

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 537

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO PUBLIC RECORDS AND PUBLIC LANDS; PROVIDING LEGISLATIVE INTENT;  
2 AND AMENDING SECTION 9-340D, IDAHO CODE, TO REVISE THE EXEMPTION FROM  
3 DISCLOSURE FOR PROPERTY, TIMBER OR MINERAL RIGHTS THAT ARE ON PUBLIC  
4 LANDS.  
5

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

7 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to  
8 provide transparency in all disposals of state endowment lands. Such dis-  
9 posals include, but are not limited to, land exchanges. Section 9-340D(3),  
10 Idaho Code, does not require the disclosure of appraisals and other informa-  
11 tion pertaining to the disposal of state endowment lands until the disposal  
12 transaction is complete. The Legislature finds and declares that waiting  
13 until a disposal transaction has been completed to disclose such information  
14 is contrary to the public interest, and contrary to the public policy of Sec-  
15 tion 58-313A, Idaho Code, which requires the State Board of Land Commission-  
16 ers to notify the county commissioners of the county in which state endowment  
17 lands are located whenever they intend to sell such state endowment lands,  
18 and which further provides that any objection said county commissioners may  
19 have to such sale must be filed prior to the completion of the sales trans-  
20 action. The Legislature further finds and declares that the public policy  
21 inconsistency between Section 9-340D(3), Idaho Code, and Section 58-313A,  
22 Idaho Code, should be rectified.

23 SECTION 2. That Section 9-340D, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

25 9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION  
26 RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records  
27 are exempt from disclosure:

28 (1) Trade secrets including those contained in response to public  
29 agency or independent public body corporate and politic requests for pro-  
30 posal, requests for clarification, requests for information and similar  
31 requests. "Trade secrets" as used in this section means information, in-  
32 cluding a formula, pattern, compilation, program, computer program, device,  
33 method, technique, process, or unpublished or in progress research that:

34 (a) Derives independent economic value, actual or potential, from not  
35 being generally known to, and not being readily ascertainable by proper  
36 means by other persons who can obtain economic value from its disclosure  
37 or use; and

38 (b) Is the subject of efforts that are reasonable under the circum-  
39 stances to maintain its secrecy.

40 (2) Production records, housing production, rental and financing  
41 records, sale or purchase records, catch records, mortgage portfolio loan

1 documents, or similar business records of a private concern or enterprise  
2 required by law to be submitted to or inspected by a public agency or sub-  
3 mitted to or otherwise obtained by an independent public body corporate and  
4 politic. Nothing in this subsection shall limit the use which can be made  
5 of such information for regulatory purposes nor its admissibility in any  
6 enforcement proceeding.

7 (3) Records relating to the appraisal of real property, timber or min-  
8 eral rights prior to its acquisition, sale or lease by a public agency or  
9 independent public body corporate and politic provided that this exemption  
10 from disclosure shall not apply to endowment lands and rights or other lands  
11 and rights offered in exchange for such endowment lands or rights.

12 (4) Any estimate prepared by a public agency or independent public body  
13 corporate and politic that details the cost of a public project until such  
14 time as disclosed or bids are opened, or upon award of the contract for con-  
15 struction of the public project.

16 (5) Examination, operating or condition reports and all documents re-  
17 lating thereto, prepared by or supplied to any public agency or independent  
18 public body corporate and politic responsible for the regulation or supervi-  
19 sion of financial institutions including, but not limited to, banks, savings  
20 and loan associations, regulated lenders, business and industrial develop-  
21 ment corporations, credit unions, and insurance companies, or for the regu-  
22 lation or supervision of the issuance of securities.

23 (6) Records gathered by a local agency or the Idaho department of com-  
24 merce, as described in chapter 47, title 67, Idaho Code, for the specific  
25 purpose of assisting a person to locate, maintain, invest in, or expand busi-  
26 ness operations in the state of Idaho.

27 (7) Shipping and marketing records of commodity commissions used to  
28 evaluate marketing and advertising strategies and the names and addresses of  
29 growers and shippers maintained by commodity commissions.

30 (8) Financial statements and business information and reports submit-  
31 ted by a legal entity to a port district organized under title 70, Idaho Code,  
32 in connection with a business agreement, or with a development proposal or  
33 with a financing application for any industrial, manufacturing, or other  
34 business activity within a port district.

