
16 agency head shall deliver the order to the presiding officer and notify the  
17 parties of the order.

18 SECTION 20. That Chapter 52, Title 67, Idaho Code, be, and the same is  
19 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
20 ignated as Section 67-5256, Idaho Code, and to read as follows:

21 67-5256. RECONSIDERATION. (1) A party, not later than fifteen (15)  
22 days after the service date of a final order, may file a petition for recon-  
23 sideration that states the specific grounds on which relief is requested.  
24 The place of filing and other procedures, if any, must be specified by agency  
25 rule and must be stated in the final order.

26 (2) If a petition for reconsideration is timely filed, and if the peti-  
27 tioner has complied with the agency's procedural rules for reconsideration,  
28 if any, the time for filing a petition for judicial review does not begin un-  
29 til the agency disposes of the petition for reconsideration as provided in  
30 section 67-5262(5), Idaho Code.

31 (3) Not later than twenty (20) days after a petition is filed under sub-  
32 section (1) of this section, the decision maker shall issue a written order  
33 denying the petition, granting the petition and dissolving or modifying the  
34 final order, or granting the petition and setting the matter for further pro-  
35 ceedings. If the decision maker fails to respond to the petition not later  
36 than thirty (30) days after filing, or a longer period agreed to by the par-  
37 ties, the petition is deemed denied. The petition may be granted only if the  
38 decision maker states findings of facts, conclusions of law, and the reasons  
39 for granting the petition.

40 SECTION 21. That Chapter 52, Title 67, Idaho Code, be, and the same is  
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
42 ignated as Section 67-5257, Idaho Code, and to read as follows:

43 67-5257. STAY. Except as otherwise provided by law of this state other  
44 than this act, a party, not later than seven (7) days after the service date  
45 of the order, may request the agency to stay a final order pending judicial  
46 review. The agency may grant the request for a stay pending judicial review  
47 if the agency finds that justice requires. The agency may grant or deny the

1 request for stay of the order before, on, or after the effective date of the  
2 order.

3 SECTION 22. That Chapter 52, Title 67, Idaho Code, be, and the same is  
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
5 ignated as Section 67-5258, Idaho Code, and to read as follows:

6 67-5258. AVAILABILITY OF ORDERS -- INDEX -- INDEXING OF GUIDANCE DOC-  
7 UMENTS. (1) Except as otherwise provided in subsections (2) and (3) of this  
8 section, an agency shall create an index of all final orders in contested  
9 cases and make the index and all final orders available for public inspection  
10 and copying, at cost, in its principal offices.

11 (2) Except as otherwise provided in subsection (3) of this section, fi-  
12 nal orders that are exempt, privileged, or otherwise made confidential or  
13 protected from disclosure by the public records law of this state are not  
14 public records and may not be indexed. The final order may be excluded from  
15 an index and disclosed only by order of the presiding officer with a written  
16 statement of reasons attached to the order.

17 (3) If the presiding officer determines it is possible to redact a fi-  
18 nal order that is exempt, privileged, or otherwise made confidential or pro-  
19 tected from disclosure by law of this state other than this act, so that it  
20 complies with the requirements of that law, the redacted order may be placed  
21 in the index and published.

22 (4) An agency may not rely on a final order adverse to a party other than  
23 the agency as precedent in future adjudications, unless the agency desig-  
24 nates the order as a precedent and the order has been published, placed in an  
25 index, and made available for public inspection.

26 (5) Unless otherwise prohibited by any provision of law, each agency  
27 shall index by subject all agency guidance documents. The index and the  
28 guidance documents shall be available for public inspection and copying at  
29 cost in the main office and each regional or district office of the agency.  
30 As used in this section, "agency guidance" means all written documents,  
31 other than rules, orders, and pre-decisional material, that are intended to  
32 guide agency actions affecting the rights or interests of persons outside  
33 the agency. "Agency guidance" shall include memoranda, manuals, policy  
34 statements, interpretations of law or rules, and other materials that are  
35 of general applicability, whether prepared by the agency alone or jointly  
36 with other persons. The indexing of a guidance document does not give that  
37 document the force and effect of law or other precedential authority.

38 SECTION 23. That Chapter 52, Title 67, Idaho Code, be, and the same is  
39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
40 ignated as Section 67-5259, Idaho Code, and to read as follows:

41 67-5259. LICENSES. (1) If a licensee has made timely and sufficient  
42 application for the renewal of a license or a new license for any activity  
43 of a continuing nature, the existing license does not expire until the agency  
44 takes final action on the application and, if the application is denied or  
45 the terms of the new license are limited, until the last day for seeking re-  
46 view of the agency order or a later date fixed by the reviewing court.



1 (2) A revocation, suspension, annulment, or withdrawal of a license is  
2 not lawful unless, before the institution of agency proceedings, the agency  
3 notifies the licensee of facts or conduct that warrants the intended action  
4 and the licensee is given an opportunity to show compliance with all lawful  
5 requirements for the retention of the license. If the agency finds that im-  
6 minent peril to public health or safety requires emergency action and in-  
7 corporates a finding to that effect in its order, summary suspension of a  
8 license may be ordered pending proceedings for revocation or other action.  
9 These proceedings must be promptly instituted and concluded and performed in  
10 accordance with the provisions of section 67-5247, Idaho Code.

11 (3) A revocation, suspension, annulment, or withdrawal of a license  
12 that is in conflict with the provisions of this section shall be null, void  
13 and of no force and effect.

14 SECTION 24. That Chapter 52, Title 67, Idaho Code, be, and the same is  
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
16 ignated as Section 67-5260, Idaho Code, and to read as follows:

17 67-5260. RIGHT TO JUDICIAL REVIEW -- FINAL AGENCY ACTION REVIEW-  
18 ABLE. (1) In this section, and sections 67-5262 through 67-5267, Idaho Code,  
19 "final agency action" means an act of an agency that imposes an obligation,  
20 grants or denies a right, confers a benefit, or determines a legal rela-  
21 tionship as a result of an administrative proceeding. The term includes an  
22 informal disposition as provided in section 67-5241, Idaho Code. The term  
23 does not include agency action that is a failure to act.

24 (2) Except to the extent that a statute of this state other than this act  
25 limits or precludes judicial review, a person who meets the requirements of  
26 this section is entitled to judicial review of a final agency action.

27 (3) A person entitled to judicial review of a final agency action under  
28 subsection (2) of this section is entitled to judicial review of an agency  
29 action that is not final if postponement of judicial review would result in  
30 an inadequate remedy or irreparable harm that outweighs the public benefit  
31 derived from postponing judicial review.

32 (4) A court may compel an agency to take action that is unlawfully with-  
33 held or unreasonably delayed.

34 SECTION 25. That Chapter 52, Title 67, Idaho Code, be, and the same is  
35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
36 ignated as Section 67-5262, Idaho Code, and to read as follows:

37 67-5262. TIME TO SEEK JUDICIAL REVIEW OF AGENCY ACTION -- LIMITA-  
38 TIONS. (1) A petition for judicial review of a temporary or final rule may be  
39 filed at any time, except as limited by section 67-5231, Idaho Code.

40 (2) A petition for judicial review of a final order or an initial order  
41 that has become final when it was not reviewed by the agency head or prelim-  
42 inary, procedural or intermediate agency action under section 67-5260(3),  
43 Idaho Code, must be filed within twenty-eight (28) days of the service date  
44 of the final order, the date when the initial order became final, or the ser-  
45 vice date of a preliminary, procedural or intermediate agency order, or, if  
46 reconsideration is sought, within twenty-eight (28) days after the service  
47 date of the decision thereon. A cross-petition for judicial review may be

1 filed within fourteen (14) days after a party is served with a copy of the no-  
2 tice of the petition for judicial review.

3 (3) A petition for judicial review of a final agency action other than a  
4 rule or order must be filed within twenty-eight (28) days of the agency ac-  
5 tion, except as provided by other provision of law. The time for filing a pe-  
6 tition for review shall be extended during the pendency of the petitioner's  
7 timely attempts to exhaust administrative remedies, if the attempts are  
8 clearly not frivolous or repetitious. A cross-petition for judicial review  
9 may be filed within fourteen (14) days after a party is served with a copy of  
10 the notice of the petition for judicial review.

11 (4) The time for seeking judicial review under this section is tolled  
12 during any time a party pursues an administrative remedy before the agency,  
13 which remedy must be exhausted as a condition of judicial review.

14 (5) A party may not petition for judicial review while seeking recon-  
15 sideration under section 67-5256, Idaho Code. During the time a petition for  
16 reconsideration is pending before an agency, the time for seeking judicial  
17 review in subsection (1) of this section is tolled.

18 SECTION 26. That Chapter 52, Title 67, Idaho Code, be, and the same is  
19 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
20 ignated as Section 67-5263, Idaho Code, and to read as follows:

21 67-5263. STAYS PENDING APPEAL. A petition for judicial review does  
22 not automatically stay an agency decision. A challenging party may request  
23 the reviewing court for a stay on the same basis as stays are granted under  
24 the Idaho rules of civil procedure, and the reviewing court may grant a stay  
25 regardless of whether the challenging party first sought a stay from the  
26 agency.

