GENERAL LAWS

OF THE

STATE OF IDAHO

PASSED BY
THE SECOND REGULAR SESSION OF THE
FIFTY-THIRD IDAHO LEGISLATURE

Convened January 8, 1996
Adjourned March 15, 1996

Idaho Official Directory and Roster of State Officials and Members of State Legislature follows the Index.

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

PETE T. CENARRUSA
Secretary of State
Boise, Idaho

Printed by The Caxton Printers, Ltd.
Caldwell, Idaho

CHAPTER 1
(H.B. No. 403)

AN ACT

RELATING TO THE FUNDS CONSOLIDATION ACT; AMENDING SECTION 57-815, IDAHO CODE, TO PROVIDE THAT MONEYS IN THE IDAHO AG IN THE CLASSROOM ACCOUNT BE USED BY THE DEPARTMENT OF AGRICULTURE.

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

SECTION 1. That Section 57-815, Idaho Code, be, and the same is hereby amended to read as follows:

57-815. IDAHO AG IN THE CLASSROOM ACCOUNT. (1) There is hereby created in the agency asset fund in the state treasury the Idaho ag in the classroom account. Moneys in the account shall be used only by the state department of ~~education~~ agriculture to provide funding for developing and presenting through the joint efforts of the United States department of agriculture, the state department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and nationwide, an educational program that will provide students in kindergarten through grade twelve (12) with a better understanding of the crucial role of agriculture in all aspects of society and of how Idaho agriculture relates to the rest of the world.

(2) The state treasurer shall invest the idle moneys in the account, and the interest earned on such investments shall be paid to the account.

Approved February 2, 1996

CHAPTER 2
(H.B. No. 417)

AN ACT

RELATING TO SCHOOL CONSTRUCTION PROJECTS; AMENDING SECTION 39-4113, IDAHO CODE, TO PROVIDE FOR PLAN CHECKING OF SCHOOL CONSTRUCTION PROJECTS COSTING IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS BY THE LOCAL JURISDICTION WHERE THE PROJECT IS LOCATED RATHER THAN THE DEPARTMENT OF LABOR AND INDUSTRIAL SERVICES WHERE THE CITY OR COUNTY IN WHICH THE CONSTRUCTION PROJECT IS LOCATED HAS ADOPTED ALL BUILDING AND OTHER CODES ADOPTED BY THE STATE AND UTILIZES CERTIFIED PLAN EXAMINERS; AND AMENDING SECTION 39-4116, IDAHO CODE, TO PROVIDE FOR AN EXCEPTION TO THE DEPARTMENT'S DUTY TO REVIEW PLANS FOR SCHOOL CONSTRUCTION PROJECTS.

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

SECTION 1. That Section 39-4113, Idaho Code, be, and the same is hereby amended to read as follows:

39-4113. PLAN CHECKING -- MAXIMUM FEES. (1) Notwithstanding the provisions of section 302(b), Uniform Building Code, 1985, the director shall establish a program for total plan checking and permit issue entirely within the safety inspection division of the department.

(2) Plan review fees shall be as required by section 304(b), Uniform Building Code, 1985.

(3) Each manufacturer of commercial coaches and modular buildings shall submit the building plans for every model of such structure to the director for the purpose of review. The manufacturer must certify that each such building plan meets the appropriate construction and safety standards in force at that time before the model involved is produced.

(4) Except as hereinafter provided, eEach school district shall submit to the department of labor and industrial services a set of working drawings and specifications for new school buildings and additions or alterations to existing buildings which are estimated to cost in excess of twenty-five thousand dollars ($25,000). The department will review the plans for compliance with the current editions of the codes specified in section 39-4109, Idaho Code. These plans must be approved before the school district may advertise for bids. A school district proposing a construction project which would otherwise be subject to plan review under this subsection shall be exempt from the provisions of this subsection if the project is located within the jurisdiction of a local government which has adopted the codes enumerated in section 39-4109, Idaho Code, and if the plans are reviewed by plan examiners certified by the international conference of building officials.

SECTION 2. That Section 39-4116, Idaho Code, be, and the same is hereby amended to read as follows:

39-4116. LOCAL GOVERNMENT ENFORCEMENT -- ASSISTANCE. (1) Local governments may, effective July 1 of any year, by affirmative action by resolution or ordinance taken by the governing board of a local government, prior to December 31 of the previous year, comply with the codes enumerated in this chapter, and codes and rules promulgated pursuant to this chapter, and inspection and enforcement may be provided by the local government, or may be provided by the department if such local government opts to comply with the provisions of this chapter but not to provide inspection and enforcement, except that the department shall retain jurisdiction of inspection and enforcement of construction standards and set-up codes for manufactured homes, and for inspection and enforcement of construction standards for modular buildings and commercial coaches, and, except as provided in section 39-4113(4), Idaho Code, for review of public school construction plans, whether or not a local government opts to comply with the other provisions of this chapter. Any decision to comply with the provisions of this chapter must be communicated to the director in writing, and compliance must be for an entire year commencing July 1. The minimum codes a local government must adopt in order to opt into this chapter are the latest editions of the Uniform Building Code and the Uniform Mechanical Code. Except as listed in subsection (2) of this section, the remaining codes enumerated in the act are optional as to whether

or not the local government wishes to adopt them.

(2) Regardless of whether or not a local government opts to comply with other sections of this act, they shall adopt the Americans With Disabilities Act (ADA) Part III, (Appendix A to Part 36-Standards for Accessible Design), Accessibility Guidelines for Buildings and Facilities as published in the Federal Register Volume 56 No. 144 Friday, July 26, 1991 and subsequent editions and this shall also be known as UBC Standard 31-1 and the Americans With Disabilities Act (ADA) Part II, Accessibility Guidelines for Buildings and Facilities, and Transportation Facilities as published in the Federal Register Volume 56 No. 173, Friday, September 6, 1991.

