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MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Principal Legislative Research Analyst - Eric Milstead
DATE: June 20, 2013
SUBJECT: Department of Administration

IDAPA 38.04.06 - Rules Pertaining To The Rules Governing Use of the Exterior of a State Property in the Capitol Mall & Other State Facilities (Docket No. 38-0406-1301);

IDAPA 38.04.08 - Rules Pertaining To The Rules Governing Use of the State Capitol Exterior (Docket No. 38-0408-1301)

I. IDAPA 38.04.06 - Rules Pertaining To The Rules Governing Use of the Exterior of a State Property in the Capitol Mall & Other State Facilities (Docket No. 38-0406-1301)

The Department of Administration submits notice of temporary and proposed rulemaking at IDAPA 38.04.06 -- Rules Governing Use of the Exterior of a State Property in the Capitol Mall and Other State Facilities. The principal revisions found in this temporary and proposed rule concern definitions. The revisions eliminate the definitions of "Event" and "Exhibit" (and use of those terms throughout the rule), revise the definition of "Public Use" and provide for a limitation on the duration of public use. (See Section 010.07 and .08; Section 010.13; and Section 201.)

The agency notes that the revisions reflected in the temporary and proposed rule reflect the concerns voiced by the 2013 Legislature. The agency also notes that negotiated rulemaking was not conducted because the "majority of the revisions are simple in nature and necessary for clarity." The agency also states that "other revisions reflect the request of legislators and consensus with representatives of affected interest, including those present at 2013 legislative hearings, is unlikely."

The effective date of the temporary rule was April 5, 2013.

The agency's temporary and proposed rule appears to be authorized pursuant to sections 67-5221, 67-1604 and 67-5709, Idaho Code.

II. IDAPA 38.04.08 - Rules Pertaining To The Rules Governing Use of the State Capitol Exterior (Docket No. 38-0408-1301)

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The Department of Administration submits notice of temporary and proposed rulemaking at IDAPA 38.04.08 -- Rules Governing Use of the State Capitol Exterior. Revisions found in the temporary and proposed rule in this docket are somewhat similar to revisions described in the immediately preceding docket. This docket includes revisions to the definitions section by deleting the definitions of "Event" and "Exhibit" and revising the definition of "Public Use". (See Sections 010.05; 010.06 and 010.08.) Consequently, those revisions are reflected throughout the temporary and proposed rule where those terms had appeared in the prior rule. For example, see Section 200.01.a and .b, where the terms "Events" and "Exhibits" are eliminated from the section authorizing uses by the public. There is also a new section that includes a new subsection providing for a limit on "Public Use Duration." (Section 201). Section 400 of the temporary and proposed rule revises provisions governing permits. Changes reflected in this section include the provision that permits will be issued to groups of two or more people and that the Director of the Department of Administration will issue a permit only for public use involving two or more persons. (See Sections 400.01 and .02.d.)

In similar fashion to the docket discussed above, the agency notes that negotiated rulemaking was not conducted because the majority of the revisions are considered "simple in nature and necessary for clarity." The agency also notes that other revisions in the temporary and proposed rule reflect the "request of legislators and consensus with representatives of affected interests, including those present at 2013 legislative hearings, is unlikely."

The effective date of the temporary rule was April 5, 2013. The agency's temporary and proposed rule appears to be authorized pursuant to sections 67-5221, 67-1604 and 67-5709, Idaho Code.

cc: Teresa Luna, Department of Administration