

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 90

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO TRANSPARENT AND ETHICAL GOVERNMENT; REPEALING SECTIONS 9-335
2 THROUGH 9-352, IDAHO CODE, RELATING TO THE PUBLIC RECORDS ACT; REPEAL-
3 ING SECTIONS 67-2340 THROUGH 67-2347, IDAHO CODE, RELATING TO THE OPEN
4 MEETINGS LAW; REPEALING CHAPTER 7, TITLE 59, IDAHO CODE, RELATING TO
5 ETHICS IN GOVERNMENT; REPEALING CHAPTER 2, TITLE 59, IDAHO CODE, RE-
6 LATING TO PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS; AMENDING THE
7 IDAHO CODE, BY THE ADDITION OF A NEW TITLE 74, IDAHO CODE, RELATING TO
8 TRANSPARENT AND ETHICAL GOVERNMENT, TO PROVIDE THE PUBLIC RECORDS ACT,
9 TO PROVIDE FOR THE OPEN MEETINGS LAW, TO PROVIDE A RESERVED CHAPTER,
10 TO PROVIDE THE ETHICS IN GOVERNMENT ACT AND TO PROVIDE PROHIBITIONS
11 AGAINST CONTRACTS WITH OFFICERS; AND PROVIDING SEVERABILITY.
12

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

14 SECTION 1. That Sections 9-335 through 9-352, Idaho Code, be, and the
15 same are hereby repealed.

16 SECTION 2. That Sections 67-2340 through 67-2347, Idaho Code, be, and
17 the same are hereby repealed.

18 SECTION 3. That Chapter 7, Title 59, Idaho Code, be, and the same is
19 hereby repealed.

20 SECTION 4. That Chapter 2, Title 59, Idaho Code, be, and the same is
21 hereby repealed.

22 SECTION 5. That the Idaho Code, be, and the same is hereby amended by the
23 addition thereto of a NEW TITLE, to be known and designated as Title 74, Idaho
24 Code, and to read as follows:

25 TITLE 74

26 TRANSPARENT AND ETHICAL GOVERNMENT

27 CHAPTER 1

28 PUBLIC RECORDS ACT

29 74-101. DEFINITIONS. As used in this chapter:

30 (1) "Applicant" means any person formally seeking a paid or volunteer
31 position with a public agency. "Applicant" does not include any person seek-
32 ing appointment to a position normally filled by election.

33 (2) "Copy" means transcribing by handwriting, photocopying, duplicat-
34 ing machine and reproducing by any other means so long as the public record is
35 not altered or damaged.

36 (3) "Custodian" means the person having personal custody and control of
37 the public records in question. If no such designation is made by the pub-

1 lic agency or independent public body corporate and politic, then custodian
2 means any public official having custody of, control of, or authorized ac-
3 cess to public records and includes all delegates of such officials, employ-
4 ees or representatives.

5 (4) "Independent public body corporate and politic" means the Idaho
6 housing and finance association as created in chapter 62, title 67, Idaho
7 Code.

8 (5) "Inspect" means the right to listen, view and make notes of public
9 records as long as the public record is not altered or damaged.

10 (6) "Investigatory record" means information with respect to an iden-
11 tifiable person, group of persons or entities compiled by a public agency or
12 independent public body corporate and politic pursuant to its statutory au-
13 thority in the course of investigating a specific act, omission, failure to
14 act, or other conduct over which the public agency or independent public body
15 corporate and politic has regulatory authority or law enforcement author-
16 ity.

17 (7) "Law enforcement agency" means any state or local agency given law
18 enforcement powers or which has authority to investigate, enforce, prose-
19 cute or punish violations of state or federal criminal statutes, ordinances
20 or regulations.

21 (8) "Local agency" means a county, city, school district, municipal
22 corporation, district, public health district, political subdivision, or
23 any agency thereof, or any committee of a local agency, or any combination
24 thereof.

25 (9) "Person" means any natural person, corporation, partnership, firm,
26 association, joint venture, state or local agency or any other recognized
27 legal entity.

28 (10) "Prisoner" means a person who has been convicted of a crime and is
29 either incarcerated or on parole for that crime or who is being held in cus-
30 tody for trial or sentencing.

31 (11) "Public agency" means any state or local agency as defined in this
32 section.

33 (12) "Public official" means any state, county, local district, inde-
34 pendent public body corporate and politic or governmental official or em-
35 ployee, whether elected, appointed or hired.

36 (13) "Public record" includes, but is not limited to, any writing con-
37 taining information relating to the conduct or administration of the pub-
38 lic's business prepared, owned, used or retained by any state agency, in-
39 dependent public body corporate and politic or local agency regardless of
40 physical form or characteristics.

41 (14) "Requester" means the person requesting examination and/or copy-
42 ing of public records pursuant to section 74-102, Idaho Code.

43 (15) "State agency" means every state officer, department, division,
44 bureau, commission and board or any committee of a state agency including
45 those in the legislative or judicial branch, except the state militia and the
46 Idaho state historical society library and archives.

47 (16) "Writing" includes, but is not limited to, handwriting, typewrit-
48 ing, printing, photostating, photographing and every means of recording,
49 including letters, words, pictures, sounds or symbols or combination

1 thereof, and all papers, maps, magnetic or paper tapes, photographic films
2 and prints, magnetic or punched cards, discs, drums or other documents.

3 74-102. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a
4 right to examine and take a copy of any public record of this state and there
5 is a presumption that all public records in Idaho are open at all reasonable
6 times for inspection except as otherwise expressly provided by statute.

7 (2) The right to copy public records shall include the right to make
8 photographs or photographic or other copies while the records are in the pos-
9 session of the custodian of the records using equipment provided by the pub-
10 lic agency or independent public body corporate and politic or using equip-
11 ment designated by the custodian.

12 (3) Additionally, the custodian of any public record shall give the
13 person, on demand, a certified copy of it if the record is of a nature permit-
14 ting such copying or shall furnish reasonable opportunity to inspect or copy
15 such record.

16 (4) A public agency or independent public body corporate and politic
17 may require that a request for public records be submitted to it in a writ-
18 ing that provides the requester's name, mailing address, e-mail address and
19 telephone number. A request for public records and delivery of the public
20 records may be made by electronic mail.

21 (5) The custodian shall make no inquiry of any person who requests a
22 public record, except:

23 (a) To verify the identity of the requester in accordance with section
24 74-113, Idaho Code; or

25 (b) To ensure that the requested record or information will not be
26 used for purposes of a mailing or telephone list prohibited by section
27 74-120, Idaho Code, or as otherwise provided by law; or

28 (c) As required for purposes of protecting personal information from
29 disclosure under chapter 2, title 49, Idaho Code, and federal law.

30 (6) The custodian shall not review, examine or scrutinize any copy,
31 photograph or memoranda in the possession of any such person and shall extend
32 to the person all reasonable comfort and facility for the full exercise of
33 the right granted under this act.

34 (7) Nothing herein contained shall prevent the custodian from main-
35 taining such vigilance as is required to prevent alteration of any public
36 record while it is being examined.

37 (8) Examination of public records under the authority of this section
38 must be conducted during regular office or working hours unless the custo-
39 dian shall authorize examination of records in other than regular office or
40 working hours. In this event, the persons designated to represent the cus-
41 todian during such examination shall be entitled to reasonable compensation
42 to be paid to them by the public agency or independent public body corporate
43 and politic having custody of such records, out of funds provided in advance
44 by the person examining such records, at other than regular office or working
45 hours.

46 (9) The public agency or independent public body corporate and politic
47 may provide the requester information to help the requester narrow the scope
48 of the request or to help the requester make the request more specific when

1 the response to the request is likely to be voluminous or require payment as
2 provided in subsection (10) of this section.

3 (10) (a) Except for fees that are authorized or prescribed under other
4 provisions of Idaho law, no fee shall be charged for the first two (2)
5 hours of labor in responding to a request for public records, or for
6 copying the first one hundred (100) pages of paper records that are re-
7 quested.

8 (b) A public agency or independent public body corporate and politic or
9 public official may establish fees to recover the actual labor and copy-
10 ing costs associated with locating and copying documents if:

11 (i) The request is for more than one hundred (100) pages of paper
12 records; or

13 (ii) The request includes records from which nonpublic informa-
14 tion must be deleted; or

15 (iii) The actual labor associated with responding to requests for
16 public records in compliance with the provisions of this chapter
17 exceeds two (2) person hours.

18 (c) A public agency or independent public body corporate and politic or
19 public official may establish a copying fee schedule. The fee may not
20 exceed the actual cost to the agency of copying the record if another fee
21 is not otherwise provided by law.

22 (d) For providing a duplicate of a computer tape, computer disc, mi-
23 crofilm or similar or analogous record system containing public record
24 information, a public agency or independent public body corporate and
25 politic or public official may charge a fee, uniform to all persons that
26 does not exceed the sum of the following:

27 (i) The agency's direct cost of copying the information in that
28 form;

29 (ii) The standard cost, if any, for selling the same information
30 in the form of a publication;

31 (iii) The agency's cost of conversion, or the cost of conversion
32 charged by a third party, if the existing electronic record is con-
33 verted to another electronic form.

34 (e) Fees shall not exceed reasonable labor costs necessarily incurred
35 in responding to a public records request. Fees, if charged, shall re-
36 flect the personnel and quantity of time that are reasonably necessary
37 to process a request. Fees for labor costs shall be charged at the per
38 hour pay rate of the lowest paid administrative staff employee or pub-
39 lic official of the public agency or independent public body corporate
40 and politic who is necessary and qualified to process the request. If
41 a request requires redactions to be made by an attorney who is employed
42 by the public agency or independent public body corporate and politic,
43 the rate charged shall be no more than the per hour rate of the lowest
44 paid attorney within the public agency or independent public body cor-
45 porate and politic who is necessary and qualified to process the public
46 records request. If a request is submitted to a public agency or inde-
47 pendent public body corporate and politic that does not have an attorney
48 on staff, and requires redactions by an attorney, the rate shall be no
49 more than the usual and customary rate of the attorney who is retained by

1 the public agency or independent public body corporate and politic for
2 that purpose.

3 (f) The public agency or independent public body corporate and politic
4 shall not charge any cost or fee for copies or labor when the requester
5 demonstrates that the requester's examination and/or copying of public
6 records:

7 (i) Is likely to contribute significantly to the public's under-
8 standing of the operations or activities of the government;

9 (ii) Is not primarily in the individual interest of the requester
10 including, but not limited to, the requester's interest in litiga-
11 tion in which the requester is or may become a party; and

12 (iii) Will not occur if fees are charged because the requester has
13 insufficient financial resources to pay such fees.

14 (g) Statements of fees by a public agency or independent public body
15 corporate and politic shall be itemized to show the per page costs for
16 copies, and hourly rates of employees and attorneys involved in re-
17 sponding to the request, and the actual time spent on the public records
18 request. No lump sum costs shall be assigned to any public records re-
19 quest.

20 (11) A requester may not file multiple requests for public records
21 solely to avoid payment of fees. When a public agency or independent public
22 body corporate and politic reasonably believes that one (1) or more re-
23 questers is segregating a request into a series of requests to avoid payment
24 of fees authorized pursuant to this section, the public agency or inde-
25 pendent public body corporate and politic may aggregate such requests and
26 charge the appropriate fees. The public agency or independent public body
27 corporate and politic may consider the time period in which the requests have
28 been made in its determination to aggregate the related requests. A public
29 agency or independent public body corporate and politic shall not aggregate
30 multiple requests on unrelated subjects from one (1) requester.

31 (12) The custodian may require advance payment of fees authorized by
32 this section. Any money received by the public agency or independent pub-
33 lic body corporate and politic shall be credited to the account for which
34 the expense being reimbursed was or will be charged, and such funds may be
35 expended by the agency as part of its appropriation from that fund. Any por-
36 tion of an advance payment in excess of the actual costs of labor and copying
37 incurred by the agency in responding to the request shall be returned to the
38 requester.

39 (13) A public agency or independent public body corporate and politic
40 shall not prevent the examination or copying of a public record by contract-
41 ing with a nongovernmental body to perform any of its duties or functions.

42 (14) Nothing contained herein shall prevent a public agency or indepen-
43 dent public body corporate and politic from disclosing statistical informa-
44 tion that is descriptive of an identifiable person or persons, unless pro-
45 hibited by law.