27 SECTION 27. That Chapter 52, Title 67, Idaho Code, be, and the same is  
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
29 ignated as Section 67-5264, Idaho Code, and to read as follows:

30 67-5264. STANDING. The following persons have standing to obtain ju-  
31 dicial review of a final agency action:

- 32 (1) A person aggrieved or adversely affected by the agency action; and  
33 (2) A person that has standing under law of this state other than this  
34 act.

35 SECTION 28. That Chapter 52, Title 67, Idaho Code, be, and the same is  
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
37 ignated as Section 67-5265, Idaho Code, and to read as follows:

38 67-5265. EXHAUSTION OF ADMINISTRATIVE REMEDIES. (1) Subject to sub-  
39 section (3) of this section, or law of this state other than this act that  
40 provides that a person need not exhaust administrative remedies, a person  
41 may file a petition for judicial review under this act only after exhaust-  
42 ing all administrative remedies available within the agency whose action is  
43 being challenged and within any other agency authorized to exercise adminis-  
44 trative review.

1 (2) Filing a petition for reconsideration or a stay of proceedings is  
2 not a prerequisite for seeking judicial review.

3 (3) The court may relieve a petitioner of the requirement to exhaust any  
4 or all administrative remedies to the extent the administrative remedies are  
5 inadequate or the requirement would result in irreparable harm.

6 SECTION 29. That Chapter 52, Title 67, Idaho Code, be, and the same is  
7 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
8 ignated as Section 67-5266, Idaho Code, and to read as follows:

9 67-5266. AGENCY RECORD ON JUDICIAL REVIEW -- EXCEPTIONS. (1) If an  
10 agency was required by the provisions of this act to maintain an agency  
11 record during the proceeding that gave rise to the action under review, the  
12 court review is confined to that record and to matters arising from that  
13 record.

14 (2) In any case to which subsection (1) of this section does not apply,  
15 the record for review consists of the unprivileged materials that agency de-  
16 cision makers directly or indirectly considered or that were submitted for  
17 consideration by any person in connection with the action under review, in-  
18 cluding information that is adverse to the agency's position. If the agency  
19 action was ministerial or was taken on the basis of a minimal or no adminis-  
20 trative record, the court may receive evidence relating to the agency's ba-  
21 sis for taking the action.

22 (3) The court may supervise an agency's compilation of the agency  
23 record. If a challenging party makes a substantial showing of need, the  
24 court may allow discovery or other evidentiary proceedings and consider  
25 evidence outside the agency record to:

26 (a) Ensure that the agency record is complete as required by this act  
27 and other applicable law;

28 (b) Adjudicate allegations of procedural error not disclosed by the  
29 record; or

30 (c) Prevent manifest injustice.

31 (4) If, before the date set for hearing, application is made to the  
32 court for leave to present additional evidence and it is shown to the satis-  
33 faction of the court that the additional evidence is material, relates to the  
34 validity of the agency action, and that there were good reasons for failure  
35 to present it in the proceeding before the agency, the court may remand the  
36 matter to the agency with directions that the agency receive additional evi-  
37 dence and conduct additional fact-finding. The agency may modify its action  
38 by reason of the additional evidence and shall file any modifications, new  
39 findings, or decisions with the reviewing court.

40 SECTION 30. That Chapter 52, Title 67, Idaho Code, be, and the same is  
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
42 ignated as Section 67-5267, Idaho Code, and to read as follows:

43 67-5267. STANDARD OF REVIEW. (1) Except as provided by law of this  
44 state other than this act, in judicial review of an agency action, the fol-  
45 lowing rules apply:

46 (a) The court shall make a ruling on each material issue on which the  
47 court's decision is based.

1 (b) The court's standard of review shall be to apply the substantial and  
2 competent evidence test to questions of fact, except those on which it  
3 takes evidence in conducting a trial de novo, and freely review ques-  
4 tions of law.

5 (c) The court shall affirm, modify or reverse the agency action, in  
6 whole or in part, or remand for further proceedings as necessary.

7 (d) If, based upon the totality of the record, the court determines that  
8 an agency action was unwarranted and based upon a manifest injustice in  
9 the findings of fact, the court shall enter findings supporting its de-  
10 termination of manifest injustice and conduct a trial de novo without a  
11 jury.

12 (2) In making a determination under this section, the court shall re-  
13 view the agency record or the parts designated by the parties and shall apply  
14 the rule of harmless error.

15 SECTION 31. That Section 67-5255, Idaho Code, be, and the same is hereby  
16 amended to read as follows:

17 67-525568. DECLARATORY RULINGS BY AGENCIES. (1) Any person may peti-  
18 tion an agency for a declaratory ruling as to the applicability of any order  
19 issued by the agency.

20 (2) A petition for a declaratory ruling does not preclude an agency from  
21 initiating a contested case in the matter.

22 (3) A declaratory ruling issued by an agency under this section is a fi-  
23 nal agency action.

24 SECTION 32. That Section 67-5272, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 67-527269. VENUE -- FORM OF ACTION. (1) Except when required by other  
27 provision of law, proceedings for review or declaratory judgment are insti-  
28 tuted by filing a petition in the district court of the county in which:

29 (a) the hearing was held; or

30 (b) the final agency action was taken; or

31 (c) the aggrieved party resides or operates its principal place of  
32 business in Idaho; or

33 (d) the real property or personal property that was the subject of the  
34 agency decision is located.

35 (2) When two (2) or more petitions for judicial review of the same  
36 agency action are filed in different counties or are assigned to different  
37 district judges in the same county, upon motion filed by any party to any  
38 of the proceedings for judicial review of the same agency action, the sep-  
39 arate consideration of the petitions in different counties or by different  
40 district judges shall be stayed. The administrative judge in the judicial  
41 district in which the first petition was filed, after appropriate consul-  
42 tation with the affected district judges and the affected administrative  
43 judges, shall then order consolidation of the judicial review of the peti-  
44 tions before one (1) district judge in one (1) county in which a petition for  
45 judicial review was properly filed, at which time the stay shall be lifted.

1 SECTION 33. That Section 7-1417, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 7-1417. FINAL ORDER OF SUSPENSION. (1) A license suspension order is-  
4 sued by the court shall be final and conclusive between the parties unless an  
5 appeal is filed within twenty-eight (28) days.

6 (2) A license suspension order issued by a hearing officer of the de-  
7 partment shall be final and conclusive between the parties unless an appeal  
8 to district court is filed within twenty-eight (28) days, notwithstanding  
9 the provisions of section 67-524~~3~~53, Idaho Code.

10 SECTION 34. That Section 26-31-208, Idaho Code, be, and the same is  
11 hereby amended to read as follows:

12 26-31-208. RECORDS -- REPORTS -- RENEWAL AND REINSTATEMENT OF LI-  
13 CENSE. (1) Every licensee under this part shall maintain records in the  
14 United States, including financial records in conformity with generally  
15 accepted accounting principles, in a manner that will enable the director  
16 to determine whether the licensee is complying with the provisions of this  
17 part. The recordkeeping system of the licensee shall be sufficient if it  
18 makes the required information reasonably available to the director. The  
19 records need not be kept in the place of business where residential mortgage  
20 loans are made, if the director is given free access to the records wherever  
21 located. The records pertaining to any loan need not be preserved for more  
22 than three (3) years after making the final entry relating to the loan.

23 (2) Every mortgage broker or mortgage lender licensed under this part  
24 that employs or contracts with a mortgage loan originator licensed under  
25 part 3 of this chapter, for the purpose of conducting mortgage loan origina-  
26 tion activities in Idaho, shall:

27 (a) Notify the director through the NMLSR, or as otherwise prescribed  
28 by the director, of the employment of, or contractual relationship  
29 with, a mortgage loan originator licensee within thirty (30) days of  
30 such employment or contract;

31 (b) Notify the director through the NMLSR, or as otherwise prescribed  
32 by the director, of the termination of employment of, or contractual re-  
33 lationship with, a mortgage loan originator licensee within thirty (30)  
34 days of such termination; and

35 (c) Maintain any records relating to the employment of, or contractual  
36 relationship with, a mortgage loan originator licensee, for a period  
37 not to exceed three (3) years.

38 (3) On or before December 31 of each year, every mortgage broker and  
39 mortgage lender licensee under this part shall pay through the NMLSR, or  
40 as otherwise prescribed by the director, a nonrefundable annual license  
41 renewal fee of one hundred fifty dollars (\$150), and file with the director  
42 through the NMLSR, or as otherwise prescribed by the director, a renewal  
43 application containing such information as the director may require.  
44 Notwithstanding the provisions of section 67-5254~~9~~9, Idaho Code, a license  
45 issued under this part automatically expires if not timely renewed accord-  
46 ing to the requirements of this section. Notwithstanding the provisions of  
47 section 67-5254~~9~~9, Idaho Code, branch licenses issued under this part also

1 expire upon the expiration, relinquishment or revocation of a license issued  
2 under this part to a licensee's designated home office.