(3) All building code inspectors, including those of local governments which have opted to comply with the provisions of this chapter, shall be certified as provided by section 39-4108, Idaho Code.

(4) The department may contract to assist a local government in such matters as technical assistance, code interpretation, education, training, personnel, and information and dissemination of information and statistics.

(5) The department may conduct or sponsor pre-entry and in-service education and training programs on the technical, legal, and administrative aspects of building code administration and enforcement. For this purpose, it may cooperate and contract with educational institutions, local, state, regional or national building officials' organizations, and any other appropriate organization.

(6) Local governments who do not exercise their option may at any time of the year contract with the department to administer the building code enforcement program for them. The terms of such a contract shall be negotiated between the local unit of government and the director.

Approved February 2, 1996.

CHAPTER 3
(H.B. No. 519)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 285, LAWS OF 1995; AUTHORIZING AN INCREASE IN THE LIMIT ON THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 2, Chapter 285, Laws of 1995, there is hereby appropriated to the Department of Law Enforcement the following amounts to be expended for the designated program according to the designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
IDAHO STATE POLICE:				
FROM:				
Idaho Law Enforcement Fund			$12,700	$12,700
Miscellaneous Revenue Fund	$27,400	$4,200		31,600
TOTAL	$27,400	$4,200	$12,700	$44,300

SECTION 2. In addition to the full-time equivalent positions authorized in Section 4, Chapter 285, Laws of 1995, the Department of Law Enforcement is authorized one (1.0) full-time equivalent position for the program specified in Section 1 of this act in accordance with Section 67-3519, Idaho Code, and no more than four hundred thirty-eight and twenty-three one hundredths (438.23) full-time equivalent positions at any point during the period July 1, 1995, through June 30, 1996.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 2, 1996.

CHAPTER 4
(H.B. No. 513)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 1996; PROVIDING TRANSFERS TO THE PEST CONTROL DEFICIENCY FUND; PROVIDING TRANSFERS TO THE FIRE SUPPRESSION DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 331, Laws of 1995, there is hereby appropriated to the Department of Lands the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR LUMP SUM	TOTAL
A. FOREST RESOURCES MANAGEMENT:				
FROM:				
General Fund	$25,000	$5,000		$30,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR LUMP SUM	TOTAL
B. FOREST AND RANGE FIRE PROTECTION:				
FROM:				
General Fund			$2,800,000	$2,800,000
Fire Suppression Deficiency Fund			85,000	85,000
TOTAL			$2,885,000	$2,885,000
C. SOIL AND WATER CONSERVATION:				
FROM:				
Water Pollution Control Fund	$38,000			$38,000
GRAND TOTAL	$63,000	$5,000	$2,885,000	$2,953,000

SECTION 2. The State Controller shall make cash transfers from the General Fund to the Pest Control Deficiency Fund, at the request of the Director of the Department of Lands, not to exceed $30,000 as appropriated in Section 1 of this act for Forest Resources Management.

SECTION 3. The State Controller shall make cash transfers from the General Fund to the Fire Suppression Deficiency Fund, at the request of the Director of the Department of Lands, not to exceed $2,800,000 as appropriated from the General Fund in Section 1 of this act for Forest and Range Fire Protection.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 2, 1996.

CHAPTER 5
(S.B. No. 1303)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 1996; PROVIDING TRANSFERS TO THE PEST CONTROL DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 242, Laws of 1995, there is hereby appropriated to the Department of Agriculture the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. PLANT INDUSTRIES:			
FROM:			
General Fund	$32,900	$14,800	$47,700
B. SHEEP COMMISSION:			
FROM:			
Agricultural Fees - Sheep Industry Regulation Fund		$ 8,000	$ 8,000
TOTAL	$32,900	$22,800	$55,700

SECTION 2. The State Controller shall make cash transfers from the General Fund to the Pest Control Deficiency Fund, at the request of the Director of the Department of Agriculture, not to exceed $47,700 as appropriated in Section 1 of this act for Plant Industries.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 2, 1996.

CHAPTER 6
(S.B. No. 1313)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND FOR FISCAL YEAR 1996; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 240, Laws of 1995, there is hereby appropriated to the State Board of Education for the Idaho School for the Deaf and the Blind the following amounts to be expended according to the designated standard classifications from the listed fund for the period from July 1, 1995, through June 30, 1996:

	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:			
Miscellaneous Revenue Fund	$9,100	$10,000	$19,100

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 5, 1996.

CHAPTER 7
(H.B. No. 461)