46 (15) Nothing contained herein shall prevent a public agency or inde-
47 pendent public body corporate and politic from providing a copy of a public
48 record in electronic form if the record is available in electronic form and
49 if the person specifically requests an electronic copy.

1 74-103. RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC RECORDS. (1) A
2 public agency or independent public body corporate and politic shall either
3 grant or deny a person's request to examine or copy public records within
4 three (3) working days of the date of the receipt of the request for exam-
5 ination or copying. If it is determined by employees of the public agency
6 or independent public body corporate and politic that a longer period of
7 time is needed to locate or retrieve the public records, the public agency
8 or independent public body corporate and politic shall so notify in writing
9 the person requesting to examine or copy the records and shall provide the
10 public records to the person no later than ten (10) working days following
11 the person's request. Provided however, if it is determined the exist-
12 ing electronic record requested will first have to be converted to another
13 electronic format by the agency or by a third party and that such conversion
14 cannot be completed within ten (10) working days, the agency shall so notify
15 in writing the person requesting to examine or copy the records. The agency
16 shall provide the converted public record at a time mutually agreed upon
17 between the agency and the requester, with due consideration given to any
18 limitations that may exist due to the process of conversion or due to the use
19 of a third party to make the conversion.

20 (2) If the public agency or independent public body corporate and
21 politic fails to respond, the request shall be deemed to be denied within ten
22 (10) working days following the request.

23 (3) If the public agency or independent public body corporate and
24 politic denies the person's request for examination or copying the public
25 records or denies in part and grants in part the person's request for exam-
26 ination and copying of the public records, the person legally responsible
27 for administering the public agency or independent public body corporate and
28 politic or that person's designee shall notify the person in writing of the
29 denial or partial denial of the request for the public record.

30 (4) The notice of denial or partial denial shall state that the attor-
31 ney for the public agency or independent public body corporate and politic
32 has reviewed the request or shall state that the public agency or independent
33 public body corporate and politic has had an opportunity to consult with an
34 attorney regarding the request for examination or copying of a record and has
35 chosen not to do so. The notice of denial or partial denial also shall in-
36 dicate the statutory authority for the denial and indicate clearly the per-
37 son's right to appeal the denial or partial denial and the time periods for
38 doing so.

39 74-104. RECORDS EXEMPT FROM DISCLOSURE -- EXEMPTIONS IN FEDERAL OR
40 STATE LAW -- COURT FILES OF JUDICIAL PROCEEDINGS. The following records are
41 exempt from disclosure:

42 (1) Any public record exempt from disclosure by federal or state law or
43 federal regulations to the extent specifically provided for by such law or
44 regulation.

45 (2) Records contained in court files of judicial proceedings, the dis-
46 closure of which is prohibited by or under rules adopted by the Idaho supreme
47 court, but only to the extent that confidentiality is provided under such
48 rules, and any drafts or other working memoranda related to judicial de-
49 cision-making, provided the provisions of this subsection making records

1 exempt from disclosure shall not apply to the extent that such records or
2 information contained in those records are necessary for a background check
3 on an individual that is required by federal law regulating the sale of
4 firearms, guns or ammunition.

5 74-105. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS,
6 INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS,
7 WORKER'S COMPENSATION. The following records are exempt from disclosure:

8 (1) Investigatory records of a law enforcement agency, as defined in
9 section 74-101(7), Idaho Code, under the conditions set forth in section
10 74-124, Idaho Code.

11 (2) Juvenile records of a person maintained pursuant to chapter 5,
12 title 20, Idaho Code, except that facts contained in such records shall be
13 furnished upon request in a manner determined by the court to persons and
14 governmental and private agencies and institutions conducting pertinent
15 research studies or having a legitimate interest in the protection, welfare
16 and treatment of the juvenile who is thirteen (13) years of age or younger.
17 If the juvenile is petitioned or charged with an offense which would be a
18 criminal offense if committed by an adult, the name, offense of which the
19 juvenile was petitioned or charged and disposition of the court shall be sub-
20 ject to disclosure as provided in section 20-525, Idaho Code. Additionally,
21 facts contained in any records of a juvenile maintained under chapter 5,
22 title 20, Idaho Code, shall be furnished upon request to any school district
23 where the juvenile is enrolled or is seeking enrollment.

24 (3) Records of the custody review board of the Idaho department of ju-
25 venile corrections, including records containing the names, addresses and
26 written statements of victims and family members of juveniles, shall be ex-
27 empt from public disclosure pursuant to section 20-533A, Idaho Code.

28 (4) (a) The following records of the department of correction:

29 (i) Records of which the public interest in confidentiality, pub-
30 lic safety, security and habilitation clearly outweighs the pub-
31 lic interest in disclosure as identified pursuant to the authority
32 of the Idaho board of correction under section 20-212, Idaho Code;

33 (ii) Records that contain any identifying information, or any in-
34 formation that would lead to the identification of any victims or
35 witnesses;

36 (iii) Records that reflect future transportation or movement of a
37 prisoner;

38 (iv) Records gathered during the course of the presentence inves-
39 tigation;

40 (v) Records of a prisoner, as defined in section 74-101(10),
41 Idaho Code, or probationer shall not be disclosed to any other
42 prisoner or probationer.

43 (b) Records of buildings, facilities, infrastructures and systems held
44 by or in the custody of any public agency only when the disclosure of
45 such information would jeopardize the safety of persons or the public
46 safety. Such records may include emergency evacuation, escape or other
47 emergency response plans, vulnerability assessments, operation and se-
48 curity manuals, plans, blueprints or security codes. For purposes of

1 this section "system" shall mean electrical, heating, ventilation, air
2 conditioning and telecommunication systems.

3 (c) Records of the commission of pardons and parole shall be exempt from
4 public disclosure pursuant to section 20-213A, Idaho Code, and section
5 20-223, Idaho Code. Records exempt from disclosure shall also include
6 those containing the names, addresses and written statements of vic-
7 tims.

8 (5) Voting records of the sexual offender classification board. The
9 written record of the vote to classify an offender as a violent sexual preda-
10 tor by each board member in each case reviewed by that board member shall be
11 exempt from disclosure to the public and shall be made available upon request
12 only to the governor, the chairman of the senate judiciary and rules commit-
13 tee, and the chairman of the house of representatives judiciary, rules and
14 administration committee, for all lawful purposes.

15 (6) Records of the sheriff or Idaho state police received or maintained
16 pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating
17 to an applicant or licensee except that any law enforcement officer and law
18 enforcement agency, whether inside or outside the state of Idaho, may access
19 information maintained in the license record system as set forth in section
20 18-3302K(13), Idaho Code.

21 (7) Records of investigations prepared by the department of health and
22 welfare pursuant to its statutory responsibilities dealing with the protec-
23 tion of children, the rehabilitation of youth, adoptions and the commitment
24 of mentally ill persons. For reasons of health and safety, best interests of
25 the child or public interest, the department of health and welfare may pro-
26 vide for the disclosure of records of investigations associated with actions
27 pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by
28 the department of health and welfare pursuant to its statutory responsibili-
29 ties dealing with the protection of children except any such records regard-
30 ing adoptions shall remain exempt from disclosure.

31 (8) Records including, but not limited to, investigative reports,
32 resulting from investigations conducted into complaints of discrimination
33 made to the Idaho human rights commission unless the public interest in
34 allowing inspection and copying of such records outweighs the legitimate
35 public or private interest in maintaining confidentiality of such records.
36 A person may inspect and copy documents from an investigative file to which
37 he or she is a named party if such documents are not otherwise prohibited from
38 disclosure by federal law or regulation or state law. The confidentiality of
39 this subsection will no longer apply to any record used in any judicial pro-
40 ceeding brought by a named party to the complaint or investigation, or by the
41 Idaho human rights commission, relating to the complaint of discrimination.

42 (9) Records containing information obtained by the manager of the Idaho
43 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on
44 behalf of employers or employees contained in underwriting and claims for
45 benefits files.

46 (10) The worker's compensation records of the Idaho industrial commis-
47 sion provided that the industrial commission shall make such records avail-
48 able:

49 (a) To the parties in any worker's compensation claim and to the indus-
50 trial special indemnity fund of the state of Idaho; or

1 (b) To employers and prospective employers subject to the provisions of
 2 the Americans with disabilities act, 42 U.S.C. 12112, or other statu-
 3 tory limitations, who certify that the information is being requested
 4 with respect to a worker to whom the employer has extended an offer of
 5 employment and will be used in accordance with the provisions of the
 6 Americans with disabilities act, 42 U.S.C. 12112, or other statutory
 7 limitations; or

8 (c) To employers and prospective employers not subject to the provi-
 9 sions of the Americans with disabilities act, 42 U.S.C. 12112, or other
 10 statutory limitations, provided the employer presents a written autho-
 11 rization from the person to whom the records pertain; or

12 (d) To others who demonstrate that the public interest in allowing in-
 13 spection and copying of such records outweighs the public or private in-
 14 terest in maintaining the confidentiality of such records, as deter-
 15 mined by a civil court of competent jurisdiction; or

16 (e) Although a claimant's records maintained by the industrial commis-
 17 sion, including medical and rehabilitation records, are otherwise ex-
 18 empt from public disclosure, the quoting or discussing of medical or re-
 19 habilitation records contained in the industrial commission's records
 20 during a hearing for compensation or in a written decision issued by the
 21 industrial commission shall be permitted; provided further, the true
 22 identification of the parties shall not be exempt from public disclo-
 23 sure in any written decision issued and released to the public by the in-
 24 dustrial commission.

25 (11) Records of investigations compiled by the commission on aging in-
 26 volving vulnerable adults, as defined in section 18-1505, Idaho Code, al-
 27 leged to be abused, neglected or exploited.

28 (12) Criminal history records and fingerprints, as defined by section
 29 67-3001, Idaho Code, and compiled by the Idaho state police. Such records
 30 shall be released only in accordance with chapter 30, title 67, Idaho Code.

31 (13) Records furnished or obtained pursuant to section 41-1019, Idaho
 32 Code, regarding termination of an appointment, employment, contract or
 33 other insurance business relationship between an insurer and a producer.

34 (14) Records of a prisoner or former prisoner in the custody of any state
 35 or local correctional facility, when the request is made by another prisoner
 36 in the custody of any state or local correctional facility.

37 (15) Except as provided in section 72-1007, Idaho Code, records of the
 38 Idaho industrial commission relating to compensation for crime victims un-
 39 der chapter 10, title 72, Idaho Code.

40 (16) Records or information identifying a complainant maintained by the
 41 department of health and welfare pursuant to section 39-3556, Idaho Code,
 42 relating to certified family homes, unless the complainant consents in writ-
 43 ing to the disclosure or the disclosure of the complainant's identity is re-
 44 quired in any administrative or judicial proceeding.

45 74-106. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-
 46 SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following
 47 records are exempt from disclosure:

48 (1) Except as provided in this subsection, all personnel records of
 49 a current or former public official other than the public official's pub-

1 lic service or employment history, classification, pay grade and step,
2 longevity, gross salary and salary history, status, workplace and employing
3 agency. All other personnel information relating to a public employee or ap-
4 plicant including, but not limited to, information regarding sex, race, mar-
5 ital status, birth date, home address and telephone number, applications,
6 testing and scoring materials, grievances, correspondence and performance
7 evaluations, shall not be disclosed to the public without the employee's or
8 applicant's written consent. Names of applicants to classified or merit
9 system positions shall not be disclosed to the public without the appli-
10 cant's written consent. Disclosure of names as part of a background check
11 is permitted. Names of the five (5) final applicants to all other positions
12 shall be available to the public. If such group is less than five (5) final-
13 ists, then the entire list of applicants shall be available to the public. A
14 public official or authorized representative may inspect and copy his per-
15 sonnel records, except for material used to screen and test for employment.

16 (2) Retired employees' and retired public officials' home addresses,
17 home telephone numbers and other financial and nonfinancial membership
18 records; active and inactive member financial and membership records and
19 mortgage portfolio loan documents maintained by the public employee retire-
20 ment system. Financial statements prepared by retirement system staff,
21 funding agents and custodians concerning the investment of assets of the
22 public employee retirement system of Idaho are not considered confidential
23 under this chapter.

