

1 AN ACT

2 RELATING TO INFORMATION TECHNOLOGY SYSTEMS; AMENDING TITLE 67, IDAHO
3 CODE, BY THE ADDITION OF A NEW CHAPTER 92, TITLE 67, IDAHO CODE,
4 TO PROVIDE A SHORT TITLE, TO PROVIDE FOR PURPOSE AND INTENT, TO
5 PROVIDE DEFINITIONS, TO ESTABLISH THE EDUCATION OPPORTUNITY
6 PROGRAM BOARD AND TO PROVIDE FOR BOARD DUTIES, CERTAIN
7 REQUIREMENTS, BOARD MEMBERSHIP AND BOARD OFFICERS, TO PROVIDE THAT
8 THE EDUCATION OPPORTUNITY PROGRAM BOARD SHALL BE A GOVERNMENTAL
9 ENTITY AND TO ESTABLISH PROVISIONS RELATING TO SUCH, TO ESTABLISH
10 CERTAIN POWERS AND AUTHORITY OF THE BOARD, TO ESTABLISH PROVISIONS
11 RELATING TO ASSISTANCE TO SCHOOL DISTRICTS, TO ESTABLISH AN
12 OVERSIGHT COMMITTEE AND PROVISIONS RELATING TO THE OVERSIGHT
13 COMMITTEE, TO ESTABLISH AN INTERIM WORKING GROUP AND TO ESTABLISH
14 PROVISIONS RELATING TO THE WORKING GROUP, TO PROVIDE REPORTING
15 REQUIREMENTS AND TO PROVIDE FOR HONORARIUM; REPEALING SECTION 67-
16 5745D, IDAHO CODE, RELATING TO THE IDAHO EDUCATION NETWORK;
17 REPEALING SECTION 67-5745E, IDAHO CODE, RELATING TO THE IDAHO
18 EDUCATION NETWORK PROGRAM AND RESOURCE ADVISORY COUNCIL; PROVIDING
19 SEVERABILITY; AND DECLARING AN EMERGENCY.

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

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

24 CHAPTER 92

25 STATE OPPORTUNITY PROGRAM ACT

26 67-9201. SHORT TITLE. This chapter shall be known and may be cited
27 as the "State Opportunity Program Act."

28 67-9202. PURPOSE AND INTENT. The purpose of this act is to both
29 establish a structured approach to providing internet service for Idaho's
30 education system and to create a separate statewide program for Idaho's
31 state agencies and other public interests. First, the legislature finds
32 that Idaho benefits from a consistent and adequate bandwidth connection
33 to its, schools, and that such bandwidth must be implemented for the
34 2017-2018 school year. The legislature therefore creates herein the
35 education opportunity program board, which is charged with ensuring
36 adequate and consistent internet connectivity for education. Secondly
37 and separately, the legislature further finds that Idaho may benefit
38 from a statewide network for Idaho's state agencies and other public
39 interests including, but not limited to, commerce and industry, labor,
40 economic development, health care and resources, local government and
41 other functions of state government.

42 67-9202A. DEFINITIONS. (1) The education opportunity program (EOP)
43 is defined as the coordinated development and implementation of an,
44 information technology service designed to provide support for a wide
45 variety of communications, electronic information applications and other
46 technologies including, but not limited to, high-bandwidth connectivity

1 for the state's school districts, and other E-rate eligible entities as
2 defined by the federal communications commission.

3 (2) The Idaho opportunity program (IOP) is defined as the
4 statewide coordinated information technology service for state agencies
5 and other public interests including, but not limited to, commerce and
6 industry, labor, economic development, health care and health care-
7 related resources, local government and other functions of state
8 government. The Idaho opportunity program shall be separate and apart
9 from the education opportunity program and shall not provide oversight
10 to the state's public K-12 education system, and other E-rate eligible
11 entities, but may, upon request, assist the Education Opportunity
12 Program.

13 (3) The term "school district" shall include Idaho public local
14 education agencies, the Idaho School for the Deaf and the Blind, the
15 education services of the Idaho Juvenile detention centers, and the Idaho
16 Digital Learning Academy.