AN ACT

RELATING TO THE UNIFORM COMMERCIAL CODE; REPEALING CHAPTER 5, TITLE 28, IDAHO CODE; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 5, TITLE 28, IDAHO CODE, PROVIDING FOR LETTERS OF CREDIT, PROVIDING A SHORT TITLE, PROVIDING DEFINITIONS, PROVIDING THE SCOPE OF THE CHAPTER, PROVIDING FORMAL REQUIREMENTS, PROVIDING FOR CONSIDERATION, PROVIDING FOR ISSUANCE, AMENDMENT, CANCELLATION AND DURATION, PROVIDING THE OBLIGATIONS OF A CONFIRMER, NOMINATED PERSON AND ADVISER, PROVIDING THE ISSUER'S RIGHTS AND OBLIGATIONS, PROVIDING FOR FRAUD AND FORGERY OF DOCUMENTS, PROVIDING FOR WARRANTIES, PROVIDING FOR REMEDIES, PROVIDING FOR THE TRANSFER OF A LETTER OF CREDIT, PROVIDING FOR TRANSFER BY OPERATION OF LAW, PROVIDING FOR ASSIGNMENT OF PROCEEDS, PROVIDING A STATUTE OF LIMITATIONS, PROVIDING FOR THE CHOICE OF LAW AND THE FORUM FOR BRINGING SUIT, PROVIDING FOR SUBROGATION OF THE ISSUER, APPLICANT AND NOMINATED PERSON, PROVIDING APPLICABILITY OF THE CHAPTER AND PROVIDING A SAVINGS CLAUSE; AMENDING SECTIONS 28-1-105 AND 28-2-512, IDAHO CODE, TO PROVIDE CORRECT REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-9-103, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE RULES GOVERNING THE PERFECTION OF SECURITY INTERESTS IN MULTIPLE STATE TRANSACTIONS TO LETTERS OF CREDIT AND RIGHTS TO PROCEEDS OF WRITTEN LETTERS OF CREDIT AND MAKING TECHNICAL CORRECTIONS; AMENDING SECTION 28-9-104, IDAHO CODE, TO EXCLUDE A TRANSFER OF AN INTEREST IN A LETTER OF CREDIT OTHER THAN THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT FROM THE APPLICATION OF CHAPTER 9, TITLE 28, IDAHO CODE; AMENDING SECTION 28-9-105, IDAHO CODE, TO INCLUDE REFERENCES TO CODE PROVISIONS RELATING TO A LETTER OF CREDIT AND PROCEEDS OF A LETTER OF CREDIT; AMENDING SECTION 28-9-106, IDAHO CODE, TO INCLUDE RIGHTS TO PROCEEDS OF WRITTEN LETTERS OF CREDIT WITHIN THE DEFINITION OF GENERAL INTANGIBLES; AND AMENDING SECTIONS 28-9-304 AND 28-9-305, IDAHO CODE, TO PROVIDE THAT A SECURITY INTEREST IN THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT CAN BE PERFECTED ONLY BY THE SECURED PARTY'S TAKING POSSESSION OF THE LETTER OF CREDIT.

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

SECTION 1. That Chapter 5, Title 28, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 5, Title 28, Idaho Code, and to read as follows:

CHAPTER 5
UNIFORM COMMERCIAL CODE -- LETTERS OF CREDIT

28-5-101. SHORT TITLE. This chapter may be cited as "Uniform Commercial Code -- Letters of Credit."

28-5-102. DEFINITIONS. (1) In this chapter:
(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.
(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.
(c) "Beneficiary" means a person who, under the terms of a letter of credit, is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.
(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.
(e) "Dishonor" of a letter of credit means failure to timely honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.
(f) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in section 28-5-108(5) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.
(g) "Good faith" means honesty in fact in the conduct or transaction concerned.
(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs

(i) upon payment,

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.
(j) "Letter of credit" means a definite undertaking that satisfies the requirements of section 28-5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.
(k) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or

custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "Acceptance"	Section 28-3-409
"Value"	Sections 28-3-303, 28-4-211

(3) Chapter 1, title 28, Idaho Code, contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

28-5-103. SCOPE. (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(3) With the exception of this subsection, subsections (1) and (2), sections 28-5-102(1)(i) and (1)(j), 28-5-106(4) and 28-5-114(4), and except to the extent prohibited in sections 28-1-102(3) and 28-5-117(4), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

28-5-104. FORMAL REQUIREMENTS. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in section 28-5-108(5).

28-5-105. CONSIDERATION. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirma-

tion.

28-5-106. ISSUANCE, AMENDMENT, CANCELLATION, AND DURATION. (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one (1) year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires five (5) years after its stated date of issuance, or if none is stated, after the date on which it is issued.

28-5-107. CONFIRMER, NOMINATED PERSON, AND ADVISER. (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

28-5-108. ISSUER'S RIGHTS AND OBLIGATIONS. (1) Except as otherwise provided in section 28-5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 28-5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) to honor,

(b) if the letter of credit provides for honor to be completed more than seven (7) business days after presentation, to accept a draft or incur a deferred obligation, or

(c) to give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in section 28-5-109(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) the performance or nonperformance of the underlying contract, arrangement, or transaction,

(b) an act or omission of others, or

(c) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5) of this section.

(7) If an undertaking constituting a letter of credit under section 28-5-102(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this chapter:

(a) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds,

(b) takes the documents free of claims of the beneficiary or presenter,

(c) is precluded from asserting a right of recourse on a draft under sections 28-3-414 and 28-3-415,

(d) except as otherwise provided in sections 28-5-110 and 28-5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation, and

(e) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

28-5-109. FRAUD AND FORGERY. (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) the issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person, and

(b) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer,

(b) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted,

(c) all of the conditions to entitle a person to the relief under Idaho law have been met, and

(d) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a) of this section.

28-5-110. WARRANTIES. (1) If its presentation is honored, the beneficiary warrants:

(a) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in section 28-5-109(1); and

(b) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) of this section are in addition to warranties arising under chapters 3, 4, 7 and 8, title 28, Idaho Code, because of the presentation or transfer of documents covered by any of those chapters.

28-5-111. REMEDIES. (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obliga-

tion under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (1) or (2) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2) of this section.

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2) or (3) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this chapter.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

28-5-112. TRANSFER OF LETTER OF CREDIT. (1) Except as otherwise provided in section 28-5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) the transfer would violate applicable law, or

(b) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in section 28-5-108(5) or is otherwise reasonable under the circumstances.

28-5-113. TRANSFER BY OPERATION OF LAW. (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in section 28-5-108(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) of this section has the consequences specified in section 28-5-108(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 28-5-109.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2) of this section.

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

28-5-114. ASSIGNMENT OF PROCEEDS. (1) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person

nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by chapter 9, title 28, Idaho Code, or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by chapter 9, title 28, Idaho Code, or other law.

28-5-115. STATUTE OF LIMITATIONS. An action to enforce a right or obligation arising under this chapter must be commenced within one (1) year after the expiration date of the relevant letter of credit or one (1) year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

28-5-116. CHOICE OF LAW AND FORUM. (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in section 28-5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one (1) address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the uniform customs and practice for documentary credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2) of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in section 28-5-103(3).

(4) If there is conflict between this chapter and chapter 3, 4, or 9, title 28, Idaho Code, this chapter governs.