3 (4) The director may reinstate an expired license during the time pe-  
4 riod of January 1 through February 28, immediately following license expira-  
5 tion if the director finds that the applicant meets the requirements for li-  
6 censure under this part after submission to the director of:

7 (a) A complete application for renewal;

8 (b) The fees required to apply for license renewal unless previously  
9 paid for the period for which the license renewal applies; and

10 (c) A reinstatement fee of two hundred dollars (\$200).

11 (5) Within forty-five (45) days of the end of each calendar quarter,  
12 each mortgage broker and mortgage lender licensee under this part shall sub-  
13 mit quarterly mortgage call reports through the NMLSR, which shall be in such  
14 form and shall contain such information as the director may require.

15 (6) Within forty-five (45) days of the end of each calendar year, each  
16 mortgage broker and mortgage lender licensee under this part shall submit  
17 an annual report of financial condition through the NMLSR, which shall be in  
18 such form and shall contain such information as the director may require.

19 SECTION 35. That Section 26-31-309, Idaho Code, be, and the same is  
20 hereby amended to read as follows:

21 26-31-309. LICENSE RENEWAL AND REINSTATEMENT REQUIREMENTS. (1) The  
22 minimum standards for license renewal for mortgage loan originators li-  
23 censed under this part shall include the following:

24 (a) The mortgage loan originator continues to meet the minimum stan-  
25 dards for license issuance pursuant to section 26-31-306, Idaho Code;

26 (b) The mortgage loan originator has satisfied the annual continuing  
27 education requirements pursuant to section 26-31-310, Idaho Code; and

28 (c) The mortgage loan originator has filed with the director through  
29 the NMLSR, on or before December 31 of each year, a renewal application  
30 containing such information as the director may require, accompanied  
31 by a nonrefundable annual license renewal fee of one hundred dollars  
32 (\$100).

33 (2) If a mortgage loan originator fails to timely satisfy the provi-  
34 sions of subsection (1) of this section, notwithstanding the provisions of  
35 section 67-52549, Idaho Code, then his license automatically and immedi-  
36 ately expires.

37 (3) The director may reinstate an expired license during the time pe-  
38 riod of January 1 through February 28, immediately following license expi-  
39 ration if the director finds that the former licensee meets the requirements  
40 for licensure under this part after submission to the director of:

41 (a) A complete application for renewal;

42 (b) The fees required to apply for license renewal unless previously  
43 paid for the period for which the license renewal applies; and

44 (c) A reinstatement fee of one hundred dollars (\$100).

45 SECTION 36. That Section 28-46-302, Idaho Code, be, and the same is  
46 hereby amended to read as follows:

1           28-46-302. LICENSE TO MAKE REGULATED CONSUMER LOANS. (1) The adminis-  
2 trator shall receive and act on all applications for a license to do busi-  
3 ness as a regulated lender. Applications shall be filed in the manner pre-  
4 scribed by the administrator, shall contain such information as the admin-  
5 istrator may reasonably require, shall be updated as necessary to keep the  
6 information current, and shall be accompanied by an application fee of three  
7 hundred fifty dollars (\$350). When an application for licensure is denied  
8 or withdrawn, the administrator shall retain all fees paid by the applicant.  
9 The administrator may deny an application for a license if the administrator  
10 finds that:

11           (a) The financial responsibility, character, and fitness of the appli-  
12 cant, and of the officers and directors thereof (if the applicant is a  
13 corporation) are not such as to warrant belief that the business will be  
14 operated honestly and fairly within the purposes of this act;

15           (b) The applicant does not maintain at least thirty thousand dollars  
16 (\$30,000) in liquid assets, as determined in accordance with generally  
17 accepted accounting principles, available for the purpose of making  
18 loans under this chapter;

19           (c) The applicant has had a license, substantially equivalent to a  
20 license under this chapter and issued by any state, denied, revoked or  
21 suspended under the law of such state;

22           (d) The applicant has filed an application for a license which is false  
23 or misleading with respect to any material fact;

24           (e) The application does not contain all of the information required by  
25 the administrator; or

26           (f) The application is not accompanied by an application fee of three  
27 hundred fifty dollars (\$350).

28           (2) A licensee under this chapter shall meet the requirements of sub-  
29 section (1) of this section at all times while licensed pursuant to this  
30 chapter. The administrator is empowered to conduct investigations as he may  
31 deem necessary, to enable him to determine the existence of the requirements  
32 set out in subsection (1) of this section.

33           (3) Upon written request, the applicant is entitled to a hearing on the  
34 question of his qualifications for a license if:

35           (a) The administrator has notified the applicant in writing that his  
36 application has been denied, or objections filed; or

37           (b) The administrator has not issued a license within sixty (60) days  
38 after the application for the license was filed.

39           If a hearing is held, the applicant and those filing objections shall  
40 reimburse, pro rata, the administrator for his reasonable and necessary ex-  
41 penses incurred as a result of the hearing. A request for a hearing may not be  
42 made more than fifteen (15) days after the administrator has mailed a writing  
43 to the applicant notifying him that the application has been denied and stat-  
44 ing in substance the administrator's finding supporting denial of the appli-  
45 cation or that objections have been filed and the substance thereof.

46           (4) The administrator may issue additional licenses to the same li-  
47 censee upon application by the licensee, in the manner prescribed by the  
48 administrator, and payment of the required application fee. A separate  
49 license shall be required for each place of business. Each license shall  
50 remain in full force and effect unless the licensee does not satisfy the

1 renewal requirements of subsection (8) of this section, or the license is  
2 relinquished, suspended or revoked.

3 (5) No licensee shall change the location of any place of business, or  
4 consolidate, or close any locations, without giving the administrator at  
5 least fifteen (15) days' prior written notice.

6 (6) A licensee shall not engage in the business of making regulated con-  
7 sumer loans at any place of business for which he does not hold a license nor  
8 shall he engage in business under any other name than that in the license.

9 (7) A license application shall be deemed withdrawn and void if an ap-  
10 plicant submits an incomplete license application and, after receipt of a  
11 written notice of the application deficiency, fails to provide the direc-  
12 tor with information necessary to complete the application within sixty (60)  
13 days of receipt of the deficiency notice. A written deficiency notice shall  
14 be deemed received by a license applicant when:

15 (a) Placed in regular U.S. mail by the director or his agent using an  
16 address provided by the applicant on the license application; or

17 (b) E-mailed to the applicant using an e-mail address provided by the  
18 applicant on the license application; or

19 (c) Posted by the director or his agent on the NMLSR if the license ap-  
20 plication was submitted through the NMLSR.

21 (8) On or before May 31 of each year, every licensee under this chap-  
22 ter shall pay a nonrefundable annual license renewal fee of one hundred fifty  
23 dollars (\$150) per licensed location, and shall file with the administrator  
24 a renewal form containing such information as the administrator may require.  
25 Notwithstanding the provisions of section 67-52549, Idaho Code, a license  
26 issued under this part automatically expires if not timely renewed according  
27 to the requirements of this section. Notwithstanding the provisions of sec-  
28 tion 67-52549, Idaho Code, branch licenses issued under this part also ex-  
29 pire upon the expiration, relinquishment or revocation of a license issued  
30 under this part to a licensee's designated home office.

31 (9) For a period of time not to exceed sixty (60) days following license  
32 expiration, the director may reinstate an expired license if he finds that  
33 the applicant meets the requirements for licensure under this part and the  
34 applicant has submitted to the director:

35 (a) A complete application for renewal;

36 (b) The fees required to apply for license renewal unless previously  
37 paid for the period for which the license renewal applies; and

38 (c) A reinstatement fee of two hundred dollars (\$200).

39 SECTION 37. That Section 28-46-404, Idaho Code, be, and the same is  
40 hereby amended to read as follows:

41 28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application  
42 for a license shall be in writing and under oath to the administrator, in a  
43 form prescribed by the administrator, and shall include at least the follow-  
44 ing:

45 (a) The legal name, residence and business address of the applicant  
46 and, if the applicant is an entity, of every member, partner, director,  
47 senior officer or twenty-five percent (25%) or more equity owner of the  
48 applicant;



1 (b) The location at which the principal place of business of the appli-  
2 cant is located; and

3 (c) Other data and information the administrator may require with re-  
4 spect to the applicant, and if the applicant is an entity, such data and  
5 information of its members, partners, directors, senior officers, or  
6 twenty-five percent (25%) or more equity owners of the applicant.

7 (2) Each application for a license shall be accompanied by an applica-  
8 tion fee in the amount of three hundred fifty dollars (\$350). Such fee shall  
9 not be subject to refund.

10 (3) The fee set forth in subsection (2) of this section shall be re-  
11 quired for each location for which an application is submitted.

12 (4) Within sixty (60) days of the filing of an application in a form  
13 prescribed by the administrator, accompanied by the fee required in subsec-  
14 tion (2) of this section, the administrator shall investigate to ascertain  
15 whether the qualifications prescribed by subsection (1) of section 28-46-  
16 403, Idaho Code, have been satisfied. If the administrator finds that the  
17 qualifications have been satisfied and approves the documents, the adminis-  
18 trator shall issue to the applicant a license to engage in the payday loan  
19 business.