17 67-9203. EDUCATION OPPORTUNITY PROGRAM BOARD -- CREATION AND DUTIES
18 -- MEMBERSHIP -- OFFICERS. (1) There is hereby created the education
19 opportunity program board, hereafter referred to as the board. The board,
20 as provided for in this chapter, is not a single department of state
21 government unto itself, nor is it a part of any of the twenty (20)
22 departments of state government authorized by section 20, article IV,
23 of the constitution of the state of Idaho, or of the departments
24 prescribed in section 67-2402, Idaho Code. It is legislative intent that
25 the board operate and be recognized not as a state agency or department,
26 but as a governmental entity whose creation has been authorized by the
27 state, in the manner as other single purpose districts.

28 (2) The education opportunity program board shall facilitate the
29 education opportunity program services for school districts, and any
30 other E-rate eligible entities. The board shall ensure that such program
31 is operational by July 1, 2016. The board shall ensure that filings for
32 E-rate funding for the participating school districts are completed and
33 filed with appropriate authorities and in a timely fashion in order to
34 qualify for E-rate funding consideration for fiscal year 2018. No school
35 district shall be required to participate in a statewide network
36 facilitated by the board.

37 (3) The board shall consist of nine (9) members:

38 (a) One (1) member shall be the superintendent of public
39 instruction or the superintendent's designee;

40 (b) One (1) member shall be a school district superintendent from
41 a school district with five thousand (5,000) or more students
42 enrolled, appointed by the governor from a list of three (3)
43 candidates submitted to the governor by the Idaho association of
44 school administrators;

45 (c) One (1) member shall be a school district superintendent from
46 a school district with less than one thousand (1,000) students
47 enrolled, appointed by the governor from a list of three (3)
48 candidates submitted to the governor by the Idaho association of
49 school administrators;

50 (d) One (1) member shall be the president of the Idaho education
51 technology association or the president's designee;

- 1 (e) One (1) member shall be the state librarian or the state
2 librarian's designee;
3 (f) Four (4) members shall be members of the Idaho Education
4 Technology Association, appointed by the board of the Idaho
5 Education Technology Association.

6 The board shall elect a chairman and a vice-chairman, who shall each
7 hold such position for two (2) year terms and who may be reelected.
8 Members of the board shall hold office for four (4) year terms. The
9 process for filling vacancies shall be determined by the program's
10 bylaws.

11 (4) The board shall meet at least once every two (2) months.

12 (5) The board shall work with appropriate entities to develop,
13 and coordinate the education opportunity program in a manner consistent
14 with the provisions of this chapter and may exercise the powers and
15 authority conferred by this chapter.

16 (6) All meetings of the board shall be held in accordance with
17 the open meeting laws of this state, shall be held in an open public
18 forum, and every reasonable effort shall be made to make such meetings
19 televised or streamed in video and audio format.

20 (7) The board shall contract for an annual audit of the board by
21 an independent third party and shall accept requests for proposal to bid
22 on such contract.

23 (8) The board shall hire a chief executive officer, who shall
24 serve at the pleasure of the board. The board shall set the chief
25 executive officer's salary and shall annually conduct a performance
26 review of the chief executive officer.

27 67-9203A. GOVERNMENTAL ENTITY -- LIABILITY -- INSURANCE. (1) The
28 education opportunity program board shall be a governmental entity as
29 provided in section 67-9203, Idaho Code. For the purposes of section 59-
30 1302(15), Idaho Code, the education opportunity program board shall be
31 deemed a governmental entity. Pursuant to the provisions of section 63-
32 36220, Idaho Code, sales to or purchases by the education opportunity
33 program board are exempt from payment of the sales and use tax. The
34 education opportunity program board and its employees are subject to the
35 following provisions:

36 (a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and
37 corrupt influence;

38 (b) Chapter 2, title 59, Idaho Code, on prohibitions against
39 contracts with officers;

40 (c) Chapter 7, title 59, Idaho Code, on ethics in government;

41 (d) Chapter 23, title 67, Idaho Code, on open public meetings;
42 and

43 (e) Chapter 3, title 9, Idaho Code, on disclosure of public
44 records.

45 (2) The education opportunity program board may sue or be sued,
46 purchase, receive, hold and convey real and personal property for
47 purposes consistent with this chapter, and its employees, members and
48 officers shall enjoy the immunities and protections provided by chapter
49 9, title 6, Idaho Code.

1 (3) The education opportunity program board shall secure
2 insurance for liability and property loss.