(5) The forum for settling disputes arising out of an undertaking

within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1) of this section.

28-5-117. SUBROGATION OF ISSUER, APPLICANT, AND NOMINATED PERSON. (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1) of this section.

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant,

(b) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary, and

(c) the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

28-5-118. APPLICABILITY. This act applies to a letter of credit that is issued on or after the effective date of this act. This act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before the effective date of this act.

28-5-119. SAVINGS CLAUSE. A transaction arising out of or associated with a letter of credit that was issued before the effective date of this act and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

SECTION 3. That Section 28-1-105, Idaho Code, be, and the same is

hereby amended to read as follows:

28-1-105. TERRITORIAL APPLICATION OF THE ACT -- PARTIES' POWER TO CHOOSE APPLICABLE LAW. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 28-2-402.

Applicability of the chapter on Leases. Sections 28-12-105 and 28-12-106.

Applicability of the chapter on Bank Deposits and Collections. Section 28-4-102.

Governing law in the part on Funds Transfers. Section 28-4-638.

Letters of Credit. Section 28-5-116.

Applicability of the chapter on Investment Securities. Section 28-8-110.

Policy and scope of the chapter on Secured Transactions. Sections 28-9-102 and 28-9-103.

SECTION 4. That Section 28-2-512, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-512. PAYMENT BY BUYER BEFORE INSPECTION. (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act (section 28-5-~~114~~109(2)).

(2) Payment pursuant to subsection (1) does not ~~consitute~~ constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

SECTION 5. That Section 28-9-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-103. PERFECTION OF SECURITY INTERESTS IN MULTIPLE STATE TRANSACTIONS. (1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents, ~~and~~ instruments, rights to proceeds of written letters of credit, and ~~to~~ goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction

where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty (30) days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty (30) day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four (4) months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of section 28-9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four (4) months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security inter-

est therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles other than uncertified securities and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four (4) months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have

been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper. The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals. Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in section 28-8-110(4).

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in section 28-8-110(5).

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as pro-

vided in subparagraphs (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

SECTION 6. That Section 28-9-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-104. TRANSACTIONS EXCLUDED FROM CHAPTER. This chapter does not apply

(a) To a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) To a landlord's lien; or

(c) To a lien given by statute or other rule of law for services or materials except as provided in section 28-9-310 on priority of such liens; or

(d) To a transfer of a claim for wages, salary or other compensation of an employee; or

(e) To a transfer by a government or governmental subdivision or agency; or

(f) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) To a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (section 28-9-306), and priorities in proceeds (section 28-9-312); or

(h) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) To any right of set-off; or

(j) Except to the extent that provision is made for fixtures in section 28-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) To a transfer in whole or in part of any claim arising out of

tort; or

(l) To a transfer of an interest in any deposit account (subsection (1) of section 28-9-105), except as provided with respect to proceeds (section 28-9-306) and priorities in proceeds (section 28-9-312); or

(m) To a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.

SECTION 7. That Section 28-9-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-105. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of chapter 1 (section 28-1-201), and a receipt of the kind described in subsection (2) of section 28-7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 28-9-313), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 28-3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or

lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service;

(o) "Photographic record" means images of documents stored in digital form on a medium which will not permit alteration of the image, as well as images of documents produced by a photochemical process on film.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account."	Section 28-9-106.
"Attach."	Section 28-9-203.
"Commodity contract."	Section 28-9-115.
"Commodity customer."	Section 28-9-115.
"Commodity intermediary."	Section 28-9-115.
"Construction mortgage."	Section 28-9-313(1).
"Consumer goods."	Section 28-9-109(1).
"Control."	Section 28-9-115.
"Equipment."	Section 28-9-109(2).
"Farm products."	Section 28-9-109(3).
"Fixture."	Section 28-9-313(1).
"Fixture filing."	Section 28-9-313(1).
"General intangibles."	Section 28-9-106.
"Inventory."	Section 28-9-109(4).
"Investment property."	Section 28-9-115.
"Lien creditor."	Section 28-9-301(3).
"Proceeds."	Section 28-9-306(1).
"Purchase money security interest."	Section 28-9-107.
"United States."	Section 28-9-103.

(3) The following definitions in other chapters apply to this chapter:

"Broker."	Section 28-8-102.
"Certificated security."	Section 28-8-102.
"Check."	Section 28-3-104.

"Clearing corporation."	Section 28-8-102.
"Contract for sale."	Section 28-2-106.
"Control."	Section 28-8-106.
"Delivery."	Section 28-8-301.
"Entitlement holder."	Section 28-8-102.
"Financial asset."	Section 28-8-102.
"Holder in due course."	Section 28-3-302.
"Letter of credit."	Section 28-5-102.
"Note."	Section 28-3-104.
"Proceeds of a letter of credit."	Section 28-5-114(1).
"Sale."	Section 28-2-106.
"Securities intermediary."	Section 28-8-102.
"Security."	Section 28-8-102.
"Security certificate."	Section 28-8-102.
"Security entitlement."	Section 28-8-102.
"Uncertificated security."	Section 28-8-102.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 8. That Section 28-9-106, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-106. DEFINITIONS -- "ACCOUNT" -- "GENERAL INTANGIBLES". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

SECTION 9. That Section 28-9-304, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-304. PERFECTION OF SECURITY INTEREST IN INSTRUMENTS, DOCUMENTS, PROCEEDS OF A WRITTEN LETTER OF CREDIT, AND GOODS COVERED BY DOCUMENTS -- PERFECTION BY PERMISSIVE FILING -- TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 28-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such

period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one (21) days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one (21) days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of section 28-9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the twenty-one (21) day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this chapter.

SECTION 10. That Section 28-9-305, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-305. WHEN POSSESSION BY SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. A security interest in ~~letters-of-credit-and advices-of-credit-(subsection--(2)(a)--of--section--28-5-116),~~ goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

Approved February 7, 1996.