24 (3) Information and records submitted to the Idaho state lottery for
25 the performance of background investigations of employees, lottery retail-
26 ers and major procurement contractors; audit records of lottery retailers,
27 vendors and major procurement contractors submitted to or performed by the
28 Idaho state lottery; validation and security tests of the state lottery for
29 lottery games; business records and information submitted pursuant to sec-
30 tions 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such docu-
31 ments and information obtained and held for the purposes of lottery security
32 and investigative action as determined by lottery rules unless the public
33 interest in disclosure substantially outweighs the private need for protec-
34 tion from public disclosure.

35 (4) Records of a personal nature as follows:

36 (a) Records of personal debt filed with a public agency or independent
37 public body corporate and politic pursuant to law;

38 (b) Personal bank records compiled by a public depositor for the pur-
39 pose of public funds transactions conducted pursuant to law;

40 (c) Records of ownership of financial obligations and instruments of a
41 public agency or independent public body corporate and politic, such as
42 bonds, compiled by the public agency or independent public body corpo-
43 rate and politic pursuant to law;

44 (d) Records, with regard to the ownership of, or security interests in,
45 registered public obligations;

46 (e) Vital statistics records; and

47 (f) Military records as described in and pursuant to section 65-301,
48 Idaho Code.

49 (5) Information in an income or other tax return measured by items of
50 income or sales, which is gathered by a public agency for the purpose of ad-

1 ministering the tax, except such information to the extent disclosed in a
2 written decision of the tax commission pursuant to a taxpayer protest of a
3 deficiency determination by the tax commission, under the provisions of sec-
4 tion 63-3045B, Idaho Code.

5 (6) Records of a personal nature related directly or indirectly to the
6 application for and provision of statutory services rendered to persons
7 applying for public care for people who are elderly, indigent or have mental
8 or physical disabilities, or participation in an environmental or a public
9 health study, provided the provisions of this subsection making records
10 exempt from disclosure shall not apply to the extent that such records or
11 information contained in those records are necessary for a background check
12 on an individual that is required by federal law regulating the sale of
13 firearms, guns or ammunition.

14 (7) Employment security information, except that a person may agree,
15 through written, informed consent, to waive the exemption so that a third
16 party may obtain information pertaining to the person, unless access to the
17 information by the person is restricted by subsection (3) (a), (3) (b) or
18 (3) (d) of section 74-113, Idaho Code. Notwithstanding the provisions of
19 section 74-113, Idaho Code, a person may not review identifying information
20 concerning an informant who reported to the department of labor a suspected
21 violation by the person of the employment security law, chapter 13, title 72,
22 Idaho Code, under an assurance of confidentiality. As used in this section
23 and in chapter 13, title 72, Idaho Code, "employment security information"
24 means any information descriptive of an identifiable person or persons that
25 is received by, recorded by, prepared by, furnished to or collected by the
26 department of labor or the industrial commission in the administration of
27 the employment security law.

28 (8) Any personal records, other than names, business addresses and
29 business phone numbers, such as parentage, race, religion, sex, height,
30 weight, tax identification and social security numbers, financial worth or
31 medical condition submitted to any public agency or independent public body
32 corporate and politic pursuant to a statutory requirement for licensing,
33 certification, permit or bonding.

34 (9) Unless otherwise provided by agency rule, information obtained as
35 part of an inquiry into a person's fitness to be granted or retain a license,
36 certificate, permit, privilege, commission or position, private associa-
37 tion peer review committee records authorized in title 54, Idaho Code. Any
38 agency which has records exempt from disclosure under the provisions of this
39 subsection shall annually make available a statistical summary of the number
40 and types of matters considered and their disposition.

41 (10) The records, findings, determinations and decisions of any prelit-
42 igation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

43 (11) Complaints received by the board of medicine and investigations
44 and informal proceedings, including informal proceedings of any committee
45 of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and
46 rules adopted thereunder.

47 (12) Records of the department of health and welfare or a public health
48 district that identify a person infected with a reportable disease.

49 (13) Records of hospital care, medical records, including prescrip-
50 tions, drug orders, records or any other prescription information that

1 specifically identifies an individual patient, prescription records main-
2 tained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho
3 Code, records of psychiatric care or treatment and professional counseling
4 records relating to an individual's condition, diagnosis, care or treat-
5 ment, provided the provisions of this subsection making records exempt from
6 disclosure shall not apply to the extent that such records or information
7 contained in those records are necessary for a background check on an indi-
8 vidual that is required by federal law regulating the sale of firearms, guns
9 or ammunition.

10 (14) Information collected pursuant to the directory of new hires act,
11 chapter 16, title 72, Idaho Code.

12 (15) Personal information contained in motor vehicle and driver records
13 that is exempt from disclosure under the provisions of chapter 2, title 49,
14 Idaho Code.

15 (16) Records of the financial status of prisoners pursuant to subsec-
16 tion (2) of section 20-607, Idaho Code.

17 (17) Records of the Idaho state police or department of correction re-
18 ceived or maintained pursuant to section 19-5514, Idaho Code, relating to
19 DNA databases and databanks.

20 (18) Records of the department of health and welfare relating to a sur-
21 vey, resurvey or complaint investigation of a licensed nursing facility
22 shall be exempt from disclosure. Such records shall, however, be subject to
23 disclosure as public records as soon as the facility in question has received
24 the report, and no later than the fourteenth day following the date that
25 department of health and welfare representatives officially exit the facil-
26 ity pursuant to federal regulations. Provided however, that for purposes
27 of confidentiality, no record shall be released under this section which
28 specifically identifies any nursing facility resident.

29 (19) Records and information contained in the registry of immunizations
30 against childhood diseases maintained in the department of health and wel-
31 fare, including information disseminated to others from the registry by the
32 department of health and welfare.

33 (20) Records of the Idaho housing and finance association (IHFA) relat-
34 ing to the following:

35 (a) Records containing personal financial, family, health or similar
36 personal information submitted to or otherwise obtained by the IHFA;

37 (b) Records submitted to or otherwise obtained by the IHFA with regard
38 to obtaining and servicing mortgage loans and all records relating to
39 the review, approval or rejection by the IHFA of said loans;

40 (c) Mortgage portfolio loan documents;

41 (d) Records of a current or former employee other than the employee's
42 duration of employment with the association, position held and loca-
43 tion of employment. This exemption from disclosure does not include the
44 contracts of employment or any remuneration, including reimbursement
45 of expenses, of the executive director, executive officers or commis-
46 sioners of the association. All other personnel information relating
47 to an association employee or applicant including, but not limited to,
48 information regarding sex, race, marital status, birth date, home ad-
49 dress and telephone number, applications, testing and scoring materi-
50 als, grievances, correspondence, retirement plan information and per-

1 performance evaluations, shall not be disclosed to the public without the
2 employee's or applicant's written consent. An employee or authorized
3 representative may inspect and copy that employee's personnel records,
4 except for material used to screen and test for employment or material
5 not subject to disclosure elsewhere in the Idaho public records act.

6 (21) Records of the department of health and welfare related to child
7 support services in cases in which there is reasonable evidence of domestic
8 violence, as defined in chapter 63, title 39, Idaho Code, that can be used
9 to locate any individuals in the child support case except in response to a
10 court order.

11 (22) Records of the Idaho state bar lawyer assistance program pursuant
12 to chapter 49, title 54, Idaho Code, unless a participant in the program au-
13 thORIZES the release pursuant to subsection (4) of section 54-4901, Idaho
14 Code.

15 (23) Records and information contained in the trauma registry created
16 by chapter 20, title 57, Idaho Code, together with any reports, analyses and
17 compilations created from such information and records.

18 (24) Records contained in the court files, or other records prepared as
19 part of proceedings for judicial authorization of sterilization procedures
20 pursuant to chapter 39, title 39, Idaho Code.

21 (25) The physical voter registration card on file in the county clerk's
22 office; however, a redacted copy of said card shall be made available consis-
23 tent with the requirements of this section. Information from the voter reg-
24 istration card maintained in the statewide voter registration database, in-
25 cluding age, will be made available except for the voter's driver's license
26 number, date of birth and, upon a showing that the voter comes within the pro-
27 visions of subsection (30) of this section or upon showing of good cause by
28 the voter to the county clerk in consultation with the county prosecuting
29 attorney, the physical residence address of the voter. For the purposes of
30 this subsection good cause shall include the protection of life and property
31 and protection of victims of domestic violence and similar crimes.

32 (26) File numbers, passwords and information in the files of the health
33 care directive registry maintained by the secretary of state under section
34 39-4515, Idaho Code, are confidential and shall not be disclosed to any per-
35 son other than to the person who executed the health care directive or the re-
36 vocation thereof and that person's legal representatives, to the person who
37 registered the health care directive or revocation thereof, and to physi-
38 cians, hospitals, medical personnel, nursing homes, and other persons who
39 have been granted file number and password access to the documents within
40 that specific file.

41 (27) Records in an address confidentiality program participant's file
42 as provided for in chapter 57, title 19, Idaho Code, other than the address
43 designated by the secretary of state, except under the following circum-
44 stances:

45 (a) If requested by a law enforcement agency, to the law enforcement
46 agency; or

47 (b) If directed by a court order, to a person identified in the order.

48 (28) Except as otherwise provided by law relating to the release of in-
49 formation to a governmental entity or law enforcement agency, any personal
50 information including, but not limited to, names, personal and business ad-

1 dresses and phone numbers, sex, height, weight, date of birth, social secu-
2 rity and driver's license numbers, or any other identifying numbers and/or
3 information related to any Idaho fish and game licenses, permits and tags un-
4 less written consent is obtained from the affected person.

5 (29) Documents and records related to continuing education and record-
6 keeping violations that are maintained by the Idaho board of veterinary
7 medicine under the provisions of section 54-2118(1) (b), Idaho Code, pro-
8 vided the requirements set forth therein are met.

9 (30) The Idaho residential street address and telephone number of an
10 eligible law enforcement officer and such officer's residing household mem-
11 ber(s) as provided for in chapter 58, title 19, Idaho Code, except under the
12 following circumstances:

13 (a) If directed by a court order, to a person identified in the court
14 order;

15 (b) If requested by a law enforcement agency, to the law enforcement
16 agency;

17 (c) If requested by a financial institution or title company for busi-
18 ness purposes, to the requesting financial institution or title com-
19 pany; or

20 (d) If the law enforcement officer provides written permission for dis-
21 closure of such information.

22 (31) All information exchanged between the Idaho transportation de-
23 partment and insurance companies, any database created, all information
24 contained in the verification system and all reports, responses or other
25 information generated for the purposes of the verification system, pursuant
26 to section 49-1234, Idaho Code.

27 (32) Nothing in this section shall prohibit the release of information
28 to the state controller as the state social security administrator as pro-
29 vided in section 59-1101A, Idaho Code.

30 (33) Personal information including, but not limited to, property val-
31 ues, personal and business addresses, phone numbers, dates of birth, social
32 security and driver's license numbers or any other identifying numbers or
33 information maintained by the administrator of the unclaimed property law
34 set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection
35 shall prohibit the release of names, last known city of residence, property
36 value ranges and general property information by the administrator for the
37 purpose of reuniting unclaimed property with its owner.

38 74-107. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION
39 RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records
40 are exempt from disclosure:

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

47 (a) Derives independent economic value, actual or potential, from not
48 being generally known to, and not being readily ascertainable by proper

1 means by other persons who can obtain economic value from its disclosure
2 or use; and

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

5 (2) Production records, housing production, rental and financing
6 records, sale or purchase records, catch records, mortgage portfolio loan
7 documents, or similar business records of a private concern or enterprise
8 required by law to be submitted to or inspected by a public agency or sub-
9 mitted to or otherwise obtained by an independent public body corporate and
10 politic. Nothing in this subsection shall limit the use which can be made
11 of such information for regulatory purposes or its admissibility in any en-
12 forcement proceeding.

13 (3) Records relating to the appraisal of real property, timber or min-
14 eral rights prior to its acquisition, sale or lease by a public agency or in-
15 dependent public body corporate and politic.

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

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

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

31 (7) Shipping and marketing records of commodity commissions used to
32 evaluate marketing and advertising strategies and the names and addresses of
33 growers and shippers maintained by commodity commissions.

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

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

1 information regarding specific property locations subject to an open burn-
2 ing of crop residue pursuant to section 39-114, Idaho Code, names of persons
3 responsible for the open burn, acreage and crop type to be burned, and time
4 frames for burning.