20 (5) Notwithstanding the provisions of section 67-52549, Idaho Code,  
21 a license issued pursuant to this part automatically expires if not timely  
22 renewed according to the requirements of subsection (7) of this section,  
23 or the license is relinquished, suspended or revoked pursuant to this act.  
24 Notwithstanding the provisions of section 67-52549, Idaho Code, branch  
25 licenses issued under this part also expire upon the expiration, relin-  
26 quishment or revocation of a license issued under this part to a licensee's  
27 designated home office.

28 (6) A license application shall be deemed withdrawn and void if an ap-  
29 plicant submits an incomplete license application and, after receipt of a  
30 written notice of the application deficiency, fails to provide the direc-  
31 tor with information necessary to complete the application within sixty (60)  
32 days of receipt of the deficiency notice. A written deficiency notice shall  
33 be deemed received by a license applicant when:

34 (a) Placed in regular U.S. mail by the director or his agent using an  
35 address provided by the applicant on the license application; or

36 (b) E-mailed to the applicant using an e-mail address provided by the  
37 applicant on the license application; or

38 (c) Posted by the director or his agent on the NMLSR if the license ap-  
39 plication was submitted through the NMLSR.

40 (7) On or before May 31 of each year, every licensee under this part 4  
41 shall pay a nonrefundable annual license renewal fee of one hundred fifty  
42 dollars (\$150) per licensed location, and shall file with the administrator  
43 a renewal form containing such information as the administrator may require.

44 (8) For a period of time not to exceed sixty (60) days following license  
45 expiration, the director may reinstate an expired license if he finds that  
46 the applicant meets the requirements for licensure under this part and the  
47 applicant has submitted to the director:

48 (a) A complete application for renewal;

49 (b) The fees required to apply for license renewal unless previously  
50 paid for the period for which the license renewal applies; and

1 (c) A reinstatement fee of two hundred dollars (\$200).

2 SECTION 38. That Section 32-1612, Idaho Code, be, and the same is hereby  
3 amended to read as follows:

4 32-1612. ORDER FROM HEARING. (1) The department shall issue an order  
5 based upon the hearing that rejects the contest or supports the contest  
6 in whole or part. The parties may file an appeal with the district court  
7 within twenty-eight (28) days, notwithstanding the provisions of section  
8 67-5243~~53~~, Idaho Code.

9 (2) The department shall notify the financial institution in writing,  
10 within two (2) business days after the receipt of the order, as to the outcome  
11 of the hearing, and provide instructions to the financial institution as to  
12 the disposition of the asset that has been frozen.

13 SECTION 39. That Section 33-5209C, Idaho Code, be, and the same is  
14 hereby amended to read as follows:

15 33-5209C. ENFORCEMENT -- REVOCATION -- APPEAL. (1) An authorized  
16 chartering entity shall continually monitor the performance and legal com-  
17 pliance of the public charter schools it oversees, including collecting and  
18 analyzing data to support ongoing evaluation according to the performance  
19 certificate. Every authorized chartering entity shall have the authority  
20 to conduct or require oversight activities that enable the authorized char-  
21 tering entity to fulfill its responsibilities pursuant to the provisions  
22 of this chapter, including conducting appropriate inquiries and investi-  
23 gations, so long as those activities are consistent with the intent of this  
24 chapter, adhere to the terms of the performance certificate and do not unduly  
25 inhibit the autonomy granted to public charter schools.

26 (2) Each authorized chartering entity shall annually publish and make  
27 available to the public a performance report for each public charter school  
28 it oversees, in accordance with the performance framework set forth in the  
29 performance certificate and section 33-5209A, Idaho Code. The authorized  
30 chartering entity may require each public charter school it oversees to sub-  
31 mit an annual report to assist the authorized chartering entity in gather-  
32 ing complete information about each school consistent with the performance  
33 framework. Each public charter school shall publish its annual performance  
34 report on the school's website.

35 (3) If an authorized chartering entity has reason to believe that a  
36 public charter school cannot remain fiscally sound for the remainder of its  
37 certificate term, it shall provide the state department of education with  
38 written notification of such concern. Upon receiving such notification,  
39 the state department of education shall have the authority to modify the  
40 percentage of the total appropriation to be paid to the public charter school  
41 pursuant to the provisions of section 33-1009(1), Idaho Code, such that  
42 equal percentages are paid on each of the prescribed dates.

43 (4) If an authorized chartering entity has reason to believe that a  
44 charter holder or public charter school has violated any provision of law, it  
45 shall notify the charter holder and the entity responsible for administering  
46 said law of the possible violation.

1 (5) If an authorized chartering entity revokes or does not renew a char-  
2 ter, the authorized chartering entity shall clearly state, in a resolution  
3 of its governing board, the reasons for the revocation or nonrenewal.

4 (6) Within fourteen (14) days of taking action to renew, not renew or  
5 revoke a charter, the authorized chartering entity shall report to the state  
6 board of education the action taken and shall provide a copy of the report to  
7 the charter holder at the same time that the report is submitted to the state  
8 board of education. The report shall include a copy of the authorized char-  
9 tering entity's resolution setting forth the action taken and reasons for  
10 the decision and assurances as to compliance with all of the requirements set  
11 forth in this chapter.

12 (7) A charter may be revoked by the authorized chartering entity if the  
13 public charter school has failed to meet any of the specific, written con-  
14 ditions for necessary improvements established pursuant to the provisions  
15 of section 33-5209B(1), Idaho Code, by the dates specified. Revocation may  
16 not occur until the charter holder has been afforded a public hearing, un-  
17 less the authorized chartering entity determines that the continued opera-  
18 tion of the public charter school presents an imminent public safety issue,  
19 in which case the charter may be revoked immediately. Public hearings shall  
20 be conducted by the authorized chartering entity or such other person or per-  
21 sons appointed by the authorized chartering entity to conduct public hear-  
22 ings and receive evidence as a contested case in accordance with the provi-  
23 sions of ~~section 67-5242~~ chapter 52, title 67, Idaho Code. Notice and oppor-  
24 tunity to reply shall include, at a minimum, written notice setting out the  
25 basis for consideration of revocation, a period of not less than thirty (30)  
26 days within which the charter holder can reply in writing, and a public hear-  
27 ing within thirty (30) days of the receipt of the written reply.

28 (8) A decision to revoke or nonrenew a charter or to deny a revision of  
29 a charter may be appealed directly to the state board of education. With re-  
30 spect to such appeal, the state board of education shall substantially fol-  
31 low the procedure as provided in section 33-5207(5)(b), Idaho Code. In the  
32 event the state board of education reverses a decision of revocation or non-  
33 renewal, the charter holder subject to such action shall then be placed under  
34 the chartering authority of the public charter school commission.

35 SECTION 40. That Section 40-709A, Idaho Code, be, and the same is hereby  
36 amended to read as follows:

37 40-709A. PETITION FOR HIGHWAY MAINTENANCE. (1) Any county or highway  
38 district may petition the Idaho transportation board to take action, as pro-  
39 vided in this section, to provide for the maintenance of a highway or portion  
40 thereof under the jurisdiction of a county or highway district.

41 (2) The petition and supporting materials shall establish the follow-  
42 ing facts:

43 (a) That the subject highway or relevant portion thereof provides the  
44 only practical access to a city, town or other developed area;

45 (b) That the county or highway district with jurisdiction over the sub-  
46 ject highway, or relevant portion thereof, is obligated to maintain the  
47 highway or relevant portion thereof;

48 (c) That said county or highway district historically has provided  
49 maintenance to the subject highway or relevant portion thereof suffi-

1           cient to allow safe motorist access to the city, town or other developed  
2           area; and

3           (d) Said county or highway district is now failing to provide main-  
4           tenance sufficient to allow safe motorist access to the city, town or  
5           other developed area.

6           The petition shall not be based on failure to improve the highway or to ex-  
7           pand maintenance beyond what historically has been provided. The petition  
8           shall also document the petitioner's efforts to communicate its concerns to  
9           the subject county or highway district and explain why the issue could not be  
10          resolved. The petitioner shall provide notice to the subject county or high-  
11          way district, including a copy of the petition and all supporting materials.

12          (3) The Idaho transportation department shall publish notice of the  
13          petition as set forth in section 40-206, Idaho Code, and shall provide the  
14          subject county or highway district a reasonable opportunity to respond to  
15          the petition, to take corrective action, to explain any extenuating cir-  
16          cumstances or to otherwise address the concerns presented in the petition.  
17          Based on all information available to it, including such independent inves-  
18          tigation as it deems appropriate, the Idaho transportation department shall  
19          make a recommendation for action to the Idaho transportation board.

20          (4) The Idaho transportation board shall review the petition and the  
21          recommendation of the Idaho transportation department.

22          (5) If the Idaho transportation board determines that the petition is  
23          without merit, it may deny the petition without hearing and issue written  
24          findings and conclusions stating its reasons therefor.

25          (6) If the Idaho transportation board determines that the petition may  
26          have merit, it shall hold a hearing on the matter and allow all affected enti-  
27          ties and interested persons an opportunity to be heard.