CHAPTER 8
(H.B. No. 473)

AN ACT

RELATING TO PUBLIC SCHOOL; AMENDING SECTION 1, CHAPTER 448, LAWS OF 1994, TO EXTEND THE SUNSET CLAUSE ON RULES AND TO PROVIDE OTHER DATE CHANGES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 448, Laws of 1994, be, and the same is hereby amended to read as follows:

SECTION 1. All rules for the public schools of the state board of education, IDAPA 08.02, chapters 01 through 07, that were in effect as of April 1, 1994, that are not otherwise repealed by the state board of education or the legislature, shall be null and void effective April 1, 1996~~7~~.

It is the intent of the legislature that the state board of education shall undertake a complete evaluation of all rules relating to the public schools to determine whether and how those rules promote a thorough system of education as described in section 33-1612, Idaho Code, (1994 Senate Bill 1291) and shall draft and promulgate new rules if necessary and consistent with a thorough system of education.

It is expected that the state board of education shall seek the active assistance of Idaho teachers, parents, administrators, state department of education, colleges of education at Boise State University, University of Idaho and Idaho State University, the teacher education program at Lewis-Clark State College, the Idaho state legislature, the office of the governor, and other appropriate agencies and organizations, both public and private, in evaluating existing rules and drafting and promulgating new rules that are necessary and consistent with a thorough system of education.

It is expected that if the state board of education identifies any state and federal statutes which should be amended to ensure more effective drafting and promulgation of rules that are necessary and consistent with a thorough system of education, the board shall report its initial recommended statutory changes to the Idaho state legislature on or before ~~January 20, 1995~~ April 1, 1997, and shall report subsequent recommended statutory changes on or before ~~January 20, 1996~~ April 1, 1997, and, with respect to recommended changes in federal law, shall report such recommendations to Idaho's U.S. Senators, U.S. Representatives and the U.S. Secretary of Education on or before ~~January 20, 1996~~ April 1, 1997.

It is expected that, as part of the evaluation of public school rules, the state board of education shall develop comprehensive recommendations to redefine the mission, structure and authority of the state department of education and on or before ~~January 20, 1996~~ April 1, 1997, shall recommend changes in state statutes as appropriate.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 7, 1996.

CHAPTER 9
(H.B. No. 529)

AN ACT

APPROPRIATING MONEYS IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 317, LAWS OF 1995; PROVIDING THAT THE STATE CONTROLLER SHALL TRANSFER CERTAIN FUNDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 317, Laws of 1995, there is hereby appropriated to the Governor's Office the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period from July 1, 1995, through June 30, 1996:

STATE EMERGENCY RESPONSE COMMISSION:

FOR:	
Trustee and Benefit Payments	$34,000
FROM:	
General Fund	$34,000

SECTION 2. The State Controller shall make a cash transfer of $34,000 from the General Fund to the Hazardous Substance Emergency Response Fund, as appropriated in Section 1 of this act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 7, 1996.

CHAPTER 10
(H.B. No. 537)

AN ACT

APPROPRIATING MONEYS IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 312, LAWS OF 1995, TO THE DEPARTMENT OF PARKS AND RECREATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 312, Laws of 1995, there is hereby appropriated to the Depart-

ment of Parks and Recreation the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENSES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
1. ADMINISTRATION:					
FROM:					
Parks and Recreation Fund		$25,000			$ 25,000
II. PARK OPERATIONS:					
FROM:					
Public Recreation Enterprise Fund	$10,000	$40,000	$46,000		$ 96,000
III. RECREATION RESOURCES:					
FROM:					
Parks and Recreation Registration Fund				$200,000	$200,000
GRAND TOTAL	$10,000	$65,000	$46,000	$200,000	$321,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 7, 1996.

CHAPTER 11
(S.B. No. 1317)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF WATER RESOURCES IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 315, LAWS OF 1995; AUTHORIZING AN INCREASE IN THE LIMIT OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 315, Laws of 1995, there is hereby appropriated to the Department of Water Resources the following amounts to be expended for the designated program according to the designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
PLANNING AND POLICY DIVISION:				
FROM:				
Water Pollution Control Fund	$119,500	$175,500	$5,000	$300,000
Professional Services Fund		201,000		201,000
Resource Conservation Fund	33,500	43,600		77,100
TOTAL	$153,000	$420,100	$5,000	$578,100

SECTION 2. In addition to the full-time equivalent positions authorized in Section 2, Chapter 315, Laws of 1995, the Department of Water Resources is authorized one (1.0) full-time equivalent position for the program specified in Section 1 of this act in accordance with Section 67-3519, Idaho Code, and no more than one hundred seventy-six (176) full-time equivalent positions at any point during the period July 1, 1995, through June 30, 1996.

SECTION 3. There is hereby reappropriated to the Department of Water Resources the unexpended and unencumbered balances of the moneys appropriated in Section 1 of this act from the Water Pollution Control Fund and the Professional Services Fund for the period July 1, 1996, through June 30, 1997.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 7, 1996.

CHAPTER 12
(H.B. No. 424)

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 37-2723, IDAHO CODE, TO SIMPLIFY THE REQUIREMENTS FOR WRITING PRESCRIPTIONS FOR CONTROLLED SUBSTANCES.

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

SECTION 1. That Section 37-2723, Idaho Code, be, and the same is hereby amended to read as follows:

37-2723. FORM AND CONTENTS OF PRESCRIPTION. No person shall write a prescription and no person shall fill, compound or dispense a prescription for a controlled substance in schedule II unless it is ~~wholly--written--in--ink-or-indelible-pencil-in-the-handwriting-of-the prescriber,-signed-and-dated-by-the-prescriber-as-of-the-date-on-which~~

~~it-is-written,-contains-the-name-and-address-of-the--person--for--whom prescribed,--and--states-the-name-and-quantity-of-the-schedule-II-substance-prescribed~~ dated as of, and signed on, the day when issued and bears the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. A practitioner should sign a prescription in the same manner as he would sign a check or legal document. Prescriptions shall be written with ink or indelible pencil and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to federal and state law, rules and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by law.

