

PURCHASING LAWS
INTERIM COMMITTEE

Draft Legislation

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Summary of Draft Legislation

1. Contract Oversight (DRELB050)

- Provides that the DOP administrator and exempt officers, institutions and entities shall establish policies and procedures on contract administration, management, monitoring, and other oversight.
- Requires annual reports to the Legislature on high-dollar and high-risk contracts.
- Could be inserted after Section 67-9218, Noncompetitive and Emergency Procurements, on p. 8 of the recodification draft.

2. Delegation of Authority (DRELB059)

- Clarifies how and to whom authority may be delegated.
- Could be inserted immediately following Section 67-9205, Powers and Duties of the Administrator, on p. 4 of the recodification draft.
- Section 67-9205(15), ll. 39-40 on p. 4 of the recodification draft, could be revised to: "May delegate authority in accordance with [delegated authority section], Idaho Code."

3. Ethics in Procurement (DRELB051)

- Defines and prohibits unethical breaches of the public trust.
- Provides penalties for unethical breaches of the public trust.
 - State employee may be warned, reprimanded, suspended, or terminated.
 - State officer may be impeached.
 - Vendor may be disqualified.
- Could be inserted prior to Section 67-9230, Severability, on p. 14 of the recodification draft.

4. Multiple Awards (DRELB052)

- Provides that a multiple award can be made under a single solicitation when the administrator determines that a multiple award would be in the best interest of the state.
- The administrator has to explain the justification for a multiple award.
- This language would *replace* Section 67-9209 on pp. 5-6, ll. 32-47, 1-7, of the recodification draft.

5. Open Contracts (DRELB053)

- Allows agencies to request exemptions from open contracts and allows the administrator to grant an exemption if the administrator determines the exemption would be in the best interest of the state.
- This language would *replace* Section 67-9214 on page 6, ll. 38-45, of the recodification draft.

6. Procurement Training (DRELB054)

- Provides that all state officers and employees who may procure property for the state shall undergo procurement training.
- Provides that the administrator shall establish training programs.
- Could be inserted immediately following 67-9205, Powers and Duties of the Administrator, on p. 4 of the recodification draft.

7. Committee Reauthorization (DRELB060)

- Authorizes appointment of a committee to continue studying issues relating to public purchasing.

DRAFT

DRELB050

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature Second Regular Session - 2016

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO STATE CONTRACTS; AMENDING CHAPTER 92, TITLE 67, IDAHO CODE, BY
THE ADDITION OF A NEW SECTION 67-9231, IDAHO CODE, TO PROVIDE FOR OVER-
SIGHT OF STATE CONTRACTS.

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

SECTION 1. That Chapter 92, Title 67, Idaho Code, be, and the same is
hereby amended by the addition thereto of a NEW SECTION, to be known and des-
ignated as Section 67-9231, Idaho Code, and to read as follows:

67-9231. CONTRACT OVERSIGHT. (1) Subject to approval of the director,
the administrator shall formulate rules that establish policies and proce-
dures relating to the administration, management, monitoring and other
oversight of contracts entered by an agency.

(2) Any officer, institution or entity that is excluded from the def-
inition of "agency" under section 67-9203, Idaho Code, but that may enter
contracts obligating the state, shall establish policies and procedures re-
lating to the administration, management, monitoring and other oversight of
such contracts.

(3) Policies and procedures established pursuant to this section shall
define the roles and responsibilities of those persons assigned to adminis-
ter, manage, monitor or otherwise oversee state contracts.

(4) Each agency, and each state officer, institution or entity excluded
from the definition of "agency" under section 67-9203, Idaho Code, shall
make an annual report to the legislature on all high-dollar and high-risk
contracts entered into by the agency, officer, institution or entity during
the previous year. The report shall be made on the first day of the regular
legislative session and shall include the following information for each
contract:

- (a) The amount;
- (b) The duration;
- (c) The parties; and
- (d) The subject.

(5) For purposes of this section:

(a) A high-dollar contract is a contract valued at more than five hun-
dred thousand dollars (\$500,000).