35 (9) Names and addresses of seed companies, seed crop growers, seed crop  
36 consignees, locations of seed crop fields, variety name and acreage by vari-  
37 ety. Upon the request of the owner of the proprietary variety, this infor-  
38 mation shall be released to the owner. Provided however, that if a seed crop  
39 has been identified as diseased or has been otherwise identified by the Idaho  
40 department of agriculture, other state departments of agriculture, or the  
41 United States department of agriculture to represent a threat to that par-  
42 ticular seed or commercial crop industry or to individual growers, infor-  
43 mation as to test results, location, acreage involved and disease symptoms  
44 of that particular seed crop, for that growing season, shall be available  
45 for public inspection and copying. This exemption shall not supersede the  
46 provisions of section 22-436, Idaho Code, nor shall this exemption apply to  
47 information regarding specific property locations subject to an open burn-  
48 ing of crop residue pursuant to section 39-114, Idaho Code, names of persons  
49 responsible for the open burn, acreage and crop type to be burned, and time  
50 frames for burning.

1 (10) Information obtained from books, records and accounts required in  
2 chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed com-  
3 mission and pertaining to the individual production records of oilseed grow-  
4 ers.

5 (11) Records of any risk retention or self-insurance program prepared  
6 in anticipation of litigation or for analysis of or settlement of potential  
7 or actual money damage claims against a public entity and its employees or  
8 against the industrial special indemnity fund except as otherwise discov-  
9 erable under the Idaho or federal rules of civil procedure. These records  
10 shall include, but are not limited to, claims evaluations, investigatory  
11 records, computerized reports of losses, case reserves, internal documents  
12 and correspondence relating thereto. At the time any claim is concluded,  
13 only statistical data and actual amounts paid in settlement shall be deemed  
14 a public record unless otherwise ordered to be sealed by a court of competent  
15 jurisdiction. Provided however, nothing in this subsection is intended to  
16 limit the attorney client privilege or attorney work product privilege oth-  
17 erwise available to any public agency or independent public body corporate  
18 and politic.

19 (12) Records of laboratory test results provided by or retained by the  
20 Idaho food quality assurance laboratory. Nothing in this subsection shall  
21 limit the use which can be made, or availability of such information if used,  
22 for regulatory purposes or its admissibility in any enforcement proceeding.

23 (13) Reports required to be filed under chapter 13, title 62, Idaho  
24 Code, identifying electrical or natural or manufactured gas consumption  
25 data for an individual customer or account.

26 (14) Voluntarily prepared environmental audits, and voluntary disclo-  
27 sures of information submitted on or before December 31, 1997, to an environ-  
28 mental agency, which are claimed to be confidential business information.

29 (15) Computer programs developed or purchased by or for any public  
30 agency or independent public body corporate and politic for its own use. As  
31 used in this subsection, "computer program" means a series of instructions  
32 or statements which permit the functioning of a computer system in a manner  
33 designed to provide storage, retrieval and manipulation of data from the  
34 computer system, and any associated documentation and source material that  
35 explain how to operate the computer program. Computer program does not in-  
36 clude:

37 (a) The original data including, but not limited to, numbers, text,  
38 voice, graphics and images;

39 (b) Analysis, compilation and other manipulated forms of the original  
40 data produced by use of the program; or

41 (c) The mathematical or statistical formulas that would be used if the  
42 manipulated forms of the original data were to be produced manually.

43 (16) Active investigative records and trademark usage audits of the  
44 Idaho potato commission specifically relating to the enforcement of chapter  
45 12, title 22, Idaho Code, until the commencement of formal proceedings as  
46 provided by rules of the commission; purchase and sales information sub-  
47 mitted to the Idaho potato commission during a trademark usage audit, and  
48 investigation or enforcement proceedings. Inactive investigatory records  
49 shall be disclosed unless the disclosure would violate the standards set  
50 forth in subsections (1) (a) through (f) of section 9-335, Idaho Code. Noth-

1 ing in this subsection shall limit the use which can be made, or availability  
2 of such information if used, for regulatory purposes or its admissibility in  
3 any enforcement proceeding.

4 (17) All records copied or obtained by the director of the department of  
5 agriculture or his designee as a result of an inspection pursuant to section  
6 25-3806, Idaho Code, except:

7 (a) Records otherwise deemed to be public records not exempt from dis-  
8 closure pursuant to this chapter; and

9 (b) Inspection reports, determinations of compliance or noncompliance  
10 and all other records created by the director or his designee pursuant  
11 to section 25-3806, Idaho Code.

12 (18) All data and information collected by the division of animal indus-  
13 tries or the state brand board pursuant to the provisions of section 25-207B,  
14 Idaho Code, or rules promulgated thereunder.

15 (19) Records disclosed to a county official by the state tax commission  
16 pursuant to subsection (4) (c) of section 63-3029B, Idaho Code.

17 (20) Records, data, information and materials collected, developed,  
18 generated, ascertained or discovered during the course of academic research  
19 at public institutions of higher education if the disclosure of such could  
20 reasonably affect the conduct or outcome of the research, or the ability of  
21 the public institution of higher education to patent or copyright the re-  
22 search or protect intellectual property.

23 (21) Records, data, information and materials collected or utilized  
24 during the course of academic research at public institutions of higher ed-  
25 ucation provided by any person or entity other than the public institution  
26 of higher education or a public agency.

