State Implementation Plan Update Regarding Boards
Section 128 and 110(a)(2)(E)(ii) of the Clean Air Act

Background
The purpose of this document is to demonstrate to the U.S. Environmental Protection Agency (EPA) that the Idaho State Implementation Plan (SIP) for air quality adequately meets the "State Boards" requirements of 42 U.S.C. § 7428 (section 128) and §7410 (section 110(a)(2)(E)(ii)) of the Clean Air Act [CAA]).

Section 128 provides:
(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—
(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and
(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.
A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

Section 110(a)(2)(E)(ii) reiterates the above requirement:
(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—
(E) provide
(ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and

Idaho Response
Previously to comply with this requirement, Idaho’s Governor Otter issued Executive Order 2013-06 to ensure the DEQ met this requirement. Governor Otter renewed the executive order with Executive Order in 2016-07. In 2022, the Idaho Legislature approved an update to Idaho Code Section 139-107 to create a permanent solution for the Section 128 requirements.

Attachment: Idaho Code Section 139-107, Senate Bill 1243 language, Senate Bill 1243 history
2022 Legislation

SENATE BILL 1243

The status of each bill, resolution, proclamation, and memorial is updated when the offices of the Secretary of the Senate and the Chief Clerk of the House publish the un-official daily journals and should not be deemed official. The official bill actions are located in the final journal, which are maintained by the offices of the Secretary of the Senate and the Chief Clerk of the House. The daily journals are published at the end of each legislative day.

Full Bill Information

Individual Links:

Bill Text
Statement of Purpose / Fiscal Note

S1243 by HEALTH AND WELFARE COMMITTEE

BOARD OF ENVIRONMENTAL QUALITY – Amends existing law to revise provisions regarding composition of the board.

01/28 Introduced; read first time; referred to JR for Printing
01/31 Reported Printed; referred to Health & Welfare
02/11 Reported out of Committee with Do Pass Recommendation; Filed for second reading
02/14 Read second time; filed for Third Reading
02/21 Read third time in full – PASSED - 33-0-2
   AYES – Anthon, Bayer, Blair(Johnson), Burgoyne, Burtenshaw, Cook, Crabtree, Den Hartog, Grow, Guthrie, Harris, Heider, Lakey, Lee, Lent, Lodge, Martin, Nelson, Nye, Patrick, Rice, Ricks, Riggs, Semmelroth, Stennett, Thayn, VanOrden(Bair), Vick, Ward-Engelking, Winder, Wintrow, Woodward, Zito
   NAYS – None
   Absent and excused – Agenbroad, Souza

Floor Sponsor - Wintrow

Title apvd - to House

02/22 Received from the Senate, Filed for First Reading
   Read First Time, Referred to Environment, Energy & Technology
03/09 Reported out of Committee with Do Pass Recommendation, Filed for Second Reading
03/10 Read second time; Filed for Third Reading
03/11 U.C. to hold place on third reading calendar until Monday, March 14, 2022
03/14 Read Third Time in Full – PASSED - 54-11-5
   NAYS – Barbieri, Boyle, Christensen, Giddings, Hanks, Kingsley, Moon, Nate, Nichols, Palmer, Scott
   Absent – Adams, Chaney, DeMordaunt, Green, Ruchti
   Floor Sponsor - Amador
   Title apvd - to Senate

03/15 Returned From House Passed; referred to enrolling
   Reported enrolled; signed by President; to House for signature of Speaker

03/16 Received from Senate; Signed by Speaker; Returned to Senate

03/17 Reported signed by the Speaker & ordered delivered to Governor
   Reported delivered to Governor at 1:46 p.m. on 03/17/22

03/22 Signed by Governor on 03/21/22
   Session Law Chapter 107
   Effective: 07/01/2022
LEGISLATURE OF THE STATE OF IDAHO
Sixty-sixth Legislature Second Regular Session - 2022

IN THE SENATE

SENATE BILL NO. 1243

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-107, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE COMPOSITION OF THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

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

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

(1) (a) The board of environmental quality shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members shall serve at the pleasure of the governor. Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector and shall be appointed to assure appropriate geographic representation of the state of Idaho. Not more than four (4) members of the board shall be from any one (1) political party. Two (2) members of the board shall be chosen with due regard to their knowledge of and interest in solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues. At least four (4) of the board members shall represent the public's interest and not derive any significant portion of their income from persons subject to air quality permits or enforcement orders.

(b) The members of the board of environmental quality shall be appointed for a term of four (4) years. In appointing members whose terms begin in 2000, the governor shall designate three (3) members to be appointed for a term of three (3) years, two (2) members appointed for a term of four (4) years, and two (2) members appointed for a term of two (2) years. Successors to the members appointed for a term of less than four (4) years shall be appointed for a term of four (4) years thereafter.

(2) The board annually shall elect a chairman, a vice chairman, and a secretary, and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(h), Idaho Code.
(3) The board, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

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

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

(6) Any person adversely affected by a final determination of the board may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.
(7) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state. The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment of the state.

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

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

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

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

(12) Upon creation of the board of environmental quality, all pending business before the board of health and welfare relating to environmental protection functions administered by the division of environmental quality shall be transferred to and determined by the board of environmental quality.

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

Idaho Statutes are updated to the web July 1 following the legislative session.

TITLE 39
HEALTH AND SAFETY
CHAPTER 1
ENVIRONMENTAL QUALITY — HEALTH


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

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

How current is this law?

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