3 (4) It shall be unlawful for:

4 (a) Any board member to have pecuniary interest directly or
5 indirectly in any contract or other transaction pertaining to the
6 maintenance or conduct of the board, or to accept any reward or
7 compensation for services rendered as a board member except as may
8 be otherwise provided in this subsection. No contract or agreement
9 for services or goods under the purview of the board may be entered
10 into by a board member or a person related to a board member by
11 blood or marriage within the second degree of consanguinity. The
12 receiving, soliciting or acceptance of moneys of the board for
13 deposit in any bank or trust company, or the lending of moneys by
14 any bank or trust company to the board, shall not be deemed to be
15 a contract pertaining to the maintenance or conduct of the
16 education opportunity program or the board within the meaning of
17 this section; nor shall the payment of compensation by the board
18 to any bank or trust company for services rendered in the
19 transaction of any banking business with the board be deemed the
20 payment of any reward or compensation to any officer or director
21 of any such bank or trust company within the meaning of this
22 section.

23 (b) The board or members of the board to enter into or execute
24 any contract with the spouse of any member of such board, the terms
25 of which said contract require, or will require, the payment or
26 delivery of any education opportunity program funds, moneys or
27 property to such spouse, except as provided in section 18-1361 or
28 18-1361A, Idaho Code.

29 (5) When any relative of any board member, or relative of the
30 spouse of a board member related by affinity or consanguinity within the
31 second degree, is to be considered for employment by the board, such
32 board member shall abstain from voting in the election of such relative
33 and shall be absent from the meeting while such employment is being
34 considered and determined.

35 (6) The state of Idaho shall not be liable for any obligations of
36 the board.

37 (7) No member of the board shall be liable, and no cause of action
38 of any nature may arise against them, for any act or omission related
39 to the performance of their powers and duties under this chapter, unless
40 such act or omission constitutes willful or wanton misconduct. The board
41 may provide for indemnification of, and legal representation for, its
42 members.

43 67-9204. POWERS AND AUTHORITY OF THE EDUCATION OPPORTUNITY PROGRAM
44 BOARD.

45 (1) In addition to the board's powers and authority provided
46 elsewhere in this chapter, the board shall have the powers and authority
47 to:

48 (a) Perform all duties that are necessary and appropriate to
49 facilitate the education opportunity program and the provisions of
50 this chapter;

1 (b) Adopt bylaws for the regulation of its affairs and the conduct
2 of its business;

3 (c) Take any legal action to recover any amounts lawfully owed to
4 the board or otherwise consistent with this chapter;

5 (d) Hire staff or engage the services of persons as it determines
6 is necessary to implement the provisions of this chapter. Such
7 staff or persons may include, but are not limited to, an independent
8 E-rate consultant and legal counsel with experience in federal
9 communications subject matter, or persons with other specialized
10 skills that the board determines are necessary in order to fulfill
11 its responsibilities;

12 (e) Pursuant to state purchasing laws, the board may enter into
13 contracts to effectuate and implement the education opportunity
14 program and accept requests for proposals to bid on such contracts;
15 and

16 (f) Develop, adopt and implement a plan of operation and other
17 governing documents to fulfill the requirements of this chapter.

18 (2) In performing the duties pursuant to this chapter, subject to
19 the availability of funds, the board shall:

20 (a) Coordinate the development and facilitation of the education
21 opportunity program services;

22 (b) Consider statewide economic development impacts in the design
23 and implementation of the program services;

24 (c) Support the information technology needs of the education
25 opportunity program for school districts, and other E-rate eligible
26 entities as the board deems necessary and appropriate;

27 (d) Set minimum service standards for high-quality, cost-
28 effective information technologies to facilitate the education
29 opportunity program;

30 (e) Establish subcommittees or advisory committees when
31 necessary. Members of the subcommittees shall be selected for their
32 knowledge and experience in the technology necessary for the
33 ongoing operation of the education opportunity network services.
34 Otherwise qualified Subcommittee or advisory committee members do
35 not have to server on the board;

36 (f) Work with the private sector, where appropriate, to deliver
37 a high quality and cost-effective education opportunity program;
38 and

39 (g) Cooperate with public education entities including, but not
40 limited to, the Idaho regional optical network, in implementing
41 the education opportunity program.