(b) A high-risk contract is any of the following:

- (i) A contract awarded as a result of a sole source or other non-
competitive procurement;
- (ii) A contract that does not have a fixed price;
- (iii) A multi-year contract; or
- (iv) A contract that is part of a multiple award.

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DRELBO59

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature Second Regular Session - 2016

IN THE _____

BILL NO. _____

BY _____

AN ACT

1 RELATING TO STATE PROCUREMENT; AMENDING CHAPTER 92, TITLE 67, IDAHO CODE, BY
2 THE ADDITION OF A NEW SECTION 67-9205A, IDAHO CODE, TO PROVIDE THAT THE
3 ADMINISTRATOR OF THE DIVISION OF PURCHASING MAY DELEGATE AUTHORITY, TO
4 ESTABLISH HOW AUTHORITY MAY BE DELEGATED AND TO PROVIDE THAT THE ADMIN-
5 ISTRATOR SHALL FORMULATE CERTAIN RULES.
6

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

8 SECTION 1. That Chapter 92, Title 67, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 67-9205A, Idaho Code, and to read as follows:

11 67-9205A. DELEGATION OF AUTHORITY. (1) The administrator may delegate
12 such authority as the administrator deems appropriate to:

- 13 (a) An employee of the division; or
- 14 (b) An agency or agency employee.

15 (2) A delegation made pursuant to subsection (1) of this section shall
16 be in writing and shall state with specificity:

- 17 (a) The nature of the authority being delegated;
- 18 (b) The terms and conditions of the delegation; and
- 19 (c) The duration of the delegation.

20 (3) The administrator shall, subject to approval of the director, for-
21 mulate rules specifying:

- 22 (a) The process by which delegation of authority may be granted or re-
23 voked; and
- 24 (b) The factors influencing the decision to delegate authority, in-
25 cluding demonstrated competence in procurement by an employee of the
26 division or an agency.

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DRELB051

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature Second Regular Session - 2016

IN THE

BILL NO.

BY

AN ACT

RELATING TO STATE PROCUREMENT; AMENDING CHAPTER 92, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-9232, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT AND APPLICABILITY, TO PROVIDE THAT CERTAIN CONDUCT RELATING TO STATE PROCUREMENT SHALL CONSTITUTE AN UNETHICAL BREACH OF THE PUBLIC TRUST, TO PROVIDE SANCTIONS FOR STATE EMPLOYEES WHO COMMIT AN UNETHICAL BREACH OF THE PUBLIC TRUST, TO PROVIDE THAT STATE OFFICERS WHO COMMIT AN UNETHICAL BREACH OF THE PUBLIC TRUST MAY BE IMPEACHED AND TO PROVIDE THAT VENDORS WHO COMMIT AN UNETHICAL BREACH OF THE PUBLIC TRUST MAY BE DISQUALIFIED.

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

SECTION 1. That Chapter 92, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-9232, Idaho Code, and to read as follows:

67-9232. ETHICS IN PROCUREMENT. (1) It is the intent of the legislature that all persons involved in the process of procuring property for the state conduct themselves in a manner that protects the public interest and fosters confidence in the integrity of the process. To that end, this section shall apply to all such persons, including:

(a) State officers, even if the officer or the officer's employer is excluded from the definition of "agency" under section 67-9203, Idaho Code;

(b) State employees, even if the employee works for an officer, institution or entity that is excluded from the definition of "agency" under section 67-9203, Idaho Code; and

(c) Vendors or any person acting on behalf of a vendor.

(2) It is an unethical breach of the public trust to:

(a) Act in a manner contrary to the provisions of chapter 4 or 5, title 74, Idaho Code;

(b) Act in a manner that constitutes a criminal offense under any provision of law, including chapter 13, title 18, Idaho Code;

(c) Attempt to realize personal gain through state office or employment by any conduct inconsistent with this chapter or any other applicable law or rule;

(d) Attempt to influence a state officer or employee to violate the provisions of this chapter or any other applicable law or rule;

(e) Knowingly violate an applicable law or rule in any matter relating to state procurement; or

(f) As a vendor or on behalf of a vendor, communicate with a state officer or state employee about a state solicitation during the period from issuance of the solicitation to award of the contract, unless the communication is allowed by rule or under the terms of the solicitation.