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

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

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

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

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

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

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

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

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

47 (16) Active investigative records and trademark usage audits of the
48 Idaho potato commission specifically relating to the enforcement of chapter
49 12, title 22, Idaho Code, until the commencement of formal proceedings as
50 provided by rules of the commission; purchase and sales information sub-

1 mitted to the Idaho potato commission during a trademark usage audit, and
2 investigation or enforcement proceedings. Inactive investigatory records
3 shall be disclosed unless the disclosure would violate the standards set
4 forth in subsections (1) (a) through (f) of section 74-124, Idaho Code. Noth-
5 ing in this subsection shall limit the use which can be made, or availability
6 of such information if used, for regulatory purposes or its admissibility in
7 any enforcement proceeding.

8 (17) All records copied or obtained by the director of the department of
9 agriculture or his designee as a result of an inspection pursuant to section
10 25-3806, Idaho Code, except:

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

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

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

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

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

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

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

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

44 (24) Records of a county assessor, the state tax commission, a county
45 board of equalization or the state board of tax appeals containing the fol-
46 lowing information: (i) lists of personal property required to be filed pur-
47 suant to section 63-302, Idaho Code, and operating statements required to
48 be filed pursuant to section 63-404, Idaho Code, and (ii) confidential com-
49 mercial or financial information including trade secrets. Except with re-
50 spect to lists of personal property required to be filed pursuant to section

1 63-302, Idaho Code, and the operator statements required to be filed pur-
2 suant to section 63-404, Idaho Code, it shall be the responsibility of the
3 taxpayer to give notice of its claim to exemption by stamping or marking each
4 page or the first page of each portion of documents so claimed. No records
5 that are exempt pursuant to this subsection shall be disclosed without the
6 consent of the taxpayer except as follows:

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

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

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

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

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

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

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

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

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

48 (26) Results of laboratory tests conducted by the Idaho state depart-
49 ment of agriculture seed laboratory on samples submitted by seed producers
50 or seed companies. Nothing in this subsection shall limit the use which can

1 be made, or availability of such information pursuant to the provisions of
2 subsections (9) and (10) of section 22-418, Idaho Code.

3 (27) For policies that are owned by private persons, and not by a public
4 agency of the state of Idaho, records of policies, endorsements, affidavits
5 and any records that discuss policies, endorsements and affidavits that may
6 be required to be filed with or by a surplus line association pursuant to
7 chapter 12, title 41, Idaho Code.

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

14 74-108. EXEMPTIONS FROM DISCLOSURE -- ARCHAEOLOGICAL, ENDANGERED
15 SPECIES, LIBRARIES, LICENSING EXAMS. The following records are exempt from
16 disclosure:

17 (1) Records, maps or other records identifying the location of archae-
18 ological or geophysical sites or endangered species, if not already known to
19 the general public.

20 (2) Archaeological and geologic records concerning exploratory
21 drilling, logging, mining and other excavation, when such records are re-
22 quired to be filed by statute for the time provided by statute.

23 (3) The records of a library which, when examined alone, or when exam-
24 ined with other public records, would reveal the identity of the library pa-
25 tron checking out, requesting, or using an item from a library.

26 (4) The material of a library, museum or archive which has been con-
27 tributed by a private person, to the extent of any limitation that is a condi-
28 tion of the contribution.

29 (5) Test questions, scoring keys, and other data used to administer a
30 licensing examination, employment, academic or other examination or testing
31 procedure before the examination is given if the examination is to be used
32 again. Records establishing procedures for and instructing persons admin-
33 istering, grading or evaluating an examination or testing procedure are in-
34 cluded in this exemption, to the extent that disclosure would create a risk
35 that the result might be affected.

36 74-109. RECORDS EXEMPT FROM DISCLOSURE -- DRAFT LEGISLATION AND SUP-
37 PORTING MATERIALS, TAX COMMISSION, UNCLAIMED PROPERTY, PETROLEUM CLEAN WA-
38 TER TRUST FUND. The following records are exempt from disclosure:

39 (1) Records consisting of draft legislation and documents specifically
40 related to such draft legislation or research requests submitted to the leg-
41 islative services office by a member of the Idaho legislature for the purpose
42 of placing such draft legislation into a form suitable for introduction as
43 official proposed legislation of the legislature of the state of Idaho, un-
44 less the individual legislator having submitted or requested such records or
45 research agrees to waive the provisions of confidentiality provided by this
46 subsection.

47 (2) All papers, physical and electronic records and correspondence or
48 other supporting materials comprising the work papers in the possession of

1 the legislative services office or the director of legislative performance
2 evaluations prior to release of the related final audit and all other records
3 or materials in the possession of the legislative services office or the di-
4 rector of legislative performance evaluations that would otherwise be con-
5 fidential or exempt from disclosure.

6 (3) Records consisting of draft congressional and legislative redis-
7 tricting plans and documents specifically related to such draft redistrict-
8 ing plans or research requests submitted to the commission staff by a member
9 of the commission for reapportionment for the purpose of placing such draft
10 redistricting plan into form suitable for presentation to the full member-
11 ship of the commission, unless the individual commission member having sub-
12 mitted or requested such plans or research agrees to waive the provisions of
13 confidentiality provided by this subsection.

14 (4) Records that identify the method by which the Idaho state tax com-
15 mission selects tax returns for audit review.

16 (5) Records that identify the method by which the administrator of the
17 unclaimed property law set forth in chapter 5, title 14, Idaho Code, selects
18 reports for audit review or conducts audit review of such reports and the
19 identity of individuals or entities under audit.

20 (6) Underwriting and claims records of the Idaho petroleum clean water
21 trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A, 41-4912
22 or 41-4912A, Idaho Code. Provided however, that this subsection shall not
23 prevent the Idaho petroleum clean water trust fund's submittal to the Idaho
24 department of environmental quality, or other regulatory agencies of infor-
25 mation necessary to satisfy an insured's corrective action requirement un-
26 der applicable federal or state standards in the event of a release into the
27 environment from a petroleum storage tank; and provided further that noth-
28 ing in this subsection shall prevent the Idaho petroleum clean water trust
29 fund from providing auditing, reporting, or actuarial information as other-
30 wise required of it pursuant to section 41-4919, 41-4925A, 41-4928, 41-4930,
31 41-4932, 41-4937 or 41-4938, Idaho Code.

32 74-110. EXEMPTION FROM DISCLOSURE -- RECORDS OF COURT PROCEEDINGS
33 REGARDING JUDICIAL AUTHORIZATION OF ABORTION PROCEDURES FOR MINORS. In ac-
34 cordance with section 18-609A, Idaho Code, the following records are exempt
35 from public disclosure: all records contained in court files of judicial
36 proceedings arising under section 18-609A, Idaho Code, are exempt from dis-
37 closure.

38 74-111. EXEMPTION FROM DISCLOSURE -- RECORDS RELATED TO THE UNIFORM
39 SECURITIES ACT. Except as otherwise determined by the director of the de-
40 partment of finance pursuant to section 30-14-607(c), Idaho Code, the fol-
41 lowing records are exempt from disclosure:

42 (1) A record obtained or created by the director of the department of
43 finance or a representative of the director in connection with an audit or
44 inspection under section 30-14-411(d), Idaho Code, or an investigation un-
45 der section 30-14-602, Idaho Code;

46 (2) A part of a record filed in connection with a registration statement
47 under section 30-14-301, Idaho Code, and sections 30-14-303 through 30-14-
48 305, Idaho Code, or a record under section 30-14-411(d), Idaho Code, that

1 contains trade secrets or confidential information if the person filing the
2 registration statement or report has asserted a claim of confidentiality or
3 privilege that is authorized by law;

4 (3) A record that is not required to be provided to the director of the
5 department of finance or filed under chapter 14, title 30, Idaho Code, and
6 is provided to the director only on the condition that the record will not be
7 subject to public examination or disclosure;

8 (4) A nonpublic record received from a person specified in section
9 30-14-608(a), Idaho Code; and

10 (5) Any social security number, residential address unless used as a
11 business address, and residential telephone number unless used as a business
12 telephone number, contained in a record that is filed pursuant to chapter 14,
13 title 30, Idaho Code.

14 74-112. EXEMPT AND NONEXEMPT PUBLIC RECORDS TO BE SEPARATED. If any
15 public record contains material which is not exempt from disclosure as well
16 as material which is exempt from disclosure, the public agency or indepen-
17 dent public body corporate and politic shall, upon receipt of a request for
18 disclosure, separate the exempt and nonexempt material and make the nonex-
19 empt material available for examination, provided that a denial of a request
20 to copy nonexempt material in a public record shall not be based upon the fact
21 that such nonexempt material is contained in the same public record as the
22 exempt material.

23 74-113. ACCESS TO RECORDS ABOUT A PERSON BY A PERSON. (1) A person may
24 inspect and copy the records of a public agency or independent public body
25 corporate and politic pertaining to that person, even if the record is other-
26 wise exempt from public disclosure.

27 (2) A person may request in writing an amendment of any record pertain-
28 ing to that person. Within ten (10) days of the receipt of the request, the
29 public agency or independent public body corporate and politic shall either:

30 (a) Make any correction of any portion of the record which the person
31 establishes is not accurate, relevant, or complete; or

32 (b) Inform the person in writing of the refusal to amend in accordance
33 with the request and the reasons for the refusal, and indicate clearly
34 the person's right to appeal the refusal and the time period for doing
35 so. The procedures for appealing a refusal to amend shall be the same
36 as those set forth in sections 74-115 and 74-116, Idaho Code, and the
37 court may award reasonable costs and attorney's fees to the prevailing
38 party or parties, if it finds that the request for amendment or refusal
39 to amend was frivolously pursued.

40 (3) The right to inspect and amend records pertaining to oneself does
41 not include the right to review:

42 (a) Otherwise exempt investigatory records of a public agency or inde-
43 dependent public body corporate and politic if the investigation is ongo-
44 ing;

45 (b) Information that is compiled in reasonable anticipation of a civil
46 action or proceeding which is not otherwise discoverable;

47 (c) The information relates to adoption records;

1 (d) Information which is otherwise exempt from disclosure by statute or
2 court rule;

3 (e) Records of a prisoner maintained by the state or local agency having
4 custody of the prisoner or formerly having custody of the prisoner or by
5 the commission of pardons and parole.

6 74-114. ACCESS TO AIR QUALITY AND HAZARDOUS WASTE RECORDS -- PROTEC-
7 TION OF TRADE SECRETS. (1) To the extent required by the federal clean air
8 act and the resource conservation and recovery act for state primacy over
9 any delegated or authorized programs, even if the record is otherwise exempt
10 from disclosure under this chapter, any person may inspect and copy:

11 (a) Air pollution emission data;

12 (b) The content of any title V operating permit;

13 (c) The name and address of any applicant or permittee for a hazardous
14 waste treatment, storage, or disposal facility permit pursuant to chap-
15 ter 44, title 39, Idaho Code; and

16 (d) Any other record required to be provided to or obtained by the de-
17 partment of environmental quality pursuant to the federal clean air act
18 and the resource conservation and recovery act, and the implementing
19 state statutes, federal regulations and state rules, unless the record
20 is a trade secret.

21 (2) For purposes of this section, a record, or a portion of the record,
22 is a "trade secret" if the information contained in the record is a trade se-
23 cret within the meaning of the Idaho trade secrets act, sections 48-801, et
24 seq., Idaho Code, including commercial or financial information which, if
25 disclosed, could cause substantial competitive harm to the person from whom
26 the record was obtained.

27 (3) Any record, or portion of a record, provided to or obtained by the
28 department of environmental quality and identified by the person providing
29 the record as a trade secret shall not be disclosed to the public and shall be
30 kept confidential according to the procedures established in this section.

31 (4) Nothing in this section shall be construed as limiting the disclo-
32 sure of a trade secret by the department of environmental quality:

33 (a) To any officer, employee, or authorized representative of the state
34 or the United States, under a continuing claim of confidentiality, as
35 necessary to carry out the provisions of state or federal law, or when
36 relevant to any proceeding thereunder;

37 (b) As determined necessary by the director of the department of en-
38 vironmental quality (under a continuing confidentiality claim) to pro-
39 tect the public health and safety from imminent and substantial endan-
40 germent;

41 (c) As required by state or federal law, including section 74-115(3),
42 Idaho Code, under a continuing claim of confidentiality and subsection
43 (1), of this section; or

44 (d) With the consent of the person from whom the record is obtained.