28          (7) Following the hearing provided in subsection (6) of this section,  
29          the Idaho transportation board shall either grant or deny the petition and  
30          issue findings and conclusions stating its reasons therefor. The petition  
31          shall be granted only upon a finding that the public safety, health or wel-  
32          fare would be endangered because the subject county or highway district is  
33          inappropriately and unreasonably failing to maintain a highway or portion  
34          thereof that it is obligated to maintain and that the facts set out in subsec-  
35          tion (2) (a), (b), (c) and (d) of this section have been established. In de-  
36          termining the reasonableness of the subject county or highway district's ac-  
37          tions with respect to the highway, the Idaho transportation board shall take  
38          into account the authority of the county or highway district to temporarily  
39          close a highway, the availability of funding and other considerations ad-  
40          dressed in sections 40-1311 and 40-1315, Idaho Code. The Idaho transporta-  
41          tion board shall not approve a petition with respect to a highway or portion  
42          thereof that has been vacated or is subject to an ongoing vacation or valida-  
43          tion proceeding.

44          (8) If the petition is granted, the transportation department may un-  
45          dertake itself the maintenance of the highway or portion thereof or it may  
46          contract with another political subdivision to undertake the maintenance.  
47          In either case, the transportation department shall certify to the state  
48          controller the actual cost of maintenance undertaken by the transportation  
49          department or by the contracted political subdivision. The state controller  
50          shall pay into the state highway account of the Idaho transportation depart-

1 ment or directly to the contracted political subdivision the actual costs  
2 incurred as certified by the transportation department. Such funds shall be  
3 deducted from the funds that would otherwise have been allocated pursuant to  
4 section 40-709, Idaho Code, to the county or highway district that failed to  
5 provide adequate maintenance.

6 (9) Political subdivisions that acquire funds for roadwork of any type  
7 either pursuant to this section or by separate voluntary agreement with  
8 another political subdivision or the state are hereby authorized to expend  
9 such funds outside of their jurisdictional boundaries notwithstanding any  
10 other provision of law.

11 (10) A county or highway district that has been the subject of a peti-  
12 tion granted pursuant to this section may request a termination or modifi-  
13 cation of the arrangement authorized by the Idaho transportation department  
14 for maintenance by the Idaho transportation department or another entity. A  
15 request for termination shall be accompanied by appropriate documentation  
16 showing that the requesting entity is prepared to resume its maintenance re-  
17 sponsibility for the highway. The Idaho transportation board shall consider  
18 the request for termination or modification, taking into account the infor-  
19 mation presented by the requesting entity and any other information avail-  
20 able to the Idaho transportation board. If the Idaho transportation board  
21 determines that the concerns giving rise to the petition have been addressed  
22 and the entity is committed to resume maintenance of the highway, the Idaho  
23 transportation board shall terminate its prior action and allow the entity  
24 to resume responsibility for maintenance of the highway upon the beginning  
25 of the next fiscal year. The Idaho transportation board may also modify the  
26 existing arrangement for funding of maintenance.

27 (11) A decision by the Idaho transportation board granting or denying a  
28 petition or request under this section is a final agency action for purposes  
29 of section 67-5270(2)60, Idaho Code.

30 SECTION 41. That Section 41-227, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32 41-227. EXAMINATION REPORT. (1) The director or his examiner shall  
33 make a full and true written report of every examination made by him under  
34 this chapter, and shall verify the report by his oath.

35 (2) The report shall comprise only facts appearing upon the books, pa-  
36 pers, records or documents of the person being examined, or ascertained from  
37 testimony of individuals under oath concerning the affairs of such person,  
38 together with such conclusions and recommendations as may reasonably be war-  
39 ranted from such facts.

40 (3) Prior to a hearing and prior to any modifications the report shall  
41 be subject to disclosure according to chapter 1, title 74, Idaho Code.

42 (4) No later than sixty (60) days following completion of the examina-  
43 tion, the examiner in charge shall file with the department a verified writ-  
44 ten report of examination under oath. Upon receipt of the verified report,  
45 the department shall transmit the report to the company examined, together  
46 with a notice which shall afford the company examined a reasonable opportu-  
47 nity of not more than thirty (30) days to make a written submission or rebut-  
48 tal with respect to any matters contained in the examination report.

1 (5) Within thirty (30) days of the end of the period allowed for the re-  
2 ceipt of written submissions or rebuttals, the director shall fully consider  
3 and review the report, together with any written submissions or rebuttals  
4 and any relevant portions of the examiner's work papers, and enter an order:

5 (a) Adopting the examination report as filed or with modifications or  
6 corrections. If the examination report reveals that the company is op-  
7 erating in violation of any law, regulation or prior order of the direc-  
8 tor, the director may order the company to take any action the director  
9 considers necessary and appropriate to cure such violation;

10 (b) Rejecting the examination report with directions to the examiners  
11 to reopen the examination for purposes of obtaining additional data,  
12 documentation or information, and refiling pursuant to subsection (24)  
13 of this section; or

14 (c) Calling for an investigatory hearing with no less than twenty (20)  
15 days' notice to the company for purposes of obtaining additional docu-  
16 mentation, data, information and testimony.

17 (6) (a) All orders entered pursuant to subsection (5) (a) of this sec-  
18 tion shall be accompanied by findings and conclusions resulting from  
19 the director's consideration and review of the examination report, rel-  
20 evant examiner work papers and any written submissions or rebuttals.  
21 Any such order shall be considered a final order and may be appealed  
22 pursuant to sections 67-527060 through 67-527969, Idaho Code, and shall  
23 be served upon the company by certified mail, together with a copy of the  
24 adopted examination report. Within thirty (30) days of the issuance of  
25 the adopted report, the company shall file affidavits executed by each  
26 of its directors stating under oath that they have received a copy of the  
27 adopted report and related orders.

28 (b) Any hearing conducted under subsection (5) (c) of this section by  
29 the director or authorized representative, shall be conducted in accor-  
30 dance with the provisions of chapter 52, title 67, Idaho Code, as a non-  
31 adversarial confidential investigatory proceeding as necessary for the  
32 resolution of any inconsistencies, discrepancies or disputed issues  
33 apparent upon the face of the filed examination report or raised by, or  
34 as a result of, the director's review of relevant work papers or by the  
35 written submission or rebuttal of the company. Within twenty (20) days  
36 of the conclusion of any such hearing, the director shall enter an order  
37 pursuant to the provisions of subsection (5) (a) of this section.

38 (c) The director shall not appoint a contract examiner or an employee of  
39 the department as an authorized representative to conduct the hearing.  
40 Nothing contained in this section shall require the department to dis-  
41 close any information or records which would indicate or show the con-  
42 tent of any investigation or activity of a criminal justice agency, ex-  
43 cept to the extent that the director relied upon information furnished  
44 to the director by such criminal justice agency in making his decision.

45 (7) The report when so verified and filed shall be admissible in evi-  
46 dence in any action or proceeding brought by the director against the person  
47 examined, or against its officers, employees or agents, and shall be pre-  
48 sumptive evidence of the material facts stated therein. The director or his  
49 examiners may at any time testify and offer other proper evidence as to in-  
50 formation secured or matters discovered during the course of an examination,

1 whether or not a written report of the examination has been either made, fur-  
2 nished or filed in the department.

3 (8) After an order is entered under the provisions of subsection (5) (a)  
4 of this section, the director may publish the report or the results of the  
5 examination as contained therein which report or results are a public record  
6 and shall be exempt from the exemptions from disclosure provided in chapter  
7 1, title 74, Idaho Code.

8 (9) Nothing contained in this chapter shall prevent or be construed  
9 as prohibiting the director from disclosing the content of an examination  
10 report, preliminary examination report or results, or any matter relating  
11 thereto, to the insurance department of this or any other state or country,  
12 or to law enforcement officials of this or any other state or agency of the  
13 federal government at any time, so long as the agency or office receiving the  
14 report or matters relating thereto agrees in writing to hold it confidential  
15 and in a manner consistent with this chapter.

16 (10) All working papers, recorded information, documents and copies  
17 thereof produced by, obtained by or disclosed to the director or any other  
18 person in the course of an examination made under the provisions of this  
19 chapter shall be made available to the person or company which was the sub-  
20 ject of the examination in proceedings pursuant to chapter 52, title 67,  
21 Idaho Code, but shall otherwise be held by the director as a record not re-  
22 quired to be made public pursuant to exemptions from disclosure provided in  
23 chapter 1, title 74, Idaho Code.

24 SECTION 42. That Section 47-324, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 47-324. RULES FOR COMMISSION -- ADMINISTRATIVE PROCEDURES. (a) The  
27 commission shall have authority to hear rulemaking proceedings, complaints  
28 filed with it pursuant to this chapter and appeals from the director's deci-  
29 sion on an application filed pursuant to this chapter. The commission may  
30 prescribe rules governing the procedure before it, subject to the provisions  
31 of the administrative procedure act, chapter 52, title 67, Idaho Code.

