

IN THE SENATE

SENATE BILL NO. 1318

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5220, IDAHO CODE, TO
2 PROVIDE STATUTORY PROCEDURES FOR NEGOTIATED RULEMAKING; AMENDING SEC-
3 TION 67-5221, IDAHO CODE, TO PROVIDE NOTICE FOR NEGOTIATED RULEMAKING,
4 TO PROVIDE FOR AN AGENCY TO POST NOTICE OF RULEMAKING ONTO ITS WEBSITE IF
5 THE AGENCY HAS A WEBSITE AND TO MAKE TECHNICAL CORRECTIONS; AND DECLAR-
6 ING AN EMERGENCY.
7

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

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

11 67-5220. NOTICE OF INTENT TO PROMULGATE RULES -- NEGOTIATED RULEMAK-
12 ING. (1) Prior to the adoption, amendment or repeal of a rule, aAn agency
13 may shall determine whether negotiated rulemaking is feasible. The agency's
14 determination of whether negotiated rulemaking is feasible is not subject
15 to judicial review. If the agency determines that negotiated rulemaking is
16 feasible, it shall publish in the bulletin a notice of intent to promulgate
17 a rule. The notice shall contain a brief, nontechnical statement of the sub-
18 ject matter to be addressed in the proposed rulemaking, and shall include the
19 purpose of the rule, the statutory authority for the rulemaking, citation to
20 a specific federal statute or regulation if that is the basis of authority or
21 requirement for the rulemaking, and the principal issues involved. The no-
22 tice shall also state that interested persons have the opportunity to par-
23 ticipate with the agency in negotiated rulemaking as provided in this sec-
24 tion, and shall identify an individual to whom comments on the proposal may
25 be sent. If the agency determines that negotiated rulemaking is not feasi-
26 ble, it shall explain why negotiated rulemaking is not feasible in a notice
27 of proposed rulemaking published pursuant to section 67-5221, Idaho Code,
28 and shall proceed with rulemaking as provided in this chapter. Each agency
29 that has a website shall cause the notice of intent to promulgate rules to be
30 placed onto or accessible from the home page of the agency's website.

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

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

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

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

3 (c) Upon request, make available to persons attending the meetings all
 4 public records as defined in section 9-337, Idaho Code, that are con-
 5 sidered by the agency in connection with the formulation of the proposed
 6 rule, and that are not exempt from disclosure pursuant to chapter 3, ti-
 7 tle 9, Idaho Code;

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

10 (e) Each agency that has a website shall establish, maintain and timely
 11 update the negotiated rulemaking schedule and a list of written com-
 12 ments and other documents and information pertinent to the proposed
 13 rule on the agency's website, or a website that may be accessed from the
 14 agency's website.

15 (f) Prepare a written summary of unresolved issues, key information
 16 considered and conclusions reached during and as a result of the negoti-
 17 ated rulemaking. Each agency that has a website shall cause the written
 18 summary required by this subsection to be placed onto or be accessible
 19 from the home page of the agency's website. If formal rulemaking is
 20 initiated by an agency, the agency shall reference such summary in its
 21 public notices and make it available to the public upon request.

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

24 67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adop-
 25 tion, amendment, or repeal of a rule, the agency shall publish notice of pro-
 26 posed rulemaking in the bulletin. The notice of proposed rulemaking shall
 27 include:

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

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

35 (c) A specific description, if applicable, of any negative fiscal
 36 impact on the state general fund greater than ten thousand dollars
 37 (\$10,000) during the fiscal year when the pending rule will become
 38 effective; provided, however, that notwithstanding section 67-5231,
 39 Idaho Code, the absence or accuracy of a fiscal impact statement pro-
 40 vided pursuant to this subsection shall not affect the validity or the
 41 enforceability of the rule;

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

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

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

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

1 (h) The deadline for public comments on the proposed rule; and
2 (i) If negotiated rulemaking was not conducted, an explanation of the
3 agency's determination that negotiated rulemaking was not feasible.

4 (2) (a) Coinciding with each issue of the bulletin, the coordinator
5 shall cause the publication of an abbreviated notice with a brief de-
6 scription of the subject matter, showing any agency's intent to propose
7 a new or changed rule that is a new addition to that issue of the bul-
8 letin. The notice shall be in the form of an official legal notice, as
9 provided for in section 60-105, Idaho Code, and subject to the rates set
10 forth therein.

11 The notice shall include the agency name and address, rule number,
12 rule subject matter as provided in paragraph (1) (b) of this section, and
13 the comment deadline. The notice shall also include a brief statement
14 that informs citizens where they can view the administrative bulletin
15 in electronic form.

16 (b) The coordinator shall cause the notice required in paragraph (a) of
17 this subsection to be published in at least the accepting newspaper of
18 largest paid circulation that is published in each county in Idaho or,
19 if no newspaper is published in the county, then in an accepting news-
20 paper of largest paid circulation published in Idaho and circulated in
21 the county. The newspaper of largest circulation shall be established
22 by the sworn statement of average annual paid weekday issue circulation
23 that has been filed by a newspaper with the United States post office for
24 the calendar year immediately preceding the calendar year during which
25 the advertisement in this section is required to be published.

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

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.