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LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fourth Legislature First Regular Session – 2017  
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IN THE \_\_\_\_\_  
BILL NO . \_\_\_\_\_  
BY \_\_\_\_\_

AN ACT  
RELATING TO HIGHWAYS: PROVIDING LEGISLATIVE INTENT; AMENDING  
SECTION 40-114, IDAHO CODE; TO REVISE THE DEFINITION OF  
MAINTENANCE; AMENDING SECTION 40-1406, IDAHO CODE, TO REVISE THE  
POWERS AND DUTIES OF HIGHWAY DISTRICT COMMISSIONERS –  
HIGHWAY POWERS OF CITIES IN COUNTY ABOLISHED.

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

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to address the Attorney General’s Opinion, January 23, 2017, whereby the Attorney General interpreted the current definition of Maintenance in Idaho Code 40-114(3) to create an mandatory obligation to conduct “snow removal, sweeping, litter control, weed abatement and placement or repair of public safety signs” without regard to the limits of a highway district’s available funds and resources. During the 2013 Legislature, House Bill 321 amended the definition of “Maintenance” to include only examples of maintenance work that would be considered in establishing a highway district’s prescriptive easements. By amending the definition of “Maintenance,” the Legislature did not intend to create an affirmative obligation of highway districts to do snow removal of sidewalks. Cities and Counties shall continue to regulate snow removal on sidewalks. It is the intent of the Legislature that the definition of Maintenance shall only obligate a highway district to keep existing highways in a suitable condition for public use within the district’s resources and funding.

SECTION 2. 40-114. That Section 40-114, Idaho Code, be, and the same is hereby amended to read as follows:

40-114. DEFINITIONS — M. (1) "Main traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(2) "Maintain" or "place" means to allow to exist, subject to the provisions of chapter 19, title 40, Idaho Code.

(3) "Maintenance" means to preserve from failure or decline, or repair, refurbish, repaint or otherwise keep an existing highway or public right-of-way in a suitable state for use, ~~including, which may include,~~ without limitation, without limitation, snow removal, sweeping, litter control, weed abatement and placement or repair of public safety signage.

1 (4) "Mortgage" means a class of liens, including deeds of trust, as are commonly given  
2 to secure advances on, or the unpaid purchase price of, real property under the laws of the state  
3 of Idaho, together with the credit instruments, if any, secured by it.

4 SECTION 2. 40-1406. That Section 40-1406, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6 40-1406. POWERS AND DUTIES OF HIGHWAY COMMISSIONERS – ONE  
7 HIGHWAY DISTRICT IN COUNTY – HIGHWAY POWERS OF CITIES IN COUNTY  
8 ABOLISHED – LAWS IN CONFLICT SUPERCEDED. The highway commissioners of a  
9 county-wide highway district shall exercise all of the powers and duties provided in chapter 13  
10 of this title, and are empowered to make highway ad valorem tax levies as provided by chapter 8,  
11 of this title. Only one (1) county-wide highway district shall be operative within a county where  
12 the electorate has voted affirmatively for the formation of a county-wide highway district. The  
13 district shall specifically be responsible for all county secondary and city highways and is hereby  
14 recognized as a body politic of this state. No city included within a county-wide highway district  
15 shall maintain or supervise any city highways, or levy any ad valorem taxes for the construction,  
16 repair or maintenance of city highways. No highway district included within a county-wide  
17 highway district, shall maintain any secondary highways or levy any ad valorem taxes for the  
18 construction, repair or maintenance of highways. Wherever any provisions of the existing laws  
19 of the state of Idaho are in conflict with the provisions of this chapter, the provisions of this  
20 chapter shall control and supersede all such laws. However, within the limits of any city, the city  
21 shall retain its authority and responsibility over sidewalks under Idaho Code 50-317, and may  
22 expend city funds for the placement, care and removal of trees, shrubs, grass, and other plants,  
23 which are located within the rights-of-way of any highway of the county-wide highway district.

24 The commissioners of a county-wide highway district may pass ordinances, rules, and  
25 make all regulations, not repugnant to law, as necessary, for carrying into effect or discharging  
26 all powers and duties conferred to a county-wide highway district pursuant to this chapter and  
27 chapter 13 of this title. All ordinances created or passed by the commissioners of a county-wide  
28 highway district shall require the affirmative vote of two-thirds (2/3) of the members of the full  
29 county-wide highway district commission. The style of all ordinances shall be: "BE IT  
30 ORDAINED by the board of highway district commissioners of (.....) County, Idaho." All  
31 ordinances passed shall, before they take effect and within one (1) month after they are passed,  
32 be published in at least one (1) issue of a newspaper published in the county or, if no paper be  
33 published in the county, then in some paper having general circulation therein. After such  
34 publication and before its effective date, such proposed ordinance shall not thereafter be  
35 amended in any particular wherein the amendment shall impose terms, conditions or privileges  
36 less favorable to the county-wide highway district than the proposed ordinance as published; but  
37 amendment favorable to the county-wide highway district may be made at any time and after  
38 publication. All ordinances passed pursuant to this section by the board of county-wide highway  
39 district commissioners may be proved by a certificate of the secretary of the county-wide  
40 highway district under the seal of the board of the county-wide highway district commissioners  
41 and shall be read and received in evidence in all courts and administrative proceedings without  
42 further proof. If ordinances duly passed are printed or published in book or pamphlet form by  
43 authority of the county-wide highway district commissioners, the printed or published book or  
44 pamphlet shall also be read and received in evidence in all courts and administrative proceedings

1 without further proof. The commissioners of the county-wide highway district may enforce such  
2 | ordinances by all appropriate administrative or judicial proceedings.  
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