32 (b) In all cases where a complaint is made by the commission or any  
33 person that any provision of this act, or any rule or order of the commis-  
34 sion is being violated, notice of any hearing to be held on such application  
35 or complaint, the commission shall serve notice on the interested parties by  
36 certified mail, return receipt requested, or in the same manner as is pro-  
37 vided in the rules of civil procedure for the service of summons in civil ac-  
38 tions. Where the interested party is unknown or cannot be located, the com-  
39 mission shall serve notice by publishing at least one (1) notice of the hear-  
40 ing to such person in a newspaper in the county where the affected tract is  
41 located. Such notice must be sent, delivered or published, as appropriate,  
42 at least five (5) business days before the date of the hearing.

43 (c) Except as provided in section 47-320(1) (a), Idaho Code, and sub-  
44 section (b) of this section, any request for an order related to oil and gas  
45 activities within the commission's jurisdiction, other than a civil penalty  
46 proceeding pursuant to section 47-325, Idaho Code, or other enforcement ac-  
47 tion by the department of lands or the commission, shall be made by applica-  
48 tion to the department of lands.

1 (i) The department shall notify the applicant within five (5) busi-  
2 ness days of receipt of an application if the application is administra-  
3 tively incomplete, and in such notice shall identify the missing item or  
4 items to be supplied in order to make the application complete.

5 (ii) A decision on the merits of the application shall be made by the di-  
6 rector. The director's decision shall not be subject to any motion for  
7 reconsideration or further review, except for appeal to the commission  
8 provided in subsection (d) of this section.

9 (iii) For applications involving an order regarding unit operations or  
10 integration of a drilling unit, the department shall send a copy of the  
11 application and supporting documents to all known and located uncommi-  
12 tted owners, to all working interest owners within the unit, and to the  
13 respective city or county where the proposed unit is located. The mail-  
14 ing shall include notice of the hearing date on which the director will  
15 consider the application. The application shall be redacted pursuant  
16 to section 47-322(f), Idaho Code, and sent by certified mail. Upon re-  
17 quest, the applicant shall reimburse the department for actual mailing  
18 costs incurred under this subsection. For any uncommitted owners and  
19 working interest owners who cannot be located, an applicant shall pub-  
20 lish notice of any application for an order once in a newspaper in the  
21 county in which the affected property is located, and request the de-  
22 partment publish notice on its website, within seven (7) calendar days  
23 of filing of the complete application. Only an uncommitted owner in the  
24 affected unit may file an objection or other response to the applica-  
25 tion, and the uncommitted owner shall file seven (7) calendar days be-  
26 fore the hearing date provided in the notice.

27 (iv) For applications not involving paragraph (iii) of this subsec-  
28 tion, including exceptional locations, any uncommitted owner within  
29 the area defined in the application may file an objection or other re-  
30 sponse to the application, and the uncommitted owner shall file seven  
31 (7) calendar days before the hearing date provided in the notice.

32 (v) The director shall hear an application within thirty (30) calendar  
33 days of the filing of a complete application. Discovery is not permit-  
34 ted. The director shall issue a written decision on any such applica-  
35 tion within thirty (30) calendar days of the hearing.

36 (d) The director's decision on an application for an order may be ap-  
37 pealed to the commission by the applicant or any owner who filed an objec-  
38 tion or other response to the application within the time required. An ap-  
39 peal must be filed with the director within fourteen (14) calendar days of  
40 the date of issuance of the director's written decision. The date of is-  
41 suance shall be three (3) calendar days after the director deposits the de-  
42 cision in the U.S. mail, or the date on which he remits a decision electron-  
43 ically. Such appeal shall include the reasons and authority for the appeal,  
44 and shall identify any facts in the record supporting the appeal. Any per-  
45 son appealing shall serve a copy of the appeal materials on any other person  
46 who participated in the proceedings below, by certified mail, or by personal  
47 service. Any person who participated in the proceeding below may file a re-  
48 sponse to the appeal within five (5) calendar days of service of a copy of  
49 the appeal materials. The appellant shall provide the director with proof of  
50 service of the appeal materials on other persons as required in this section.



1 The commission shall make a decision based on the record below as set forth  
2 in the written submittals of only the appellant and any other participating  
3 qualified person, the director's decision, and any oral argument taken by  
4 the commission at an appeal hearing.

5 (e) Appeals to the commission shall be heard at the next regularly  
6 scheduled commission hearing, or at a special meeting of the commission if  
7 determined by the commission. In no case will a hearing be later than thirty  
8 (30) days after the filing of an appeal. The commission may take argument  
9 from, but not new testimony of, the appellant and other qualified partici-  
10 pating persons at the hearing. The commission shall make a decision on the  
11 appeal at the hearing and direct the department to issue a written order  
12 within five (5) business days of the hearing. The prevailing party shall  
13 draft a proposed written order and submit it to the department within two (2)  
14 business days. The final order of the commission shall not be subject to any  
15 motion for reconsideration.

16 (f) If no appeal is filed with the commission within the required time,  
17 the decision of the director shall become the final order.

18 (g) Judicial review of actions taken by the commission shall be gov-  
19 erned by the provisions of chapter 52, title 67, Idaho Code. Only a person  
20 qualified under subsection (d) of this section who has completed the appeal  
21 procedures set forth in this section shall be considered to have exhausted  
22 administrative remedies as required in section 67-5271~~65~~, Idaho Code.

23 (h) Each order shall include a reasoned statement in support of the  
24 decision, including a concise statement of facts supporting any findings,  
25 a statement of available procedures and time limits for appeals. Findings  
26 must be based exclusively on materials in the record. The applicant and any  
27 participating qualified person shall be served with a copy of the order. The  
28 order shall include or be accompanied by a certificate of service.

29 (i) Every application shall be signed by the applicant or his represen-  
30 tative, and his address shall be stated thereon. The signature of the ap-  
31 plicant or his representative constitutes a certificate by him that he has  
32 read the application and that to the best of his knowledge, information and  
33 belief there is good ground to support the same. Each application shall be  
34 of such form and content and accompanied by the number of copies required by  
35 rule of the commission. Each application shall be accompanied by a fee as es-  
36 tablished in statute or rule.

37 SECTION 43. That Section 50-222, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legisla-  
40 ture hereby declares and determines that it is the policy of the state of  
41 Idaho that cities of the state should be able to annex lands which are reason-  
42 ably necessary to assure the orderly development of Idaho's cities in order  
43 to allow efficient and economically viable provision of tax-supported and  
44 fee-supported municipal services, to enable the orderly development of pri-  
45 vate lands which benefit from the cost-effective availability of municipal  
46 services in urbanizing areas and to equitably allocate the costs of public  
47 services in management of development on the urban fringe.

48 (2) General authority. Cities have the authority to annex land into a  
49 city upon compliance with the procedures required in this section. In any

1 annexation proceeding, all portions of highways lying wholly or partially  
2 within an area to be annexed shall be included within the area annexed unless  
3 expressly agreed between the annexing city and the governing board of the  
4 highway agency providing road maintenance at the time of annexation. Pro-  
5 vided further, that said city council shall not have the power to declare  
6 such land, lots or blocks a part of said city if they will be connected to such  
7 city only by a shoestring or strip of land which comprises a railroad or high-  
8 way right-of-way.

9 (3) Annexation classifications. Annexations shall be classified and  
10 processed according to the standards for each respective category set forth  
11 herein. The three (3) categories of annexation are:

12 (a) Category A: Annexations wherein:

13 (i) All private landowners have consented to annexation. Annex-  
14 ation where all landowners have consented may extend beyond the  
15 city area of impact provided that the land is contiguous to the  
16 city and that the comprehensive plan includes the area of annexa-  
17 tion;

18 (ii) Any residential enclaved lands of less than one hundred (100)  
19 privately-owned parcels, irrespective of surface area, which are  
20 surrounded on all sides by land within a city or which are bounded  
21 on all sides by lands within a city and by the boundary of the  
22 city's area of impact; or

23 (iii) The lands are those for which owner approval must be given  
24 pursuant to subsection (5) (b) (v) of this section.

25 (b) Category B: Annexations wherein:

26 (i) The subject lands contain less than one hundred (100) sepa-  
27 rate private ownerships and platted lots of record and where not  
28 all such landowners have consented to annexation; or

29 (ii) The subject lands contain more than one hundred (100) sepa-  
30 rate private ownerships and platted lots of record and where  
31 landowners owning more than fifty percent (50%) of the area of the  
32 subject private lands have consented to annexation prior to the  
33 commencement of the annexation process; or

34 (iii) The lands are the subject of a development moratorium or a  
35 water or sewer connection restriction imposed by state or local  
36 health or environmental agencies; provided such lands shall not be  
37 counted for purposes of determining the number of separate private  
38 ownerships and platted lots of record aggregated to determine the  
39 appropriate category.

40 (c) Category C: Annexations wherein the subject lands contain more  
41 than one hundred (100) separate private ownerships and platted lots of  
42 record and where landowners owning more than fifty percent (50%) of the  
43 area of the subject private lands have not consented to annexation prior  
44 to commencement of the annexation process.