45 (5) It shall be the responsibility of any person providing a record to
46 the department of environmental quality to give notice of the existence of a
47 trade secret on each page or other portion of information at the time of sub-
48 mittal and such person shall have the burden of demonstrating that the infor-
49 mation is a trade secret.

1 (6) Notwithstanding the time frames set forth in section 74-103(1),
2 Idaho Code, when a request is made to the department of environmental quality
3 pursuant to the provisions of this chapter for the disclosure of information
4 for which a trade secret claim has been made, and the information has not
5 been demonstrated to be a trade secret to the satisfaction of the director
6 of the department of environmental quality, within three (3) working days of
7 receipt of the request for the disclosure of the information the department
8 of environmental quality shall provide a written request for substantiation
9 to the person making the confidentiality claim. A response shall be submit-
10 ted to the department of environmental quality by the person claiming the
11 trade secret protection within ten (10) working days after receipt of the
12 request for substantiation or the information subject to the claim shall be
13 disclosed without further notice. Upon receipt of a timely response to the
14 request for substantiation, the director of the department of environmental
15 quality shall determine whether the information is a trade secret subject to
16 protection.

17 (a) If it is determined that the information, or any portion of the in-
18 formation, is a trade secret, within three (3) working days after re-
19 ceipt of the response, the director of the department of environmental
20 quality shall notify the person requesting the information that the re-
21 quest is denied pursuant to sections 74-103(3) and (4), Idaho Code.

22 (b) If it is determined that the information, or any portion of the
23 information, is not a trade secret and is, therefore, subject to dis-
24 closure, within three (3) working days after receipt of the response,
25 the director of the department of environmental quality shall inform
26 the person making the confidentiality claim of the determination. The
27 decision shall be a final agency action directly appealable, de novo, to
28 the district court of the county where the records or some part thereof
29 are located. An appeal contesting the decision of the director of the
30 department of environmental quality to release information claimed to
31 be a trade secret shall be filed within ten (10) working days from the
32 date of receipt of the written notice of decision. The information
33 claimed to be a trade secret shall not be disclosed until the period
34 for appeal has expired with no appeal being taken, or a court order has
35 been issued finding that the information is not a trade secret and all
36 appeals of that order have been exhausted.

37 (7) In any appeal taken pursuant to this section, the court may award
38 reasonable costs and attorney's fees to the prevailing party if it finds the
39 claim of confidentiality or the decision of the director of the department of
40 environmental quality to provide records was frivolously pursued.

41 (8) The department of environmental quality shall adopt rules which in-
42 clude:

43 (a) Appropriate measures to safeguard and protect against improper
44 disclosure of trade secrets, including procedures to train all employ-
45 ees on the proper handling of trade secrets; and

46 (b) Any other provisions necessary to carry out this section.

47 (9) As it relates to the department of environmental quality, or to
48 agents, contractors, or other representatives of the department, the immu-
49 nity created in section 74-118, Idaho Code, shall apply only when disclosure
50 of a trade secret is made consistent with this section.

1 74-115. PROCEEDINGS TO ENFORCE RIGHT TO EXAMINE OR TO RECEIVE A COPY
2 OF RECORDS -- RETENTION OF DISPUTED RECORDS. (1) The sole remedy for a per-
3 son aggrieved by the denial of a request for disclosure is to institute
4 proceedings in the district court of the county where the records or some
5 part thereof are located, to compel the public agency or independent public
6 body corporate and politic to make the information available for public
7 inspection in accordance with the provisions of this chapter. The petition
8 contesting the public agency's or independent public body corporate and
9 politic's decision shall be filed within one hundred eighty (180) calendar
10 days from the date of mailing of the notice of denial or partial denial by the
11 public agency or independent public body corporate and politic. In cases
12 in which the records requested are claimed as exempt pursuant to section
13 74-107(1) or (24), Idaho Code, the petitioner shall be required to name as a
14 party and serve the person or entity that filed or provided such documents
15 to the agency, and such person or entity shall have standing to oppose the
16 request for disclosure and to support the decision of the agency to deny the
17 request. The time for responsive pleadings and for hearings in such proceed-
18 ings shall be set by the court at the earliest possible time, or in no event
19 beyond twenty-eight (28) calendar days from the date of filing.

20 (2) The public agency or independent public body corporate and politic
21 shall keep all documents or records in question until the end of the appeal
22 period, until a decision has been rendered on the petition, or as otherwise
23 statutorily provided, whichever is longer.

24 (3) Nothing contained in this chapter shall limit the availability
25 of documents and records for discovery in the normal course of judicial or
26 administrative adjudicatory proceedings, subject to the law and rules of
27 evidence and of discovery governing such proceedings. Additionally, in any
28 criminal appeal or post-conviction civil action, this chapter shall not make
29 available the contents of prosecution case files where such material has
30 previously been provided to the defendant nor shall this chapter be avail-
31 able to supplement, augment, substitute or supplant discovery procedures in
32 any other federal, civil or administrative proceeding.

33 74-116. ORDER OF THE COURT -- COURT COSTS AND ATTORNEY FEES. (1) When-
34 ever it appears that certain public records are being improperly withheld
35 from a member of the public, the court shall order the public official
36 charged with withholding the records to disclose the public record or show
37 cause why he should not do so. The court shall decide the case after examin-
38 ing the pleadings filed by the parties and such oral arguments and additional
39 evidence as the court may allow. The court may examine the record in camera
40 in its discretion.

41 (2) If the court finds that the public official's decision to refuse
42 disclosure is not justified, it shall order the public official to make the
43 requested disclosure. If the court determines that the public official was
44 justified in refusing to make the requested record available, he shall re-
45 turn the item to the public official without disclosing its content and shall
46 enter an order supporting the decision refusing disclosure. In any such ac-
47 tion, the court shall award reasonable costs and attorney fees to the pre-
48 vailing party or parties, if it finds that the request or refusal to provide
49 records was frivolously pursued.

1 74-117. ADDITIONAL PENALTY. If the court finds that a public official
2 has deliberately and in bad faith improperly refused a legitimate request
3 for inspection or copying, a civil penalty shall be assessed against the pub-
4 lic official in an amount not to exceed one thousand dollars (\$1,000), which
5 shall be paid into the general account.

6 74-118. IMMUNITY. No public agency or independent public body corpo-
7 rate and politic, public official, or custodian shall be liable, nor shall a
8 cause of action exist, for any loss or damage based upon the release of a pub-
9 lic record governed by the provisions of this chapter if the public agency or
10 independent public body corporate and politic, public official or custodian
11 acted in good faith in attempting to comply with the provisions of this chap-
12 ter.

13 74-119. AGENCY GUIDELINES. By January 1, 2016, every state agency or
14 independent public body corporate and politic shall adopt guidelines that
15 identify the general subject matter of all public records kept or maintained
16 by the state agency or independent public body corporate and politic, the
17 custodian, and the physical location of such documents.

18 74-120. PROHIBITION ON DISTRIBUTION OR SALE OF MAILING OR TELEPHONE
19 NUMBER LISTS -- PENALTY. (1) Except as provided in subsections (2), (3), (4),
20 (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of
21 those who deal with public agencies or an independent public body corporate
22 and politic:

23 (a) No agency or independent public body corporate and politic may dis-
24 tribute or sell for use as a mailing list or a telephone number list any
25 list of persons without first securing the permission of those on the
26 list; and

27 (b) No list of persons prepared by the agency or independent public
28 body corporate and politic may be used as a mailing list or a telephone
29 number list except by the agency or independent public body corporate
30 and politic or another agency without first securing the permission of
31 those on the list.

32 (2) Except as may be otherwise provided in this chapter, this section
33 does not prevent an individual from compiling a mailing list or a telephone
34 number list by examination or copying of public records, original documents
35 or applications which are otherwise open to public inspection.

36 (3) The provisions of this section do not apply to the lists of regis-
37 tered electors compiled pursuant to title 34, Idaho Code, or to lists of the
38 names of employees governed by chapter 53, title 67, Idaho Code.

39 (4) The provisions of this section shall not apply to agencies which is-
40 sue occupational or professional licenses.

41 (5) This section does not apply to the right of access either by Idaho
42 law enforcement agencies or, by purchase or otherwise, of public records
43 dealing with motor vehicle registration.

44 (6) This section does not apply to a corporate information list devel-
45 oped by the office of the secretary of state containing the name, address,
46 registered agent, officers and directors of corporations authorized to do
47 business in this state or to a business information list developed by the de-

1 department of commerce containing the name, address, telephone number or other
2 relevant information of Idaho businesses or individuals requesting informa-
3 tion regarding the state of Idaho or to business lists developed by the de-
4 partment of agriculture, division of marketing and development, used to pro-
5 mote food and agricultural products produced in Idaho.

6 (7) This section does not apply to lists to be used for ordinary util-
7 ity purposes which are requested by a person who supplies utility services in
8 this state. Ordinary utility purposes, as used in this chapter only, do not
9 include marketing or marketing research.

10 (8) This section does not apply to lists to be used to give notice re-
11 quired by any statute, ordinance, rule, law or by any governing agency.

12 (9) This section does not apply to student directory information pro-
13 vided by colleges, universities, secondary schools and school districts to
14 military recruiters for military recruiting purposes pursuant to the re-
15 quirements of federal laws.

16 (10) Nothing in this section shall prohibit the release of information
17 to the state controller as the state social security administrator as pro-
18 vided in section 59-1101A, Idaho Code.

19 (11) If a court finds that a person or public official has deliberately
20 and in bad faith violated the provisions of subsection (1) (a) or (1) (b)
21 of this section, the person or public official shall be liable for a civil
22 penalty assessed by the court in an amount not in excess of one thousand dol-
23 lars (\$1,000) which shall be paid into the general account.

24 74-121. REPLEVIN -- PUBLIC RECORDS -- IMPROPER OR UNLAWFUL TRANSFER OR
25 REMOVAL. (1) Public records of the state and/or territory of Idaho are the
26 property of the citizens of the state in perpetuity and they may not be im-
27 properly or unlawfully transferred or removed from their proper custodian.
28 For purposes of this section, the terms "public record" and "record," or plu-
29 rals thereof, shall have the same meaning as "public record" as provided in
30 section 74-101, Idaho Code.

31 (2) For the purpose of this section, where public records of a county,
32 local district, or independent public body corporate and politic thereof are
33 involved, all references to the state archivist also refer to any responsi-
34 ble public official or records custodian and all references to the attorney
35 general also refer to county prosecutors.

36 (3) Whenever the state archivist or their designee has reasonable
37 grounds to believe that records belonging to the state, county, local dis-
38 trict, or independent public body corporate and politic thereof, are in
39 the possession of a person or entity not authorized by law to possess those
40 records, and such possession was acquired on or after July 1, 2011, he or she
41 may issue a written notice demanding that person or entity to do either of the
42 following within ten (10) calendar days of receiving the notice:

43 (a) Return the records to the office of origin or the Idaho state
44 archives; or

45 (b) Respond in writing and declare why the records do not belong to the
46 state or a local agency.

47 (4) The notice and demand shall identify the records claimed to belong
48 to the state or local agency with reasonable specificity, and shall specify
49 that the state archivist may undertake legal action to recover the records if

1 the person or entity fails to respond in writing within the required time or
2 does not adequately demonstrate that the records do not belong to the state
3 or a local agency.

4 (5) If a person or entity that receives a written notice and demand from
5 the state archivist pursuant to this chapter fails to deliver the described
6 records, fails to respond to the notice and demand within the required time,
7 or does not adequately demonstrate that the records do not belong to the
8 state or a local agency, the state archivist may ask the attorney general to
9 petition a court of competent jurisdiction for an order requiring the return
10 of the records.

11 (6) The court may issue any order necessary to protect the records from
12 destruction, alteration, transfer, conveyance or alienation by the person
13 or entity in possession of the records, and may order that the records be sur-
14 rendered into the custody of the state archivist pending the court's deci-
15 sion on the petition.

16 (7) After a hearing, and upon a finding that the specified records are
17 in the possession of a person or entity not authorized by law to possess
18 the records, the court shall order the records to be delivered to the state
19 archivist or other official designated by the court.

20 (8) If the attorney general recovers a record under this section, the
21 court may award attorney's fees and court costs.

22 (9) Notwithstanding any other provision of this section, any public
23 record that is in the custody of an organization or institution shall not be
24 subject to the provisions of this section provided:

25 (a) That professional standards recognized by the society of American
26 archivists for the management and preservation of historical records
27 are maintained; and

28 (b) Such records are accessible to the public in a manner consistent
29 with this chapter.

