

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 767

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION  
67-5224, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION  
67-5291, IDAHO CODE, TO PROVIDE FOR WHEN PENDING FEE AND NON-FEE RULES  
SHALL BECOME EFFECTIVE; AND DECLARING AN EMERGENCY.

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

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

67-5224. PENDING RULE. (1) Prior to the adoption of a rule, the agency  
shall consider fully all written and oral submissions respecting the pro-  
posed rule.

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

(a) Reasons for adopting the rule;

(b) Any changes between the text of the proposed rule and the text of the  
pending rule with the reasons for any changes;

(c) The date on which the pending rule will become final and effective,  
as provided in section 67-5291-~~(5)~~ (6), Idaho Code, and a statement that  
the pending rule must be approved by concurrent resolution of the legis-  
lature;

(d) An identification of any pending fee rule and a statement that this  
pending fee rule shall not become final and effective unless affirma-  
tively approved by concurrent resolution of the legislature;

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

(f) Except as otherwise required in paragraph (g) of this subsection,  
a specific description, if applicable, of any negative fiscal impact on  
the state general fund greater than ten thousand dollars (\$10,000) dur-  
ing the fiscal year when the pending rule will become effective; pro-  
vided however, that notwithstanding section 67-5231, Idaho Code, the  
absence or accuracy of a fiscal impact statement provided pursuant to  
this paragraph shall not affect the validity or the enforceability of  
the rule; or

(g) If a notice of proposed rulemaking of the Idaho state tax commis-  
sion, a specific description of any negative or positive fiscal impact  
greater than ten thousand dollars (\$10,000) during the fiscal year when  
the pending rule will become effective; provided however, notwith-  
standing section 67-5231, Idaho Code, the absence or accuracy of a

1 fiscal impact statement provided pursuant to this paragraph shall not  
2 affect the validity or the enforceability of the rule.

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

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

10 (5) Each agency shall provide the coordinator with a description of any  
11 pending fee rule, along with a citation of the specific statute authorizing  
12 the imposition or increase of the fee or charge. The coordinator shall pro-  
13 vide the legislature with a compilation of the descriptions provided by the  
14 agencies.

15 (6) Upon adjournment sine die of the legislature or as soon thereafter  
16 as is practicable, the coordinator shall publish the date of adjournment and  
17 the date rules became effective and a list of final rules becoming effective  
18 on a different date, as provided in section 67-5291, Idaho Code, and tempo-  
19 rary rules remaining in effect as provided in section 67-5291, Idaho Code.

20 SECTION 2. That Section 67-5291, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 67-5291. LEGISLATIVE REVIEW OF RULES. (1) A standing committee of the  
23 legislature shall review any temporary, pending, or final rule that is ger-  
24 mane to its committee and has been published in the bulletin or in the admin-  
25 istrative code to determine if the rule is consistent with the legislative  
26 intent of the statute that the rule was written to interpret, prescribe, im-  
27 plement, or enforce. If a reviewed rule is approved, the standing committee  
28 that approves the rule shall report its findings and recommendations to the  
29 body. If ordered by the presiding officer, the committee's report shall be  
30 printed in the journal.

31 (2) (a) All temporary, pending, and final rules of any nature may be ap-  
32 proved or rejected by a concurrent resolution of the legislature. The  
33 concurrent resolution shall state the effective date of the approval or  
34 rejection.

35 (b) The legislature may reject a rule, in whole or in part, where the  
36 legislature determines that the rule, or part of the rule, is not con-  
37 sistent with the legislative intent of the statute that the rule was  
38 written to interpret, prescribe, implement, or enforce. When rejecting  
39 a rule, the legislature shall make a finding of facts as to why the rule  
40 does not meet the legislative intent of the enabling statute by identi-  
41 fying how the rule is inconsistent with the authority granted by or the  
42 requirements of the corresponding section of Idaho Code. For purposes  
43 of this section, "part of the rule" means a provision in a rule that is  
44 designated either numerically or alphabetically or the entirety of any  
45 new or amended language contained therein. The rejection of a rule in  
46 whole or in part shall terminate the rule, in whole or in part, as of the  
47 effective date of the rejection. An agency shall not, subsequent to the  
48 rejection, issue a proposed rule that is substantially similar to the

1 rejected rule unless it is consistent with the legislative intent of the  
2 statute as expressed in the concurrent resolution.

3 (c) The secretary of state shall immediately notify the affected agency  
4 of the filing and effective date of any concurrent resolution enacted to  
5 approve or reject, in whole or in part, an agency rule. When an agency  
6 rule has been partially rejected, the secretary of state shall trans-  
7 mit a copy of the concurrent resolution to the director of the agency for  
8 promulgation of the rule as amended.

9 (d) The agency shall be responsible for implementing legislative in-  
10 tent as expressed in the concurrent resolution, including, as appropri-  
11 ate, the reinstatement of the prior rule in whole or in part, if any, in  
12 the case of a resolution rejecting a rule in whole or in part. The agency  
13 shall publish notice of rejection of a rule in whole or in part in the  
14 bulletin.

15 (3) A temporary rule that is not approved by a concurrent resolution  
16 shall expire by its own terms or at adjournment sine die of the next succeed-  
17 ing regular session of the legislature, whichever date is earlier.

18 (4) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a  
19 pending fee rule that is not approved by a concurrent resolution shall expire  
20 upon adjournment sine die of the legislative session during which the agency  
21 submits the pending fee rule to the legislature for review.

22 (5) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a  
23 pending non-fee rule that is not approved by a concurrent resolution shall  
24 expire upon adjournment sine die of the legislative session during which the  
25 agency submits the pending rule to the legislature for review.

26 (6) On and after January 1, 2024, pending fee and non-fee rules shall  
27 become effective on July 1 in the year of the legislative session in which the  
28 rule was approved by concurrent resolution unless otherwise specified in the  
29 concurrent resolution.

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