45 (4) (a) Evidence of consent to annexation. For purposes of this sec-  
46 tion, and unless excepted in paragraph (b) of this subsection (4),  
47 consent to annex shall be valid only when evidenced by written instru-  
48 ment consenting to annexation executed by the owner or the owner's  
49 authorized agent. Written consent to annex lands must be recorded in  
50 the county recorder's office to be binding upon subsequent purchasers,

1 heirs, or assigns of lands addressed in the consent. Lands need not be  
2 contiguous or adjacent to the city limits at the time the landowner con-  
3 sents to annexation for the property to be subject to a valid consent to  
4 annex; provided however, no annexation of lands shall occur, irrespec-  
5 tive of consent, until such land becomes contiguous or adjacent to such  
6 city.

7 (b) Exceptions to the requirement of written consent to annexation.  
8 The following exceptions apply to the requirement of written consent to  
9 annexation provided for in subsection (4) (a) of this section:

10 (i) Enclaved lands: In category A annexations, no consent is nec-  
11 essary for enclaved lands meeting the requirements of subsection  
12 (3) (a) (ii) of this section;

13 (ii) Implied consent: In category B and C annexations, valid con-  
14 sent to annex is implied for the area of all lands connected to a  
15 water or wastewater collection system operated by the city if the  
16 connection was requested in writing by the owner, or the owner's  
17 authorized agent, or completed before July 1, 2008.

18 (5) Annexation procedures. Annexation of lands into a city shall fol-  
19 low the procedures applicable to the category of lands as established by this  
20 section. The implementation of any annexation proposal wherein the city  
21 council determines that annexation is appropriate shall be concluded with  
22 the passage of an ordinance of annexation.

23 (a) Procedures for category A annexations: Lands lying contiguous or  
24 adjacent to any city in the state of Idaho may be annexed by the city  
25 if the proposed annexation meets the requirements of category A. Upon  
26 determining that a proposed annexation meets such requirements, a city  
27 may initiate the planning and zoning procedures set forth in chapter 65,  
28 title 67, Idaho Code, to establish the comprehensive planning policies,  
29 where necessary, and zoning classification of the lands to be annexed.

30 (b) Procedures for category B annexations: A city may annex lands that  
31 would qualify under the requirements of category B annexation if the  
32 following requirements are met:

33 (i) The lands are contiguous or adjacent to the city and lie  
34 within the city's area of city impact;

35 (ii) The land is laid off into lots or blocks containing not more  
36 than five (5) acres of land each, whether the same shall have been  
37 or shall be laid off, subdivided or platted in accordance with any  
38 statute of this state or otherwise, or whenever the owner or pro-  
39 prietor or any person by or with his authority has sold or begun to  
40 sell off such contiguous or adjacent lands by metes and bounds in  
41 tracts not exceeding five (5) acres, or whenever the land is sur-  
42 rounded by the city. Splits of ownership which occurred prior to  
43 January 1, 1975, and which were the result of placement of public  
44 utilities, public roads or highways, or railroad lines through the  
45 property shall not be considered as evidence of an intent to de-  
46 velop such land and shall not be sufficient evidence that the land  
47 has been laid off or subdivided in lots or blocks. A single sale  
48 after January 1, 1975, of five (5) acres or less to a family mem-  
49 ber of the owner for the purpose of constructing a residence shall  
50 not constitute a sale within the meaning of this section. For pur-

1 poses of this section, "family member" means a natural person or  
2 the spouse of a natural person who is related to the owner by blood,  
3 adoption or marriage within the first degree of consanguinity;

4 (iii) Preparation and publication of a written annexation plan,  
5 appropriate to the scale of the annexation contemplated, which in-  
6 cludes, at a minimum, the following elements:

7 (A) The manner of providing tax-supported municipal ser-  
8 vices to the lands proposed to be annexed;

9 (B) The changes in taxation and other costs, using examples,  
10 which would result if the subject lands were to be annexed;

11 (C) The means of providing fee-supported municipal ser-  
12 vices, if any, to the lands proposed to be annexed;

13 (D) A brief analysis of the potential effects of annexation  
14 upon other units of local government which currently provide  
15 tax-supported or fee-supported services to the lands pro-  
16 posed to be annexed; and

17 (E) The proposed future land use plan and zoning designation  
18 or designations, subject to public hearing, for the lands  
19 proposed to be annexed;

20 (iv) Compliance with the notice and hearing procedures governing  
21 a zoning district boundary change as set forth in section 67-6511,  
22 Idaho Code, on the question of whether the property should be  
23 annexed and, if annexed, the zoning designation to be applied  
24 thereto; provided however, the initial notice of public hearing  
25 concerning the question of annexation and zoning shall be pub-  
26 lished in the official newspaper of the city and mailed by first  
27 class mail to every property owner with lands included in such  
28 annexation proposal not less than twenty-eight (28) days prior  
29 to the initial public hearing. All public hearing notices shall  
30 establish a time and procedure by which comments concerning the  
31 proposed annexation may be received in writing and heard and,  
32 additionally, public hearing notices delivered by mail shall in-  
33 clude a one (1) page summary of the contents of the city's proposed  
34 annexation plan and shall provide information regarding where the  
35 annexation plan may be obtained without charge by any property  
36 owner whose property would be subject to the annexation proposal.

37 (v) In addition to the standards set forth elsewhere in this sec-  
38 tion, annexation of the following lands must meet the following  
39 requirements:

40 (A) Property, owned by a county or any entity within the  
41 county, that is used as a fairgrounds area under the pro-  
42 visions of chapter 8, title 31, Idaho Code, or chapter 2,  
43 title 22, Idaho Code, must have the consent of a majority of  
44 the board of county commissioners of the county in which the  
45 property lies; and

46 (B) Property, owned by a nongovernmental entity, that is  
47 used to provide outdoor recreational activities to the pub-  
48 lic and that has been designated as a planned unit develop-  
49 ment of fifty (50) acres or more and does not require or uti-

1           lize any city services must have the express written permis-  
2           sion of the nongovernmental entity owner.

3           (vi) After considering the written and oral comments of property  
4           owners whose land would be annexed and other affected persons,  
5           the city council may proceed with the enactment of an ordinance  
6           of annexation and zoning. In the course of the consideration of  
7           any such ordinance, the city must make express findings, to be set  
8           forth in the minutes of the city council meeting at which the an-  
9           nexation is approved, as follows:

10           (A) The land to be annexed meets the applicable requirements  
11           of this section and does not fall within the exceptions or  
12           conditional exceptions contained in this section;

13           (B) The annexation would be consistent with the public pur-  
14           poses addressed in the annexation plan prepared by the city;

15           (C) The annexation is reasonably necessary for the orderly  
16           development of the city;

17           (vii) Notwithstanding any other provision of this section, rail-  
18           road right-of-way property may be annexed pursuant to this sec-  
19           tion only when property within the city adjoins or will adjoin both  
20           sides of the right-of-way.

21           (c) Procedures for category C annexations: A city may annex lands that  
22           would qualify under the requirements of category C annexation if the  
23           following requirements are met:

24           (i) Compliance with the procedures governing category B annexa-  
25           tions; and

26           (ii) Evidence of consent to annexation based upon the following  
27           procedures:

28           (A) Following completion of all procedures required for  
29           consideration of a category B annexation, but prior to en-  
30           actment of an annexation ordinance and upon an affirmative  
31           action by the city council, the city shall mail notice to  
32           all private landowners owning lands within the area to be  
33           annexed, exclusive of the owners of lands that are subject  
34           to a consent to annex which complies with subsection (4) (a)  
35           of this section defining consent. Such notice shall invite  
36           property owners to give written consent to the annexation,  
37           include a description of how that consent can be made and  
38           where it can be filed, and inform the landowners where the  
39           entire record of the subject annexation may be examined.  
40           Such mailed notice shall also include a legal description of  
41           the lands proposed for annexation and a simple map depicting  
42           the location of the subject lands.

43           (B) Each landowner desiring to consent to the proposed an-  
44           nexation must submit the consent in writing to the city clerk  
45           by a date specified in the notice, which date shall not be  
46           later than forty-five (45) days after the date of the mailing  
47           of such notice.

48           (C) After the date specified in the notice for receipt of  
49           written consent, the city clerk shall compile and present  
50           to the city council a report setting forth: (i) the total

1 physical area sought to be annexed, and (ii) the total phys-  
 2 ical area of the lands, as expressed in acres or square feet,  
 3 whose owners have newly consented in writing to the annexa-  
 4 tion, plus the area of all lands subject to a prior consent to  
 5 annex which complies with subsection (4) (a) of this section  
 6 defining consent. The clerk shall immediately report the  
 7 results to the city council.

8 (D) Upon receiving such report, the city council shall re-  
 9 view the results and may thereafter confirm whether consent  
 10 was received from the owners of a majority of the land. The  
 11 results of the report shall be reflected in the minutes of  
 12 the city council. If the report as accepted by the city coun-  
 13 cil confirms that owners of a majority of the land area have  
 14 consented to annexation, the city council may enact an ordi-  
 15 nance of annexation, which thereafter shall be published and  
 16 become effective according to the terms of the ordinance.  
 17 If the report confirms that owners of a majority of the land  
 18 area have not consented to the annexation, the category C  
 19 annexation shall not be authorized.