30 (10) When a record is returned pursuant to subsection (3)(a) of this
31 section, upon the request of the person, organization or institution that
32 returned the record, the record custodian that receives the record shall
33 issue to that person, organization or institution a copy or digital image
34 of the record which shall be certified as a true copy of the record that was
35 returned to the state or local agency, and dated on the same day the record
36 was returned.

37 74-122. CONFIDENTIALITY LANGUAGE REQUIRED IN THIS CHAPTER. On and af-
38 ter January 1, 2016, any statute which is added to the Idaho Code and provides
39 for the confidentiality or closure of any public record or class of public
40 records shall be placed in this chapter. Any statute which is added to the
41 Idaho Code on and after January 1, 2016, and which provides for confidenc-
42 iality or closure of a public record or class of public records and is located at
43 a place other than this chapter shall be null, void and of no force and effect
44 regarding the confidentiality or closure of the public record and such pub-
45 lic record shall be open and available to the public for inspection as pro-
46 vided in this chapter.

47 74-123. IDAHO CODE IS PROPERTY OF THE STATE OF IDAHO. (1) The Idaho
48 Code is the property of the state of Idaho, and the state of Idaho and the tax-

1 payers shall be deemed to have a copyright on the Idaho Code. If a person re-
2 produces or distributes the Idaho Code for the purpose of direct or indirect
3 commercial advantage, the person shall owe to the Idaho code commission, as
4 the agent of the state of Idaho, a royalty fee in addition to the fee charged
5 for copying the Idaho Code. Any person who reproduces or distributes the
6 Idaho Code in violation of the provisions of this section, shall be deemed
7 to be an infringer of the state of Idaho's copyright. The Idaho code commis-
8 sion, through the office of the attorney general, is entitled to institute
9 an action for any infringement of that particular right committed while the
10 Idaho code commission or its designated agent has custody of the Idaho Code.

11 (2) A court having jurisdiction of a civil action arising under this
12 section may grant such relief as it deems appropriate. At any time while an
13 action under this section is pending, the court may order the impounding, on
14 such terms as it deems reasonable, of all copies claimed to have been made or
15 used in violation of the Idaho code commission's copyright pursuant to this
16 section.

17 (3) An infringer of the state of Idaho's copyright pursuant to this sec-
18 tion is liable for any profits the infringer has incurred by obtaining the
19 Idaho Code for commercial purposes or is liable for statutory damages as pro-
20 vided in subsection (4) of this section.

21 (4) The Idaho code commission, as agent of the copyright owner, may
22 elect, at any time before final judgment is rendered, to recover, instead of
23 actual damages and profits, an award of statutory damages for all infringe-
24 ments involved in the action, with respect to the Idaho Code for which any
25 one (1) infringer is liable individually, or for which any two (2) or more
26 infringers are liable jointly and severally, in a sum of not less than two
27 hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as
28 the court considers just.

29 (5) In any civil action under this section, the court may allow the re-
30 recovery of full costs by or against any party and may also award reasonable at-
31 torney's fees to the prevailing party as part of the costs.

32 (6) The Idaho code commission is hereby authorized to license and
33 charge fees for the use of the Idaho Code. The Idaho code commission may
34 grant a license for the use of the Idaho Code to a public agency in the state
35 and waive all or a portion of the fees. All fees recovered by the Idaho code
36 commission shall be deposited in the general account.

37 74-124. EXEMPTIONS FROM DISCLOSURE -- CONFIDENTIALITY. (1) Notwith-
38 standing any statute or rule of court to the contrary, nothing in this chap-
39 ter nor chapter 10, title 59, Idaho Code, shall be construed to require dis-
40 closure of investigatory records compiled for law enforcement purposes by a
41 law enforcement agency, but such exemption from disclosure applies only to
42 the extent that the production of such records would:

- 43 (a) Interfere with enforcement proceedings;
- 44 (b) Deprive a person of a right to a fair trial or an impartial adjudica-
45 tion;
- 46 (c) Constitute an unwarranted invasion of personal privacy;
- 47 (d) Disclose the identity of a confidential source and, in the case of a
48 record compiled by a criminal law enforcement agency in the course of a

1 criminal investigation, confidential information furnished only by the
2 confidential source;

3 (e) Disclose investigative techniques and procedures; or

4 (f) Endanger the life or physical safety of law enforcement personnel.

5 (2) Notwithstanding subsection (1) of this section, any person in-
6 volved in a motor vehicle collision which is investigated by a law enforce-
7 ment agency, that person's authorized legal representative and the insurer
8 shall have a right to a complete, unaltered copy of the impact report, or its
9 successors, and the final report prepared by the agency.

10 (3) An inactive investigatory record shall be disclosed unless the
11 disclosure would violate the provisions of subsection (1) (a) through (f) of
12 this section. Investigatory record as used herein means information with
13 respect to an identifiable person or group of persons compiled by a law en-
14 forcement agency in the course of conducting an investigation of a specific
15 act or omission and shall not include the following information:

16 (a) The time, date, location, and nature and description of a reported
17 crime, accident or incident;

18 (b) The name, sex, age, and address of a person arrested, except as oth-
19 erwise provided by law;

20 (c) The time, date, and location of the incident and of the arrest;

21 (d) The crime charged;

22 (e) Documents given or required by law to be given to the person ar-
23 rested;

24 (f) Informations and indictments except as otherwise provided by law;
25 and

26 (g) Criminal history reports.

27 As used herein, the term "law enforcement agency" means the office of
28 the attorney general, the office of the state controller, the Idaho state po-
29 lice, the office of any prosecuting attorney, sheriff or municipal police
30 department.

31 (4) Whenever it is made to appear by verified petition to the district
32 court of the county where the records or some part thereof are situated that
33 certain investigative records are being improperly withheld from a member of
34 the public, the court shall order the officer or person charged with with-
35 holding the records to disclose the investigative record or show cause why he
36 should not do so. The court shall decide the case after examining the record
37 in camera, papers filed by the parties, and such oral argument and additional
38 evidence as the court may allow.

39 If the court finds that the public official's decision to refuse disclo-
40 sure is not justified, he shall order the public official to make the record
41 public. If the judge determines that the public official was justified in
42 refusing to make the record public, he shall return the item to the public
43 official without disclosing its content with an order supporting the deci-
44 sion refusing disclosure. Any person who fails to obey the order of the court
45 shall be cited to show cause why he is not in contempt of court. The court
46 may, in its discretion, award costs and fees to the prevailing party.

47 74-125. EVIDENCE FROM PRELIMINARY HEARING -- ADMISSION -- REQUIRE-
48 MENTS. Prior to admitting into evidence recorded testimony from a prelimi-
49 nary hearing, the court must find that the testimony offered is:

1 1. Offered as evidence of a material fact and that the testimony is more
2 probative on the point for which it is offered than any other evidence which
3 the proponent can procure through reasonable efforts; and

4 2. That the witness is, after diligent and good faith attempts to lo-
5 cate, unavailable for the hearing; and

6 3. That at the preliminary hearing, the party against whom the admis-
7 sion of the testimony is sought had an adequate opportunity to prepare and
8 cross-examine the proffered testimony.

9 74-126. SEVERABILITY. The provisions of this act are hereby declared
10 to be severable and if any provision of this act or the application of such
11 provision to any person or circumstance is declared invalid for any reason,
12 such declaration shall not affect the validity of remaining portions of this
13 act.

14 CHAPTER 2
15 OPEN MEETINGS LAW

16 74-201. FORMATION OF PUBLIC POLICY AT OPEN MEETINGS. The people of the
17 state of Idaho in creating the instruments of government that serve them, do
18 not yield their sovereignty to the agencies so created. Therefore, the leg-
19 islature finds and declares that it is the policy of this state that the for-
20 mation of public policy is public business and shall not be conducted in se-
21 cret.

22 74-202. OPEN PUBLIC MEETINGS -- DEFINITIONS. As used in this chapter:

23 (1) "Decision" means any determination, action, vote or final dispo-
24 sition upon a motion, proposal, resolution, order, ordinance or measure on
25 which a vote of a governing body is required, at any meeting at which a quorum
26 is present, but shall not include those ministerial or administrative ac-
27 tions necessary to carry out a decision previously adopted in a meeting held
28 in compliance with this chapter.

29 (2) "Deliberation" means the receipt or exchange of information or
30 opinion relating to a decision, but shall not include informal or impromptu
31 discussions of a general nature which do not specifically relate to a matter
32 then pending before the public agency for decision.

33 (3) "Executive session" means any meeting or part of a meeting of a gov-
34 erning body which is closed to any persons for deliberation on certain mat-
35 ters.

36 (4) "Public agency" means:

37 (a) any state board, commission, department, authority, educational
38 institution or other state agency which is created by or pursuant to
39 statute, other than courts and their agencies and divisions, and the
40 judicial council, and the district magistrates commission;

41 (b) any regional board, commission, department or authority created by
42 or pursuant to statute;

43 (c) any county, city, school district, special district, or other mu-
44 nicipal corporation or political subdivision of the state of Idaho;

45 (d) any subagency of a public agency which is created by or pursuant to
46 statute, ordinance, or other legislative act.

1 (5) "Governing body" means the members of any public agency which con-
2 sists of two (2) or more members, with the authority to make decisions for or
3 recommendations to a public agency regarding any matter.

4 (6) "Meeting" means the convening of a governing body of a public agency
5 to make a decision or to deliberate toward a decision on any matter.

6 (a) "regular meeting" means the convening of a governing body of a pub-
7 lic agency on the date fixed by law or rule, to conduct the business of
8 the agency.

9 (b) "special meeting" is a convening of the governing body of a public
10 agency pursuant to a special call for the conduct of business as speci-
11 fied in the call.

12 74-203. GOVERNING BODIES -- REQUIREMENT FOR OPEN PUBLIC MEETINGS. (1)
13 Except as provided below, all meetings of a governing body of a public agency
14 shall be open to the public and all persons shall be permitted to attend any
15 meeting except as otherwise provided by this act. No decision at a meeting of
16 a governing body of a public agency shall be made by secret ballot.

17 (2) Deliberations of the board of tax appeals created in chapter 38, ti-
18 tle 63, Idaho Code, the public utilities commission and the industrial com-
19 mission in a fully submitted adjudicatory proceeding in which hearings, if
20 any are required, have been completed, and in which the legal rights, duties
21 or privileges of a party are to be determined are not required by this act to
22 take place in a meeting open to the public. Such deliberations may, however,
23 be made and/or conducted in a public meeting at the discretion of the agency.

24 (3) Meetings of the Idaho life and health insurance guaranty associa-
25 tion established under chapter 43, title 41, Idaho Code, the Idaho insurance
26 guaranty association established under chapter 36, title 41, Idaho Code, and
27 the surplus line association approved by the director of the Idaho depart-
28 ment of insurance as authorized under chapter 12, title 41, Idaho Code, are
29 not required by this act to take place in a meeting open to the public.

30 (4) A governing body shall not hold a meeting at any place where dis-
31 crimination on the basis of race, creed, color, sex, age or national origin
32 is practiced.

33 (5) All meetings may be conducted using telecommunications devices
34 which enable all members of a governing body participating in the meeting
35 to communicate with each other. Such devices may include, but are not lim-
36 ited to, telephone or video conferencing devices and similar communications
37 equipment. Participation by a member of the governing body through telecom-
38 munications devices shall constitute presence in person by such member at
39 the meeting; provided however, that at least one (1) member of the govern-
40 ing body, or the director of the public agency, or the chief administrative
41 officer of the public agency shall be physically present at the location
42 designated in the meeting notice, as required under section 74-204, Idaho
43 Code, to ensure that the public may attend such meeting in person. The com-
44 munications among members of a governing body must be audible to the public
45 attending the meeting in person and the members of the governing body.

46 74-204. NOTICE OF MEETINGS -- AGENDAS. (1) Regular meetings. No less
47 than a five (5) calendar day meeting notice and a forty-eight (48) hour
48 agenda notice shall be given unless otherwise provided by statute. Provided

1 however, that any public agency that holds meetings at regular intervals of
2 at least once per calendar month scheduled in advance over the course of the
3 year may satisfy this meeting notice by giving meeting notices at least once
4 each year of its regular meeting schedule. The notice requirement for meet-
5 ings and agendas shall be satisfied by posting such notices and agendas in a
6 prominent place at the principal office of the public agency, or if no such
7 office exists, at the building where the meeting is to be held.