27 (22) The exemptions from disclosure provided in subsections (20) and  
28 (21) of this section shall apply only until the academic research is pub-  
29 licly released, copyrighted or patented, or until the academic research  
30 is completed or terminated. At such time, the records, data, information,  
31 and materials shall be subject to public disclosure unless: (a) another  
32 exemption in this chapter applies; (b) such information was provided to the  
33 institution subject to a written agreement of confidentiality; or (c) public  
34 disclosure would pose a danger to persons or property.

35 (23) The exemptions from disclosure provided in subsections (20) and  
36 (21) of this section do not include basic information about a particular  
37 research project that is otherwise subject to public disclosure, such as the  
38 nature of the academic research, the name of the researcher, and the amount  
39 and source of the funding provided for the project.

40 (24) Records of a county assessor, the state tax commission, a county  
41 board of equalization or the state board of tax appeals containing the fol-  
42 lowing information: (i) lists of personal property required to be filed pur-  
43 suant to section 63-302, Idaho Code, and operating statements required to  
44 be filed pursuant to section 63-404, Idaho Code, and (ii) confidential com-  
45 mercial or financial information including trade secrets. Except with re-  
46 spect to lists of personal property required to be filed pursuant to section  
47 63-302, Idaho Code, and the operator statements required to be filed pur-  
48 suant to section 63-404, Idaho Code, it shall be the responsibility of the  
49 taxpayer to give notice of its claim to exemption by stamping or marking each  
50 page or the first page of each portion of documents so claimed. No records

1 that are exempt pursuant to this subsection shall be disclosed without the  
2 consent of the taxpayer except as follows:

3 (a) To any officer, employee or authorized representative of the state  
4 or the United States, under a continuing claim of confidentiality, as  
5 necessary to carry out the provisions of state or federal law or when  
6 relevant to any proceeding thereunder.

7 (b) In the publication of statistics or reports as long as the statis-  
8 tics or reports do not reasonably lead to the identification of the spe-  
9 cific taxpayer or information submitted by taxpayers exempt pursuant to  
10 this subsection.

11 (c) To the board of tax appeals or the district court as evidence or  
12 otherwise in connection with an appeal of the taxpayer's property tax  
13 assessment, but only if the board or the court, as applicable, has en-  
14 tered a protective order specifying that the taxpayer information may  
15 not be disclosed by any person conducting or participating in the action  
16 or proceeding, except as authorized by the board or the court in accor-  
17 dance with applicable law.

18 (d) Nothing in this subsection shall prevent disclosure of the follow-  
19 ing information:

- 20 (i) Name and mailing address of the property owner;
- 21 (ii) A parcel number;
- 22 (iii) A legal description of real property;
- 23 (iv) The square footage and acreage of real property;
- 24 (v) The assessed value of taxable property;
- 25 (vi) The tax district and the tax rate; and
- 26 (vii) The total property tax assessed.

27 (25) Results of laboratory tests which have no known adverse impacts to  
28 human health conducted by the Idaho state department of agriculture animal  
29 health laboratory, related to diagnosis of animal diseases of individual an-  
30 imals or herds, on samples submitted by veterinarians or animal owners un-  
31 less:

32 (a) The laboratory test results indicate the presence of a state or fed-  
33 erally reportable or regulated disease in animals;

34 (b) The release of the test results is required by state or federal law;  
35 or

36 (c) The test result is identified as representing a threat to animal or  
37 human health or to the livestock industry by the Idaho state department  
38 of agriculture or the United States department of agriculture. Nothing  
39 in this subsection shall limit the use which can be made, or availabil-  
40 ity of such information if used, for regulatory purposes or its admis-  
41 sibility in any enforcement proceeding, or the duty of any person to re-  
42 port contagious or infectious diseases as required by state or federal  
43 law.

44 (26) Results of laboratory tests conducted by the Idaho state depart-  
45 ment of agriculture seed laboratory on samples submitted by seed producers  
46 or seed companies. Nothing in this subsection shall limit the use which can  
47 be made, or availability of such information pursuant to the provisions of  
48 subsections (9) and (10) of section 22-418, Idaho Code.

49 (27) For policies that are owned by private persons, and not by a public  
50 agency of the state of Idaho, records of policies, endorsements, affidavits

1 and any records that discuss policies, endorsements and affidavits that may  
2 be required to be filed with or by a surplus line association pursuant to  
3 chapter 12, title 41, Idaho Code.

4 (28) Individual financial statements of a postsecondary educational  
5 institution or a proprietary school submitted to the state board of educa-  
6 tion, its director or a representative thereof, for the purpose of regis-  
7 tering the postsecondary educational institution or proprietary school pur-  
8 suant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an  
9 administrative rule of the board adopted pursuant to such sections.