Approved February 8, 1996.

CHAPTER 13
(H.B. No. 444)

AN ACT

RELATING TO RETENTION AND STORAGE OF COUNTY RECORDS; AMENDING SECTION 9-331, IDAHO CODE, TO PROVIDE FOR OPTICAL SCANNING OF RECORDS; AND AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-331A, IDAHO CODE, TO PROVIDE FOR PHOTOGRAPHIC OR DIGITAL RETENTION OF RECORDS AND DISPOSITION OF ORIGINALS.

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

SECTION 1. That Section 9-331, Idaho Code, be, and the same is hereby amended to read as follows:

9-331. COUNTY OFFICIALS REPLACING DOCUMENTS OR BOOKS -- MANNER. Whenever any officer of any county is required or authorized by law to record, copy, file, recopy or replace any document, plat, paper, written instrument, or book, on file or of record in his office, he may do so by photostatic, photographic, microphotographic, microfilm, optical scan or other ~~mechanical~~ process which produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record, in accordance with standards not less than those now approved for permanent records by the American Nnational ~~Bureau of~~ Sstandards institute (ANSI).

SECTION 2. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-331A, Idaho Code, and to read as follows:

9-331A. PHOTOGRAPHIC OR DIGITAL RETENTION OF COUNTY RECORDS -- DISPOSITION OF ORIGINALS. Any county officer may receive or retain

records filed or recorded in his office on media other than paper, provided that the media comply with the standards set forth in this section. The originals of paper documents may be disposed of in accordance with the provisions of this section.

(1) A county officer may receive, file or record documents in his office in paper form. When permitted by law, a county officer may alternately receive, file or record documents which are transmitted on other media or by electronic means, provided that the medium or means of transmittal does not permit undetected additions, deletions, or alterations of documents during transmittal. Such media and electronic means include, but are not limited to, facsimile transmissions (FAX), magnetic tape or disk, photographic film, optical disk and an electronically transmitted data stream.

(2) A county officer may retain a document in a different form or medium from that in which it is received, provided that the form or medium in which the document is retained results in a permanent record which may be accurately reproduced during the period for which the document must be retained.

(3) If a document is received in paper form or as an image of a paper document, e.g. film, FAX, or other digitized image, it must be retained in a form or medium which permits accurate reproduction of the document in paper form. If the medium chosen for retention is photographic, all film used for capture or retention of images must meet the quality standards of the American national standards institute (ANSI). If the medium chosen for retention is digital, the permanent medium must preclude alteration or erasure of a document, and must permit reproduction on paper at a resolution not worse than two hundred (200) dots per inch.

(4) If a document is received as a data stream, it must be retained in a system which is secure against unauthorized or undetected alteration or deletion of data, and which provides for periodic backup of data for off-site storage. The system must permit the document to be readily and intelligibly reproduced on paper.

(5) If a document is received in paper form or as an image of a paper document, and if the receiving county officer retains it in another form or medium as permitted in subsection (3) of this section, then the original of the document may be disposed of or returned to the sender, provided that such disposition or return is done pursuant to statute.

(6) A document retained by a county officer in any form or medium permitted under this section shall be deemed to be an original public record for all purposes. A reproduction or copy of such a document, certified by the county officer, shall be deemed to be a transcript or certified copy of the original, and shall be admissible before any court or administrative hearing.

Approved February 8, 1996.

CHAPTER 14
(H.B. No. 456)

AN ACT

RELATING TO COUNTY JAILS; AMENDING SECTION 20-618, IDAHO CODE, TO ALLOW FOR JAIL COMMISSARY FUNDS TO BE SPENT FOR ANY INMATE CARE ITEMS IN THE JAIL.

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

SECTION 1. That Section 20-618, Idaho Code, be, and the same is hereby amended to read as follows:

20-618. JAIL COMMISSARY FUND. County jails which provide commissary items to inmates, and collect the costs or a portion of the costs for such items from an inmate with sufficient funds to pay for items, are authorized to create a self-perpetuating fund to supply inmates with necessary hygiene items, ~~and~~ recreational devices and other inmate care items and deposit the funds from the sale of items in this fund. This fund shall be subject to a yearly audit authorized by the board of county commissioners.

Approved February 8, 1996.

CHAPTER 15
(S.B. No. 1344)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF REVENUE AND TAXATION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 301, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 2, Chapter 301, Laws of 1995, there is hereby appropriated to the Department of Revenue and Taxation the following amounts to be expended for the designated programs according to the designated standard classifications from the listed fund for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. REVENUE OPERATIONS:			
FROM:			
General Fund		$75,000	$75,000
B. BOARD OF TAX APPEALS:			
FROM:			
General Fund	$14,500	$ 2,000	$16,500
TOTAL	$14,500	$77,000	$91,500

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 8, 1996.

CHAPTER 16
(S.B. No. 1345)

AN ACT

APPROPRIATING MONEYS TO THE HUMAN RIGHTS COMMISSION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 197, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 197, Laws of 1995, there is hereby appropriated to the Office of the Governor for the Human Rights Commission the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

FOR:
Personnel Costs
FROM:

General Fund	$ 9,000
Federal Grant Fund	$ 2,600
TOTAL	$11,600

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 8, 1996.

CHAPTER 17
(S.B. No. 1346)

AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 198, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 198, Laws of 1995, there is hereby appropriated to the State Controller the following amounts to be expended for the designated programs according to the designated standard classifications from the

listed funds for the period July 1, 1995, through June 30, 1996:

	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. STATEWIDE ACCOUNTING AND PAYROLL:			
FROM:			
General Fund	$ 70,100		$ 70,100
B. COMPUTER CENTER:			
FROM:			
Data Processing Services Fund	$ 41,100	$862,300	$903,400
TOTAL	$111,200	$862,300	$973,500

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 8, 1996.