8 (2) Special meetings. No special meeting shall be held without at least
9 a twenty-four (24) hour meeting and agenda notice, unless an emergency ex-
10 ists. An emergency is a situation involving injury or damage to persons or
11 property, or immediate financial loss, or the likelihood of such injury,
12 damage or loss, when the notice requirements of this section would make such
13 notice impracticable, or increase the likelihood or severity of such injury,
14 damage or loss, and the reason for the emergency is stated at the outset of
15 the meeting. The notice required under this section shall include at a min-
16 imum the meeting date, time, place and name of the public agency calling for
17 the meeting. The secretary or other designee of each public agency shall
18 maintain a list of the news media requesting notification of meetings and
19 shall make a good faith effort to provide advance notification to them of the
20 time and place of each meeting.

21 (3) Executive sessions. If an executive session only will be held, a
22 twenty-four (24) hour meeting and agenda notice shall be given according
23 to the notice provisions stated in subsection (2) of this section and shall
24 state the reason and the specific provision of law authorizing the executive
25 session.

26 (4) An agenda shall be required for each meeting. The agenda shall be
27 posted in the same manner as the notice of the meeting. An agenda may be
28 amended, provided that a good faith effort is made to include, in the origi-
29 nal agenda notice, all items known to be probable items of discussion.

30 (a) If an amendment to an agenda is made after an agenda has been posted
31 but forty-eight (48) hours or more prior to the start of a regular meet-
32 ing, or twenty-four (24) hours or more prior to the start of a special
33 meeting, then the agenda is amended upon the posting of the amended
34 agenda.

35 (b) If an amendment to an agenda is proposed after an agenda has been
36 posted and less than forty-eight (48) hours prior to a regular meeting
37 or less than twenty-four (24) hours prior to a special meeting but prior
38 to the start of the meeting, the proposed amended agenda shall be posted
39 but shall not become effective until a motion is made at the meeting and
40 the governing body votes to amend the agenda.

41 (c) An agenda may be amended after the start of a meeting upon a motion
42 that states the reason for the amendment and states the good faith rea-
43 son the agenda item was not included in the original agenda posting.

44 74-205. WRITTEN MINUTES OF MEETINGS. (1) The governing body of a pub-
45 lic agency shall provide for the taking of written minutes of all its meet-
46 ings. Neither a full transcript nor a recording of the meeting is required,
47 except as otherwise provided by law. All minutes shall be available to the
48 public within a reasonable time after the meeting, and shall include at least
49 the following information:

- 1 (a) All members of the governing body present;
2 (b) All motions, resolutions, orders, or ordinances proposed and their
3 disposition;
4 (c) The results of all votes, and upon the request of a member, the vote
5 of each member, by name.
6 (2) Minutes pertaining to executive sessions. Minutes pertaining to an
7 executive session shall include a reference to the specific statutory sub-
8 section authorizing the executive session and shall also provide sufficient
9 detail to identify the purpose and topic of the executive session but shall
10 not contain information sufficient to compromise the purpose of going into
11 executive session.

12 74-206. EXECUTIVE SESSIONS -- WHEN AUTHORIZED. (1) An executive ses-
13 sion at which members of the public are excluded may be held, but only for the
14 purposes and only in the manner set forth in this section. The motion to go
15 into executive session shall identify the specific subsections of this sec-
16 tion that authorize the executive session. There shall be a roll call vote on
17 the motion and the vote shall be recorded in the minutes. An executive ses-
18 sion shall be authorized by a two-thirds (2/3) vote of the governing body. An
19 executive session may be held:

- 20 (a) To consider hiring a public officer, employee, staff member or in-
21 dividual agent, wherein the respective qualities of individuals are to
22 be evaluated in order to fill a particular vacancy or need. This para-
23 graph does not apply to filling a vacancy in an elective office or delib-
24 erations about staffing needs in general;
25 (b) To consider the evaluation, dismissal or disciplining of, or to
26 hear complaints or charges brought against, a public officer, employee,
27 staff member or individual agent, or public school student;
28 (c) To conduct deliberations concerning labor negotiations or to ac-
29 quire an interest in real property which is not owned by a public agency;
30 (d) To consider records that are exempt from disclosure as provided in
31 chapter 1, title 74, Idaho Code;
32 (e) To consider preliminary negotiations involving matters of trade or
33 commerce in which the governing body is in competition with governing
34 bodies in other states or nations;
35 (f) To communicate with legal counsel for the public agency to discuss
36 the legal ramifications of and legal options for pending litigation, or
37 controversies not yet being litigated but imminently likely to be liti-
38 gated. The mere presence of legal counsel at an executive session does
39 not satisfy this requirement;
40 (g) By the commission of pardons and parole, as provided by law;
41 (h) By the custody review board of the Idaho department of juvenile cor-
42 rections, as provided by law; or
43 (i) To engage in communications with a representative of the public
44 agency's risk manager or insurance provider to discuss the adjustment
45 of a pending claim or prevention of a claim imminently likely to be
46 filed. The mere presence of a representative of the public agency's
47 risk manager or insurance provider at an executive session does not sat-
48 isfy this requirement.

1 (2) Labor negotiations may be conducted in executive session if either
2 side requests closed meetings. Notwithstanding the provisions of section
3 74-204, Idaho Code, subsequent sessions of the negotiations may continue
4 without further public notice.

5 (3) The exceptions to the general policy in favor of open meetings
6 stated in this section shall be narrowly construed. It shall be a violation
7 of this act to change the subject within the executive session to one not
8 identified within the motion to enter the executive session or to any topic
9 for which an executive session is not provided.

10 (4) No executive session may be held for the purpose of taking any final
11 action or making any final decision.

12 74-207. OPEN LEGISLATIVE MEETINGS REQUIRED. All meetings of any
13 standing, special or select committee of either house of the legislature of
14 the state of Idaho shall be open to the public at all times, except in extra-
15 ordinary circumstances as provided specifically in the rules of procedure in
16 either house, and any person may attend any meeting of a standing, special
17 or select committee, but may participate in the committee only with the ap-
18 proval of the committee itself.

19 74-208. VIOLATIONS. (1) If an action, or any deliberation or decision-
20 making that leads to an action, occurs at any meeting which fails to comply
21 with the provisions of this chapter, such action shall be null and void.

22 (2) Any member of the governing body governed by the provisions of this
23 chapter, who conducts or participates in a meeting which violates the provi-
24 sions of this act shall be subject to a civil penalty not to exceed fifty dol-
25 lars (\$50.00).

26 (3) Any member of a governing body who knowingly violates the provi-
27 sions of this chapter shall be subject to a civil penalty not to exceed five
28 hundred dollars (\$500).

29 (4) Any member of a governing body who violates any provision of this
30 act and who has previously admitted to committing or has been previously
31 determined to have committed a violation of this act within the twelve (12)
32 months preceding this subsequent violation shall be subject to a civil
33 penalty not to exceed five hundred dollars (\$500).

34 (5) The attorney general shall have the duty to enforce this chapter in
35 relation to public agencies of state government, and the prosecuting attor-
36 neys of the various counties shall have the duty to enforce this act in re-
37 lation to local public agencies within their respective jurisdictions. In
38 the event that there is reason to believe that a violation of the provisions
39 of this act has been committed by members of a board of county commissioners
40 or, for any other reason a county prosecuting attorney is deemed disquali-
41 fied from proceeding to enforce this act, the prosecuting attorney or board
42 of county commissioners shall seek to have a special prosecutor appointed
43 for that purpose as provided in section 31-2603, Idaho Code.

44 (6) Any person affected by a violation of the provisions of this chap-
45 ter may commence a civil action in the magistrate division of the district
46 court of the county in which the public agency ordinarily meets, for the pur-
47 pose of requiring compliance with provisions of this act. No private action
48 brought pursuant to this subsection shall result in the assessment of a civil

1 penalty against any member of a public agency and there shall be no private
 2 right of action for damages arising out of any violation of the provisions of
 3 this chapter. Any suit brought for the purpose of having an action declared
 4 or determined to be null and void pursuant to subsection (1) of this section
 5 shall be commenced within thirty (30) days of the time of the decision or ac-
 6 tion that results, in whole or in part, from a meeting that failed to comply
 7 with the provisions of this act. Any other suit brought under the provisions
 8 of this section shall be commenced within one hundred eighty (180) days of
 9 the time of the violation or alleged violation of the provisions of this act.

10 (7) (a) A violation may be cured by a public agency upon:

11 (i) The agency's self-recognition of a violation; or

12 (ii) Receipt by the secretary or clerk of the public agency of
 13 written notice of an alleged violation. A complaint filed and
 14 served upon the public agency may be substituted for other forms of
 15 written notice. Upon notice of an alleged open meeting violation,
 16 the governing body shall have fourteen (14) days to respond pub-
 17 licly and either acknowledge the open meeting violation and state
 18 an intent to cure the violation or state that the public agency
 19 has determined that no violation has occurred and that no cure is
 20 necessary. Failure to respond shall be treated as a denial of any
 21 violation for purposes of proceeding with any enforcement action.

22 (b) Following the public agency's acknowledgment of a violation pur-
 23 suant to paragraph (a) (i) or (a) (ii) of this subsection, the public
 24 agency shall have fourteen (14) days to cure the violation by declaring
 25 that all actions taken at or resulting from the meeting in violation of
 26 this act void.

27 (c) All enforcement actions shall be stayed during the response and
 28 cure period but may recommence at the discretion of the complainant af-
 29 ter the cure period has expired.

30 (d) A cure as provided in this section shall act as a bar to the impo-
 31 sition of the civil penalty provided in subsection (2) of this section.
 32 A cure of a violation as provided in subsection (7) (a) (i) of this sec-
 33 tion shall act as a bar to the imposition of any civil penalty provided
 34 in subsection (4) of this section.

35 CHAPTER 3
 36 [RESERVED]

37 CHAPTER 4
 38 ETHICS IN GOVERNMENT

39 74-401. SHORT TITLE. This chapter shall be known and may be cited as
 40 the "Ethics in Government Act of 2015."

41 74-402. POLICY AND PURPOSE. It is hereby declared that the position of
 42 a public official at all levels of government is a public trust and it is in
 43 the public interest to:

44 (1) Protect the integrity of government throughout the state of Idaho
 45 while at the same time facilitating recruitment and retention of personnel
 46 needed within government;

- 1 (2) Assure independence, impartiality and honesty of public officials
2 in governmental functions;
- 3 (3) Inform citizens of the existence of personal interests which may
4 present a conflict of interest between an official's public trust and pri-
5 vate concerns;
- 6 (4) Prevent public office from being used for personal gain contrary to
7 the public interest;
- 8 (5) Prevent special interests from unduly influencing governmental ac-
9 tion; and
- 10 (6) Assure that governmental functions and policies reflect, to the
11 maximum extent possible, the public interest.

12 74-403. DEFINITIONS. For purposes of this chapter:

- 13 (1) "Official action" means any decision on, or proposal, considera-
14 tion, enactment, defeat, or making of any rule, regulation, rate-making pro-
15 ceeding or policy action or nonaction by a governmental body or any other
16 policy matter which is within the official jurisdiction of the governmental
17 body.
- 18 (2) "Business" means any undertaking operated for economic gain, in-
19 cluding, but not limited to, a corporation, partnership, trust, proprietor-
20 ship, firm, association or joint venture.
- 21 (3) "Business with which a public official is associated" means any
22 business of which the public official or member of his household is a direc-
23 tor, officer, owner, partner, employee or holder of stock over five thousand
24 dollars (\$5,000) or more at fair market value.
- 25 (4) "Conflict of interest" means any official action or any decision or
26 recommendation by a person acting in a capacity as a public official, the ef-
27 fect of which would be to the private pecuniary benefit of the person or a
28 member of the person's household, or a business with which the person or a
29 member of the person's household is associated, unless the pecuniary benefit
30 arises out of the following:
- 31 (a) An interest or membership in a particular business, industry, occu-
32 pation or class required by law as a prerequisite to the holding by the
33 person of the office or position;
- 34 (b) Any action in the person's official capacity which would affect to
35 the same degree a class consisting of an industry or occupation group in
36 which the person, or a member of the person's household or business with
37 which the person is associated, is a member or is engaged;
- 38 (c) Any interest which the person has by virtue of his profession, trade
39 or occupation where his interest would be affected to the same degree as
40 that of a substantial group or class of others similarly engaged in the
41 profession, trade or occupation;
- 42 (d) Any action by a public official upon any revenue measure, any appro-
43 priation measure or any measure imposing a tax, when similarly situated
44 members of the general public are affected by the outcome of the action
45 in a substantially similar manner and degree.
- 46 (5) "Economic gain" means increase in pecuniary value from sources
47 other than lawful compensation as a public official.
- 48 (6) "Governmental entity" means:

1 (a) The state of Idaho and all agencies, commissions and other govern-
2 mental bodies of the state; and

3 (b) Counties and municipalities of the state of Idaho, all other po-
4 litical subdivisions including, but not limited to, highway districts,
5 planning and zoning commissions or governmental bodies not specifi-
6 cally mentioned in this chapter.