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DRELB051

1 (3) Subject to due process requirements, and in addition to any other
2 administrative, civil or criminal sanctions provided by law or rule, a state
3 employee's supervisor may impose the following sanctions on the employee for
4 an unethical breach of the public trust:

5 (a) A reprimand or warning, either oral or written;

6 (b) Suspension with or without pay for a specified period of time; or

7 (c) Termination of employment.

8 (4) In addition to any other administrative, civil or criminal sanc-
9 tions provided by law or rule, a state officer may be impeached pursuant to
10 the provisions of chapter 40, title 19, Idaho Code, for an unethical breach
11 of the public trust.

12 (5) In addition to any other administrative, civil or criminal sanc-
13 tions provided by law or rule, a vendor who commits an unethical breach of
14 the public trust, or whose advocate or representative commits an unethical
15 breach of the public trust, may be disqualified pursuant to section 67-9215,
16 Idaho Code.

Ethics in Procurement – Existing Statutory Provisions

1. Chapter 4, Title 74, Idaho Code (Ethics in Government Act)
 - 74-404 – Requires certain actions when a public official has a conflict of interest
 - 74-406 – Imposes a civil penalty (fine of up to \$500) for failure to disclose a conflict of interest

2. Chapter 5, Title 74, Idaho Code (Prohibitions Against Contracts with Officers)
 - 74-501 – Legislators, state officers, and local officers can't have an interest in a contract made by them in their official capacity
 - 74-504 – Prohibited contracts are voidable
 - 74-509 – Violation of chapter is a misdemeanor
 - 74-511 – All public officers have to comply with Section 67-5726, Idaho Code (Section 67-9227 in recodification draft)

3. Chapter 13, Title 18, Idaho Code (Bribery and Corruption)
 - 18-1307 – Public officials convicted of a crime under this chapter forfeit their office
 - 18-1352 – Bribing a public servant to influence an official action
 - 18-1353 – Threatening a public servant to influence an official action
 - 18-1354 – Compensating a public servant for an official action
 - 18-1357 – Compensating a public servant for assisting private interests in an official matter
 - 18-1359 – Using public position for personal gain

4. Chapter 40, Title 19, Idaho Code (Impeachments)
 - 19-4001 – State officer may be impeached for any "misdemeanor in office"
 - A misdemeanor in office is "any act involving moral turpitude and contrary to honesty and good morals."

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DRELB052

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature Second Regular Session - 2016

IN THE _____

BILL NO. _____

BY _____

AN ACT

1 RELATING TO STATE PROCUREMENT; AMENDING CHAPTER 92, TITLE 67, IDAHO CODE, BY
2 THE ADDITION OF A NEW SECTION 67-9209, IDAHO CODE, TO PROVIDE THAT THE
3 ADMINISTRATOR OF THE DIVISION OF PURCHASING MAY AWARD CONTRACTS TO MORE
4 THAN ONE BIDDER IN A SINGLE SOLICITATION UNDER CERTAIN CIRCUMSTANCES.
5

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

7 SECTION 1. That Chapter 92, Title 67, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
9 ignated as Section 67-9209, Idaho Code, and to read as follows:

10 67-9209. MULTIPLE AWARDS. Notwithstanding any provision of this chap-
11 ter to the contrary, the administrator may award contracts to more than one
12 (1) bidder under a single solicitation when the administrator determines
13 that a multiple award would be in the best interest of the state. The admin-
14 istrator's determination shall be in writing and explain the justification
15 for the multiple award.