CHAPTER 18
(S.B. No. 1347)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO EDUCATIONAL PUBLIC BROADCASTING SYSTEM IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 241, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 241, Laws of 1995, there is hereby appropriated to the State Board of Education for the Idaho Educational Public Broadcasting System the following amount to be expended according to the designated standard classification from the listed fund for the period July 1, 1995, through June 30, 1996:

IDAHO EDUCATIONAL PUBLIC BROADCASTING SYSTEM:

FROM:	
General Fund	$68,000
FOR:	
Capital Outlay	$68,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 8, 1996.

CHAPTER 19
(S.B. No. 1348)

AN ACT

APPROPRIATING MONEYS FOR THE OFFICE OF THE STATE BOARD OF EDUCATION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 3, CHAPTER 355, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 3, Chapter 355, Laws of 1995, there is hereby appropriated to the State Board of Education for the Office of the State Board of Education the following amount, to be expended according to the designated standard classification from the listed fund for the period July 1, 1995, through June 30, 1996:

FOR:	
Operating Expenditures	$45,000
FROM:	
General Fund	$45,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 8, 1996.

CHAPTER 20
(H.B. No. 453)

AN ACT

RELATING TO CHEMIGATION; AMENDING SECTION 22-1401, IDAHO CODE, TO ADD DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-1407, IDAHO CODE, TO RECOGNIZE PRIVATE AND PROFESSIONAL APPLICATOR CATEGORIES ON LICENSES, TO PROVIDE LICENSE FEES, TO PROVIDE EXPIRATION DATES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 22-1408, IDAHO CODE, TO RECOGNIZE PRIVATE AND PROFESSIONAL APPLICATOR LICENSE CATEGORIES.

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

SECTION 1. That Section 22-1401, Idaho Code, be, and the same is hereby amended to read as follows:

22-1401. DEFINITIONS. As used in this chapter:

(1) "Antipollution devices" means any mechanical equipment used to reduce hazard to the environment in cases of malfunction or shutdown of chemigation equipment during chemigation and may include, but not be limited to, interlock, water line check valve, chemical line closure device, vacuum relief device and automatic low pressure drain.

(2) "Chemical" means any fertilizer or pesticide.

(3) "Chemigation" means any process whereby chemicals are added to irrigation water applied to land or crop or both through an irrigation system.

(4) "Director" means the director of the department of agriculture.

(5) "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients.

(6) "Herbicide" means any substance or mixture of substances used to inhibit or destroy plant or weed growth.

(7) "Irrigation system" means any device or combination of devices having a hose, pipe or other conduit which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied to land or crop or both. The term does not include any hand held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(8) "Person" means an individual, firm, partnership, corporation, or other recognized legal entity.

(9) "Pest" means (a) any insect, rodent, nematode, fungus, weed, or (b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except virus, bacteria, or other microorganism on or in living man or other living animals, which the director declares to be a pest.

(10) "Pesticide" means but is not limited to (a) any substance or mixture of substances intended to prevent, destroy, control, repel or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus or fungus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest, and (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and (c) any spray adjuvant.

(11) "Private applicator" means a person who: (a) uses or supervises the use of restricted-use pesticides to produce agricultural commodities or forest crops on land owned or rented by him or his employer; or (b) applies restricted-use pesticides without compensation other than the trading of personal services between producers of agricultural commodities; or (c) applies pesticides or fertilizers through irrigation systems on land owned or rented by him or his employer.

(12) "Professional applicator" means a person who: (a) applies pesticides upon the land or property of another for compensation, or applies pesticides or fertilizers through irrigation systems upon the land or property of another for compensation; or (b) uses or supervises the use of restricted-use pesticides and is not a private applicator; or (c) offers or supplies technical advice or recommendations regarding the use of agricultural pesticides.

(13) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator of the United States environmental protection agency (EPA).

SECTION 2. That Section 22-1407, Idaho Code, be, and the same is

hereby amended to read as follows:

22-1407. LICENSE REQUIRED. (1) It shall be unlawful for any person to engage in, conduct or carry on chemigation without first obtaining a license to do so from the Idaho department of agriculture. A person may obtain a chemigation category on a private or professional applicator license from the department of agriculture by making application and paying a license fee of twenty-~~five~~ dollars ($25~~0~~.00) to the department. On the application for a license, the applicant must certify that the equipment and system they plan to use for chemigation meets department standards and that the owner and person(s) operating the equipment have read the rules ~~and regulations~~ for chemigation in the state of Idaho and that the owner intends to operate and maintain the chemigation system according to the rules ~~and regulations~~. The equipment certification may be provided to the person proposing to chemigate by the equipment supplier in the case of a new installation. The department shall assist persons in completing their license applications upon request. On the application for licensure, the department may require such other information as it deems necessary. Upon receipt of a properly signed and completed application and the required information and fee, the department shall issue a license to the applicant so that the person can engage in, conduct or carry on chemigation. The department may impose as a condition of licensure that an applicant either attend a seminar conducted, sponsored or accredited by the department or pass an examination regarding chemigation through irrigation systems and ways to avert contaminating the ground water of the state while engaged in chemigation.

(2) The fee for the ~~renewal of the~~ chemigation category on a private or professional applicator's license required by this section shall be ~~ten~~ twenty dollars ($~~1~~20.00) and shall be paid with the application for license ~~renewal on or before April 1 of each year~~. Failure to pay the fees when due forfeits the right to engage in, conduct or carry on chemigation. Chemigation categories issued to private or professional applicators shall expire on the same date as the private or professional license, unless suspended or revoked as provided for in this section.

(3) Any person who has been previously licensed to engage in, conduct or carry on chemigation and whose license has been forfeited shall not be issued a renewal license except upon written application to the department accompanied by a sum of money equal to the initial application fee charged in subsection (1) of this section.