42 (3) The board shall not have the power to alter its own legal
43 structure. The board shall, however, report to the legislative oversight
44 committee established in section 67-9204B, Idaho Code, annually, no later
45 than September 1 of each year. The board shall notify the legislative
46 oversight committee if it believes legal barriers exist that are
47 obstacles to the successful completion of its responsibilities and duties
48 provided for in this chapter. The board shall also report to the
49 oversight committee where it finds opportunities, not provided for in
50 law, to advance education through technology.

51 (4) The board shall distribute allocated funds to school
52 districts to reimburse school districts for the cost of internet service.

1 (a) The board shall reimburse only those school districts that
2 made good faith efforts to apply for E-rate funding, provided that
3 E-rate funding is available;

4 (b) The board shall distribute allocated funds equal to the non-
5 E-rate reimbursed cost of internet services to school districts
6 that received E-rate funding;

7 (c)

8 (5) If E-rate funding is unavailable, or a school district is
9 denied E-rate reimbursement after making a good faith effort the board
10 shall reimburse the school district for its internet service costs. The
11 board shall set minimum and maximum service levels and quality of
12 services eligible for reimbursement.

13 (6) The board shall analyze broadband usage to determine the
14 levels of internet services necessary for the school districts.

15 (a) The board shall set a minimum per student internet level that
16 school districts must provide to be eligible for reimbursement;

17 (b) The board shall reimburse a school district for not less than
18 the level of service approved for reimbursement by the State
19 Department of Education in the 2016-2017 school year, if that level
20 exceeds the minimum level set by the board;

21 (c) The board shall, upon request of the school district, collect
22 broadband utilization statistics from the school district;

23 (d) The board shall authorize funding increases for internet
24 service levels when a district is consistently exceeding 70%
25 utilization during school days and hours, provided adequate funding
26 is available.

27 67-9204A. ASSISTANCE TO SCHOOL DISTRICTS. (1) The education opportunity
28 program board shall provide technical support for school districts.

29 (2) The board is not authorized to provide legal advice.

30 (3) The board is authorized to collaborate with districts, at the
31 school district's request, to:

32 (a) Negotiate in conjunction with and on behalf of school
33 districts with providers for broadband and related services;

34 (b) Enter into contracts for broadband and related services on
35 behalf of school districts;

36 (c) Facilitate and enter into contracts for broadband and related
37 services on behalf of school district consortiums;

38 (d) Enter into a statewide broadband contract that districts may
39 participate in if they so choose; and

40 (e) Facilitate other technical services to districts including,
41 but not limited to, E-rate application services, assistance on
42 information technology issues, and assistance on technical issues
43 relating to federal communications commission matters.

44 (4) The board is authorized to hire staff to provide technical
45 assistance to school districts as described in this section.

46 67-9204B. BROADBAND PROGRAM LEGISLATIVE OVERSIGHT COMMITTEE
47 ESTABLISHED -- ONGOING REVIEW AND REPORT. (1) There is hereby established
48 the broadband program legislative oversight committee. Members of the
49 committee shall include: the chairman of the senate education committee,

1 the chairman of the house education committee, the cochairmen of the
2 joint finance-appropriations committee, or any of their respective
3 designees; two (2) members appointed by the president pro tempore of the
4 senate, and two (2) members appointed by the speaker of the house of
5 representatives. The oversight committee shall consider reports
6 submitted by the education opportunity program board and the interim
7 working group established in section 67-9204C, Idaho Code. The oversight
8 committee shall submit proposed legislation for consideration to the
9 joint finance-appropriations committee and other committees, as
10 necessary, no later than January 31, 2017.

11 (2) The education opportunity program board is charged with
12 ongoing review of the implementation of its enabling legislation and the
13 operations of the board itself. The board shall report to the broadband
14 program legislative oversight committee no later than November 1, 2017.
15 Such report shall include recommendations, if necessary, for revisions
16 to the board's enabling legislation, recommendations for changes in board
17 structure, funding levels, staffing issues or other matters that the
18 board determines should be brought to the oversight committee's
19 attention.

20 (3) The interim working group, established pursuant to this
21 chapter, shall report to the broadband program legislative oversight
22 committee no later than November 1, 2015. Such report shall include
23 recommendations for legislation to implement the provisions of the Idaho
24 opportunity program defined in section 67-9202A, Idaho Code.