7 (7) "Members of a household" means the spouse and dependent children of
8 the public official and/or persons whom the public official is legally obli-
9 gated to support.

10 (8) "Person" means an individual, proprietorship, partnership, asso-
11 ciation, trust, estate, business trust, group or corporation, whether op-
12 erated for profit or not, and any other legal entity, or agent or servant
13 thereof, or a governmental entity.

14 (9) "Public office" means any position in which the normal and usual du-
15 ties are conducted on behalf of a governmental entity.

16 (10) "Public official" means any person holding public office in the
17 following capacity:

18 (a) As an elected public official meaning any person holding public of-
19 fice of a governmental entity by virtue of an elected process, including
20 persons appointed to a vacant elected office of a governmental entity,
21 excluding members of the judiciary; or

22 (b) As an elected legislative public official meaning any person hold-
23 ing public office as a legislator; or

24 (c) As an appointed public official meaning any person holding public
25 office of a governmental entity by virtue of formal appointment as re-
26 quired by law; or

27 (d) As an employed public official meaning any person holding public
28 office of a governmental entity by virtue of employment, or a person em-
29 ployed by a governmental entity on a consultive basis.

30 74-404. REQUIRED ACTION IN CONFLICTS. A public official shall not take
31 any official action or make a formal decision or formal recommendation con-
32 cerning any matter where he has a conflict of interest and has failed to dis-
33 close such conflict as provided in this section. Disclosure of a conflict
34 does not affect an elected public official's authority to be counted for pur-
35 poses of determining a quorum and to debate and to vote on the matter, unless
36 the public official requests to be excused from debate and voting at his or
37 her discretion. In order to determine whether a conflict of interest exists
38 relative to any matter within the scope of the official functions of a public
39 official, a public official may seek legal advice from the attorney repre-
40 senting that governmental entity or from the attorney general or from inde-
41 pendent counsel. If the legal advice is that no real or potential conflict of
42 interest exists, the public official may proceed and shall not be subject to
43 the prohibitions of this chapter. If the legal advice is that a real or po-
44 tential conflict may exist, the public official:

45 (1) If he is an elected legislative public official, he shall disclose
46 the nature of the potential conflict of interest and/or be subject to the
47 rules of the body of which he/she is a member and shall take all action re-
48 quired under such rules prior to acting on the matter. If a member requests
49 to be excused from voting on an issue which involves a conflict or a potential

1 conflict, and the body of which he is a member does not excuse him, such fail-
2 ure to excuse shall exempt that member from any civil or criminal liability
3 related to that particular issue.

4 (2) If he is an elected state public official, he shall prepare a writ-
5 ten statement describing the matter required to be acted upon and the nature
6 of the potential conflict, and shall file such statement with the secretary
7 of state prior to acting on the matter. A public official may seek legal ad-
8 vice from the attorney representing that agency or from the attorney general
9 or from independent counsel. The elected public official may then act on the
10 advice of the agency's attorney, the attorney general or independent coun-
11 sel.

12 (3) If he is an appointed or employed state public official, he shall
13 prepare a written statement describing the matter to be acted upon and the
14 nature of the potential conflict, and shall deliver the statement to his ap-
15 pointing authority. The appointing authority may obtain an advisory opin-
16 ion from the attorney general or from the attorney representing that agency.
17 The public official may then act on the advice of the attorney general, the
18 agency's attorney or independent counsel.

19 (4) If he is an elected public official of a county or municipality, he
20 shall disclose the nature of a potential conflict of interest prior to act-
21 ing on a matter and shall be subject to the rules of the body of which he/she
22 is a member and take all action required by the rules prior to acting on the
23 matter. If a member requests to be excused from voting on an issue which in-
24 volves a conflict or a potential conflict, and the body of which he is a mem-
25 ber does not excuse him, such failure to excuse shall exempt that member from
26 any civil or criminal liability related to that particular issue. The public
27 official may obtain an advisory opinion from the attorney general or the at-
28 torney for the county or municipality or from independent counsel. The pub-
29 lic official may then act on the advice of the attorney general or attorney
30 for the county or municipality or his independent counsel.

31 (5) If he is an appointed or employed public official of a county or mu-
32 nicipality, he shall prepare a written statement describing the matter re-
33 quired to be acted upon and the nature of the potential conflict, and shall
34 deliver the statement to his appointing authority. The appointing authority
35 may obtain an advisory opinion from the attorney for the appointing author-
36 ity, or, if none, the attorney general. The public official may then act on
37 the advice of the attorney general or attorney for the appointing authority
38 or independent counsel.

39 (6) Nothing contained herein shall preclude the executive branch of
40 state government or a political subdivision from establishing an ethics
41 board or commission to perform the duties and responsibilities provided for
42 in this chapter. Any ethics board or commission so established shall have
43 specifically stated powers and duties including the power to:

44 (a) Issue advisory opinions upon the request of a public official
45 within its jurisdiction;

46 (b) Investigate possible unethical conduct of public officials within
47 its jurisdiction and conduct hearings, issue findings, and make rec-
48 ommendations for disciplinary action to a public official's appointing
49 authority;

1 (c) Accept complaints of unethical conduct from the public and take ap-
2 appropriate action.

3 74-405. NONCOMPENSATED PUBLIC OFFICIAL -- EXCEPTION. When a person is
4 a public official by reason of his appointment or election to a governing
5 board of a governmental entity for which the person receives no salary or
6 fee as compensation for his service on said board, he shall not be prohibited
7 from having an interest in any contract made or entered into by the board of
8 which he is a member, if he strictly observes the procedure set out in section
9 18-1361A, Idaho Code.

10 74-406. CIVIL PENALTY. (1) Any public official who intentionally
11 fails to disclose a conflict of interest as provided for in section 74-404,
12 Idaho Code, shall be guilty of a civil offense, the penalty for which may be a
13 fine not to exceed five hundred dollars (\$500), provided that the provisions
14 of this subsection shall not apply to any public official where the govern-
15 mental entity on which said official serves has put into operation an ethics
16 commission or board described in section 74-404(6), Idaho Code.

17 (2) The penalty prescribed in subsection (1) of this section does not
18 limit the power of either house of the legislature to discipline its own mem-
19 bers, nor limit the power of governmental entities, including occupational
20 or professional licensing bodies, to discipline their members or personnel.
21 A violation of the provisions of this chapter shall not preclude prosecution
22 and conviction for any criminal violation that may have been committed.

23 CHAPTER 5
24 PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS

25 74-501. OFFICERS NOT TO BE INTERESTED IN CONTRACTS. Members of the
26 legislature, state, county, city, district and precinct officers, must not
27 be interested in any contract made by them in their official capacity, or by
28 any body or board of which they are members.

29 74-502. REMOTE INTERESTS. (1) A public officer shall not be deemed to
30 be interested in a contract, within the meaning of section 74-501, Idaho
31 Code, if he has only a remote interest in the contract and if the fact and
32 extent of such interest is disclosed to the body of which he is an officer
33 and noted in the official minutes or similar records prior to the formation
34 of the contract, and thereafter the governing body authorizes, approves, or
35 ratifies the contract in good faith by a vote of its membership sufficient
36 for the purpose without counting the vote or votes of the officer having the
37 remote interest. As used in this section, "remote interest" means:

- 38 (a) That of a nonsalaried officer of a nonprofit corporation; or
39 (b) That of an employee or agent of a contracting party where the com-
40 pensation of such employee or agent consists entirely of fixed wages or
41 salary; or
42 (c) That of a landlord or tenant of a contracting party; or
43 (d) That of a holder of less than one percent (1%) of the shares of a cor-
44 poration or cooperative which is a contracting party.

45 (2) Although a public official's interest in a contract may be only re-
46 mote, a public official shall not influence or attempt to influence any other

1 officer of the board of which he is an officer to enter into the contract. Vi-
2 olation of the provisions of this subsection shall be a misdemeanor as pro-
3 vided in section 74-509, Idaho Code. Any contract created or entered into in
4 violation of the provisions of this subsection shall be void.

5 74-503. OFFICERS NOT TO BE INTERESTED IN SALES. State, county, dis-
6 trict, precinct and city officers must not be purchasers at any sale nor ven-
7 dors at any purchase made by them in their official capacity.

8 74-504. PROHIBITED CONTRACTS VOIDABLE. Every contract made in viola-
9 tion of any of the provisions of this chapter may be avoided at the instance
10 of any party except the officer interested therein.

11 74-505. DEALING IN WARRANTS PROHIBITED. The state treasurer and state
12 controller, the several county, city, district or precinct officers of this
13 state, their deputies and clerks, are prohibited from purchasing or selling,
14 or in any manner receiving to their own use or benefit, or to the use or bene-
15 fit of any person or persons, whatever, any state, county, or city warrants,
16 scrip, orders, demands, claims, or other evidences of indebtedness against
17 the state, or any county or city thereof, except evidences of indebtedness
18 issued to or held by them for services rendered as such officer, deputy or
19 clerk, and evidences of the funded indebtedness of such state, county, city,
20 district or corporation.

21 74-506. AFFIDAVIT OF NONVIOLATION A PREREQUISITE TO ALLOWANCE OF AC-
22 COUNTS. Every officer whose duty it is to audit and allow the accounts of
23 other state, county, district, city or precinct officers, must, before al-
24 lowing such accounts, require each of such officers to make and file with him
25 an affidavit that he has not violated any of the provisions of this chapter.

26 74-507. PROVISIONS OF CHAPTER VIOLATED -- DISBURSING OFFICER NOT TO
27 PAY WARRANTS. Officers charged with the disbursement of public moneys must
28 not pay any warrant or other evidence of indebtedness against the state,
29 county, city or district, when the same has been purchased, sold, received or
30 transferred contrary to any of the provisions of this chapter.

31 74-508. SUSPENSION OF SETTLEMENT OR PAYMENT -- PROSECUTION OF OFFEND-
32 ERS. Every officer charged with the disbursement of public moneys, who is in-
33 formed by affidavit that any officer whose account is to be settled, audited,
34 or paid by him, has violated any of the provisions of this chapter, must sus-
35 pend such settlement or payment, and cause such officer to be prosecuted for
36 such violation.

37 74-509. VIOLATION. A violation of the provisions of this chapter, un-
38 less otherwise provided, is a misdemeanor and shall be punished by a fine not
39 exceeding one thousand dollars (\$1,000), or incarceration in the county jail
40 for a period not exceeding one (1) year, or by both such fine and incarcera-
41 tion.

42 74-510. NONCOMPENSATED PUBLIC OFFICIAL -- EXCEPTION. When a person is
43 a public official by reason of his appointment or election to a governing

1 board of a governmental entity for which the person receives no salary or
2 fee as compensation for his service on said board, he shall not be prohibited
3 from having an interest in any contract made or entered into by the board of
4 which he is a member, if he strictly observes the procedure set out in section
5 18-1361A, Idaho Code.

6 74-511. VIOLATION RELATING TO PUBLIC CONTRACTS. Officers shall not
7 commit any act prohibited by section 67-5726, Idaho Code, violations of
8 which are subject to penalties as provided in section 67-5734, Idaho Code,
9 and which prohibitions and penalties shall be deemed to extend to all public
10 officers governed by the provisions of this chapter.

11 SECTION 6. SEVERABILITY. The provisions of this act are hereby declared
12 to be severable and if any provision of this act or the application of such
13 provision to any person or circumstance is declared invalid for any reason,
14 such declaration shall not affect the validity of the remaining portions of
15 this act.