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DRELB053

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature Second Regular Session - 2016

IN THE _____

BILL NO. _____

BY _____

AN ACT

1 RELATING TO STATE CONTRACTS; AMENDING CHAPTER 92, TITLE 67, IDAHO CODE, BY
2 THE ADDITION OF A NEW SECTION 67-9214, IDAHO CODE, TO PROVIDE THAT STATE
3 AGENCIES SHALL PROCURE PROPERTY FROM AN OPEN CONTRACT WHEN SUCH PROP-
4 erty IS AVAILABLE UNDER THE CONTRACT, TO PROVIDE FOR EXEMPTIONS, TO PRO-
5 vide REQUIREMENTS FOR REQUESTING AND GRANTING AN EXEMPTION AND TO PRO-
6 vide THAT ANY PERSON WHO FAILS TO COMPLY WITH THIS SECTION SHALL BE SUB-
7 ject TO CERTAIN PENALTIES.
8

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

10 SECTION 1. That Chapter 92, Title 67, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 67-9214, Idaho Code, and to read as follows:

13 67-9214. OPEN CONTRACTS. (1) If property is available on an open con-
14 tract, then all agencies seeking to procure such property must do so from the
15 open contract. Provided however, that the administrator may grant an exemp-
16 tion to a requesting agency if the administrator determines that an exemp-
17 tion would be in the best interest of the state.

18 (2) A request for an exemption shall be made in writing and explain why
19 the exemption would be in the best interest of the state.

20 (3) The administrator's determination to grant an exemption shall be in
21 writing and explain the justification for the exemption.

22 (4) Any person who fails to comply with this section shall be subject to
23 penalties pursuant to sections 67-9227 and 67-9228, Idaho Code.

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DRELB054

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature Second Regular Session - 2016

This bill draft contains confidential and privileged information exempt from disclosure under Section 74-109(1), Idaho Code. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning the Legislative Services Office at (208) 334-2475.

1 AN ACT
2 RELATING TO STATE PROCUREMENT; AMENDING CHAPTER 92, TITLE 67, IDAHO CODE, BY
3 THE ADDITION OF A NEW SECTION 67-9233, IDAHO CODE, TO PROVIDE THAT STATE
4 OFFICERS OR EMPLOYEES WHO PROCURE PROPERTY FOR THE STATE SHALL UNDERGO
5 PROCUREMENT TRAINING AND TO PROVIDE THAT THE ADMINISTRATOR SHALL ESTAB-
6 LISH CERTAIN TRAINING.

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

8 SECTION 1. That Chapter 92, Title 67, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 67-9233, Idaho Code, and to read as follows:

11 67-9233. PROCUREMENT TRAINING. (1) A state officer or employee who
12 may procure property for the state shall undergo procurement training, in-
13 cluding a person whose office or employer is exempt from the definition of
14 "agency" under section 67-9203, Idaho Code.

15 (2) The administrator shall establish training for those persons who
16 procure property for the state. Such training shall be tailored to address
17 the person's specific procurement duties.

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DRELBO60

 LEGISLATURE OF THE STATE OF IDAHO
 Sixty-third Legislature Second Regular Session - 2016

IN THE HOUSE OF REPRESENTATIVES

HOUSE CONCURRENT RESOLUTION NO. _____

BY _____

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF ISSUES RELATING TO PUBLIC PURCHASING AND TO MAKE RECOMMENDATIONS.

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

WHEREAS, the First Regular Session of the Sixty-third Idaho Legislature adopted House Concurrent Resolution No. 23, which authorized the appointment of a committee to undertake and complete a study of the purchasing laws of the State of Idaho and to make recommendations; and

WHEREAS, the committee, having conducted the study, has proposed legislation reorganizing and revising the purchasing laws for purposes of modernization and clarification; and

WHEREAS, the committee's term has expired; and

WHEREAS, it is the opinion of the committee that several issues remain to be addressed, including the revision and modernization of laws relating to public works, purchasing by political subdivisions, and purchasing appeals.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixty-third Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized to appoint a committee to undertake and complete a study of issues relating to public purchasing. The Legislative Council shall determine the number of legislators and membership from each house appointed to the committee and shall authorize the committee to receive input, advice and assistance from interested and affected parties who are not members of the Legislature.

BE IT FURTHER RESOLVED that nonlegislative members of the committee may be appointed by the co-chairs of the committee who are appointed by the Legislative Council. Nonlegislative members of the committee shall not be reimbursed from legislative funds for per diem, mileage or other expenses and shall not have voting privileges regarding the committee's recommendations or proposed legislation.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations and proposed legislation, if any, to the First Regular Session of the Sixty-fourth Idaho Legislature.