25 67-9204C. INTERIM WORKING GROUP. (1) There is hereby established
26 the Idaho opportunity program interim working group, hereafter referred
27 to as the working group. The working group shall develop proposed
28 legislation to establish and implement the Idaho opportunity program as
29 defined in section 67-9202A, Idaho Code. The working group shall develop
30 proposed legislation for submission, no later than October 1, 2015, to
31 the broadband program legislative oversight committee established
32 pursuant to section 67-9204B, Idaho Code. Such proposed legislation shall
33 provide for the establishment of the Idaho opportunity program as defined
34 in section 67-9202A, Idaho Code. The proposed legislation shall ensure
35 that the Idaho opportunity program is developed and implemented in an
36 open and transparent fashion and that all services are obtained in
37 compliance with state purchasing laws. Members of the working group shall
38 meet as soon as practicable following the passage and approval of this
39 act.

40 (2) Members of the working group shall include:

41 (a) One (1) member shall be the state controller or the state
42 controller's designee;

43 (b) One (1) member shall be the director of the department of
44 health and welfare or the director's designee;

45 (c) One (1) member shall be the director of the department of
46 labor or the director's designee;

47 (d) One (1) member shall be the director of the Idaho
48 transportation department or the director's designee;

49 (e) One (1) member shall be the director of the Idaho state police
50 or the director's designee;

1 (f) One (1) member shall be the adjutant general, Idaho military
2 division, or the adjutant general's designee;

3 (g) One (1) member shall be the director of the department of
4 commerce or the director's designee;

5 (h) One (1) member shall be the president of the state board of
6 education or the president's designee; and

7 (i) One (1) member shall be the president of the Idaho education
8 technology association.

9 (3) The chief executive officer of the education opportunity
10 program board shall serve as a nonvoting ex officio member of the working
11 group.

12 (4) The working group shall also review the policy objectives
13 provided for in sections 67-5745, 67-5745A, 67-5745B and 67-5745C, Idaho
14 Code, and shall develop recommendations to strengthen the enforcement
15 of such policy objectives.

16 (5) The working group shall meet monthly unless otherwise agreed
17 to by the group.

18 (6) The working group shall select a chairman and vice-chairman.

19 (7) The chairman of the working group shall obtain advice from
20 technical advisors and appropriate stakeholders including, but not
21 limited to, the department of homeland security and other appropriate
22 state departments. The working group is authorized to appoint an advisory
23 committee to help with its work. Members of such advisory committee may
24 be persons representing stakeholders and may have technical expertise
25 to aid in the working group's efforts. Members of the advisory committee
26 shall not be eligible for any honorarium or compensation, but shall be
27 eligible for reimbursement of certain actual expenses as provided for
28 in section 67-9206, Idaho Code.

29 67-9205. REPORTING REQUIREMENTS. The education opportunity program
30 board shall submit a written report of its activities and the condition
31 and status of the education opportunity program to the office of the
32 state controller, the governor and the chairman of the senate education
33 committee, the house of representatives' education committee and the
34 cochairs of the joint finance-appropriations committee on or before
35 January 31, 2017, and annually on or before each January 31 thereafter.
36 The report shall include information regarding broadband usage, speed
37 and capability of the network, and how many and what type of entities
38 are using the network.

39 67-9206. BOARD MEMBERS -- HONORARIUM. Members of the boards and
40 interim working groups authorized pursuant to this chapter shall serve
41 without honorarium or compensation of any kind, but shall be reimbursed
42 for actual and necessary expenses, subject to the limits provided in
43 section 67-2008, Idaho Code.

44 SECTION 2. That Section 67-5745D, Idaho Code, be, and the same is
45 hereby repealed.

46 SECTION 3. That Section 67-5745E, Idaho Code, be, and the same is
47 hereby repealed.

1 Section 4. All equipment owned by the state for the Idaho Education
2 Network and currently housed in schools shall become the property of the
3 school district in which it is housed. Any school district disclaiming
4 ownership of the equipment can return the equipment to the State
5 Department of Education to be redistributed to other school districts.

6 SECTION 5. SEVERABILITY. The provisions of this act are hereby
7 declared to be severable and if any provision of this act or the
8 application of such provision to any person or circumstance is declared
9 invalid for any reason, such declaration shall not affect the validity
10 of the remaining portions of this act.

11 SECTION 6. An emergency existing therefor, which emergency is
12 hereby declared to exist, Sections 1 and 4 of this act shall be in full
13 force and effect on and after passage and approval. Sections 2 and 3 of
14 this act shall be in full force and effect on and after February 1,
15 2016.

DRAFT