20 (6) The decision of a city council to annex and zone lands as a category  
 21 B or category C annexation shall be subject to judicial review in accordance  
 22 with the procedures provided in chapter 52, title 67, Idaho Code, and pur-  
 23 suant to the standards set forth in section 67-527967, Idaho Code. Any such  
 24 appeal shall be filed by an affected person in the appropriate district court  
 25 no later than twenty-eight (28) days after the date of publication of the an-  
 26 nexation ordinance. All cases in which there may arise a question of the va-  
 27 lidity of any annexation under this section shall be advanced as a matter of  
 28 immediate public interest and concern, and shall be heard by the district  
 29 court at the earliest practicable time.

30 (7) Annexation of noncontiguous municipal airfield. A city may annex  
 31 land that is not contiguous to the city and is occupied by a municipally owned  
 32 or operated airport or landing field. However, a city may not annex any other  
 33 land adjacent to such noncontiguous facilities which is not otherwise annex-  
 34 able pursuant to this section.

35 SECTION 44. That Section 54-2509, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 54-2509. PENALTY FOR VIOLATIONS OF LAW -- POWER OF COMMISSION. (1) Any  
 38 person holding a race meet, and any other person required by this act or the  
 39 rules of the commission to be licensed, participating, directly or indi-  
 40 rectly, in a race meet, without first being licensed by the commission, and  
 41 any person violating any of the terms or provisions of this act is guilty of a  
 42 misdemeanor.

43 (a) There shall be an absolute prohibition of the use of live lures in  
 44 the state of Idaho for the training of or racing of racing dogs. Any  
 45 violation of the provisions of this section shall be a felony punishable  
 46 by a fine not exceeding twenty-five thousand dollars (\$25,000), or by a  
 47 prison term not to exceed seven (7) years, or by both such fine and im-  
 48 prisonment. In addition the state racing commission shall not license  
 49 any breeder, trainer or kennel whose dogs have been trained or raced

1 with the use of live lures. The state racing commission shall adopt  
 2 rules that will provide for the humane treatment of the dogs involved in  
 3 any aspect of training for or engaging in dog racing.

4 (2) The commission shall have the power to exclude from any and all race  
 5 courses in this state any person who the commission deems detrimental to the  
 6 best interests of racing, or any person who violates any of the provisions of  
 7 this act or any rule or order of the commission.

8 (3) It shall be lawful to conduct race meets on or at a race track, or  
 9 otherwise, at any time during the week.

10 (4) Any person maintaining a license issued by the commission, who vio-  
 11 lates the provisions of this act or the rules of the commission, may have such  
 12 license suspended or revoked. In addition to such suspension or revocation  
 13 the commission may levy a monetary penalty commensurate with the gravity of  
 14 the offense, not to exceed two thousand five hundred dollars (\$2,500). The  
 15 commission, by rule shall provide a summary procedure for such determination  
 16 at the track, the penalty amount for specified violations, and shall provide  
 17 for an appeal of any summary decision to the commission. At-the-track sum-  
 18 mary proceedings shall not be subject to the provisions of chapter 52, ti-  
 19 tle 67, Idaho Code. Hearings and appeals before the commission as allowed by  
 20 this act or the rules of the commission shall be subject to chapter 52, title  
 21 67, Idaho Code, except the provisions of section 67-5254(2)~~59~~, Idaho Code,  
 22 which is inconsistent with the unique requirements of racing.

23 (5) All law enforcement officers in this state shall assist in the en-  
 24 forcement of this act and the rules of the commission.

25 SECTION 45. That Section 58-122, Idaho Code, be, and the same is hereby  
 26 amended to read as follows:

27 58-122. CONTESTED CASES -- PROCEDURE. It shall be the duty of the  
 28 director of the department of lands in any or all contested cases, at the  
 29 direction of the board, to appoint hearing officers, receive evidence, issue  
 30 subpoenas and to hold contested case hearings in accordance with sections  
 31 67-5240~~2~~ through 67-5271~~69~~, Idaho Code, when hearings are necessary and  
 32 witnesses may be required to be examined. Provided however, that when the  
 33 state board of land commissioners is exercising its duties and authorities  
 34 concerning the direction, control or disposition of the public lands of the  
 35 state pursuant to sections 7 and 8, article IX, of the constitution of the  
 36 state of Idaho, such actions shall not be considered to be contested cases  
 37 as defined in subsection (6) of section 67-5201, Idaho Code, ~~and section~~  
 38 ~~67-5240, Idaho Code,~~ unless the board, in its discretion, determines that a  
 39 contested case hearing would be of assistance to the board in the exercise of  
 40 its duties and authorities.

41 SECTION 46. That Section 67-2317, Idaho Code, be, and the same is hereby  
 42 amended to read as follows:

43 67-2317. HEARING AND DECISION OF DISPUTED ISSUES. Upon the failure  
 44 or refusal of the official or agency in charge of any state public building  
 45 to comply with the recommendations of the administrator of the division  
 46 of building safety, the administrator may hold a hearing, pursuant to the

1 provisions for contested cases under the administrative procedure act, as  
 2 provided in sections 67-52401 et seq., Idaho Code.

3 The administrator is empowered to conduct such hearing and render a de-  
 4 cision. The administrator shall transmit a copy of the decision to the offi-  
 5 cial or agency in direct control of the public building and to the governor.

6 SECTION 47. That Section 67-5206, Idaho Code, be, and the same is hereby  
 7 amended to read as follows:

8 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE  
 9 ACT. (1) In accordance with the rulemaking requirements of this chapter, the  
 10 administrative rules coordinator shall promulgate rules implementing the  
 11 provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules  
 12 shall:

13 (a) establish a uniform numbering system applicable to rules adopted by  
 14 all agencies;

15 (b) establish a uniform style and format applicable to rules adopted by  
 16 all agencies;

17 (c) establish a publication schedule for the bulletin and the adminis-  
 18 trative code, including deadlines for the submission of documents to be  
 19 included within each publication;

20 (d) establish a uniform indexing system for agency orders; and

21 (e) include such other rules as the coordinator deems necessary to im-  
 22 plement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho  
 23 Code, and this section.

24 (2) In accordance with the rulemaking requirements of this chapter, the  
 25 attorney general shall promulgate rules of procedure appropriate for use by  
 26 as many agencies as possible. The rules shall deal with all general func-  
 27 tions and duties performed in common by several agencies.

28 (3) In accordance with the rulemaking requirements of this chapter, the  
 29 attorney general shall promulgate rules implementing the provisions of sec-  
 30 tions 67-5220 through 67-5232, Idaho Code. The rules shall specify:

31 (a) the form and content for petitions requesting an opportunity for an  
 32 oral presentation in a substantive rulemaking;

33 (b) procedures for the creation of a record of comments received at any  
 34 oral presentation;

35 (c) the standards by which exemptions from regular rulemaking require-  
 36 ments will be authorized to correct typographical errors, transcrip-  
 37 tion errors, or clerical errors;

38 (d) the form and content for a petition for the adoption of rules and the  
 39 procedure for its submission, consideration and disposition;

40 (e) procedures to facilitate negotiated rulemaking;

41 (f) the form and content of a petition for a declaratory ruling on the  
 42 applicability of statutes or regulations; and

43 (g) such other provisions as may be necessary or useful.

44 (4) In accordance with the rule making requirements of this chapter,  
 45 the attorney general shall promulgate rules implementing the provisions of  
 46 sections 67-52401 through 67-52559, Idaho Code. The rules shall specify:

47 (a) form and content to be employed in giving notice of a contested  
 48 case;



- 1 (b) procedures and standards required for intervention in a contested  
2 case;
- 3 (c) procedures for prehearing conferences;
- 4 (d) format for pleadings, briefs, and motions;
- 5 (e) the method by which service shall be made;
- 6 (f) procedures for the issuance of subpoenas, discovery orders, and  
7 protective orders if authorized by other provisions of law;
- 8 (g) qualifications for persons seeking to act as a hearing officer;
- 9 (h) qualifications for persons seeking to act as a representative for  
10 parties to contested cases;
- 11 (i) procedures to facilitate informal settlement of matters;
- 12 (j) procedures for placing ex parte contacts on the record; and
- 13 (k) such other provisions as may be necessary or useful.
- 14 (5) (a) After July 1, 1993, the rules promulgated by the attorney gen-  
15 eral under this section shall apply to all agencies that do not affirma-  
16 tively promulgate alternative procedures after the promulgation of the  
17 rules by the attorney general. The rules promulgated by the attorney  
18 general shall supersede the procedural rules of any agency in effect on  
19 June 30, 1993, unless that agency promulgates its own procedures as pro-  
20 vided in paragraph (b) of this subsection.
- 21 (b) After July 1, 1993, an agency that promulgates its own procedures  
22 shall include in the rule adopting its own procedures a finding that  
23 states the reasons why the relevant portion of the attorney general's  
24 rules were inapplicable to the agency under the circumstances.