(4) The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(a) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license;

(b) The licensee was guilty of willfully violating any of the provisions of this chapter; and

(c) The chemigation equipment is insufficient to protect against accident.

SECTION 3. That Section 22-1408, Idaho Code, be, and the same is hereby amended to read as follows:

22-1408. CONDUCTING CHEMIGATION WITHOUT A LICENSE. Any person who engages in, conducts or carries on chemigation without having a valid chemigation category on a private or professional applicator license in full force and effect pursuant to this chapter shall be liable for a civil penalty of not less than one thousand dollars ($1,000) and not more than twenty-five thousand dollars ($25,000). The director may file a civil action to enforce this section in a court of competent jurisdiction in the county in which the violation occurred. All civil penalties collected pursuant to this section shall be remitted to the water pollution control account. The burden of proof for such liability shall be met by showing a preponderance of the evidence. The civil liability contained in this section shall be in addition to, and not in lieu of, any liability contained in chapter 1, title 39, Idaho Code.

Approved February 9, 1996.

CHAPTER 21
(H.B. No. 556)

AN ACT

RELATING TO THE APPROPRIATION FOR THE STATE TREASURER; AMENDING SECTION 1, CHAPTER 263, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 263, Laws of 1995, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the State Treasurer the following amounts from the listed funds, to be expended according to designated standard classifications for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$ 84,200			$ 84,200
Professional Services Fund	~~670,300~~ 699,000	~~$507,900~~ 479,200	$62,300	1,240,500
TOTAL	~~$754,500~~ 783,200	~~$507,900~~ 479,200	$62,300	$1,324,700

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 9, 1996.

CHAPTER 22
(H.B. No. 454)

AN ACT

RELATING TO PESTICIDES; AMENDING SECTION 22-3401, IDAHO CODE, TO ADD, CLARIFY AND ALPHABETIZE DEFINITIONS AND TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3402, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR AND TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3403, IDAHO CODE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS AND TO MAKE GRAMMATICAL CHANGES; AMENDING SECTION 22-3404, IDAHO CODE, TO REVISE LICENSING CLASSIFICATIONS AND REQUIREMENTS, TO REMOVE THE REQUIREMENT TO REGISTER COMMERCIAL APPLICATION EQUIPMENT, TO PROVIDE PERSONS NOT APPLYING PESTICIDES AN EXEMPTION FROM PROVING FINANCIAL REQUIREMENTS, TO REMOVE A REFERENCE TO AN EXPIRATION DATE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS AND TO REMOVE OBSOLETE REFERENCES AND REDUNDANT LANGUAGE; REPEALING SECTION 22-3405, IDAHO CODE; AMENDING SECTION 22-3406, IDAHO CODE, TO CHANGE THE EXPIRATION DATE FOR A LICENSE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS AND TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3408, IDAHO CODE, TO REMOVE OBSOLETE REFERENCES AND TO PROVIDE A REFERENCE TO WRITTEN ORDERS; AMENDING SECTION 22-3409, IDAHO CODE, TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3411, IDAHO CODE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS; AMENDING SECTION 22-3416, IDAHO CODE, TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3418, IDAHO CODE, TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3419, IDAHO CODE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS, TO REMOVE OBSOLETE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-3420, IDAHO CODE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS AND TO REMOVE OBSOLETE REFERENCES AND REDUNDANT LANGUAGE; AMENDING SECTION 22-3421, IDAHO CODE, TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3422, IDAHO CODE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS AND TO REMOVE OBSOLETE REFERENCES; AMENDING SECTION 22-3423, IDAHO CODE, TO REMOVE OBSOLETE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-3424, IDAHO CODE, TO MAKE LANGUAGE CONSISTENT WITH DEFINITIONS, TO CLARIFY A COURT REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 22-3426, IDAHO CODE, TO REMOVE OBSOLETE REFERENCES.

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

SECTION 1. That Section 22-3401, Idaho Code, be, and the same is hereby amended to read as follows:

22-3401. DEFINITIONS. When used in this act:

(1) ~~"Department"---means---Idaho---department---of----agriculture~~ "Adulterated" means a pesticide is adulterated for the purpose of this act if the strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(2) ~~"Director"-means-the-director-of-the-department--of--agriculture--of--the-state-of-Idaho~~ "Certified applicator" means a person who has qualified as a professional applicator, or private applicator under the provisions of this act and the rules promulgated by the director.

(3) ~~"Pesticide"-means-but-is-not-limited-to-(a)-any-substance--or mixture--of-substances-intended-to-prevent,-destroy,-control,-repel-or mitigate-any-insect,-rodent,-nematode,-snail,-slug,-fungus,--weed--and any--other-form-of-plant-or-animal-life-or-virus,-except-virus-or-fungus-on-or-in-living-man-or-other-animal,-which-is-normally--considered to--be--a-pest-or-which-the-director-may-declare-to-be-a-pest,-and-(b) any-substance-or-mixture-of-substances-intended-to-be-used-as-a--plant regulator,---defoliant--or--desiccant,--and--(c)--any--spray--adjuvant~~ "Defoliant" means any substance or mixture of substances intended for causing the foliage to drop from a plant, with or without causing abscission.

(4) ~~"Pest"-means-(a)-any-insect,-rodent,-nematode,-fungus,--weed, or--(b)--any-other-form-of-terrestrial-or-aquatic-plant-or-animal-life or-virus,-bacteria,-or-other-microorganism,-except-virus,-bacteria,-or other-microorganism-on-or-in-living-man-or-other-living-animals,-which the-director-declares-to-be-a-pest~~ "Department" means Idaho department of agriculture.

(5) ~~"Device"-means-an-instrument-or--contrivance,--other--than--a firearm,--intended--to--trap,--destroy,-control,-repel-or-mitigate-any pest-or-any-other-form-of-plant-or-animal-life,--other--than--man--and other-than-bacteria,-virus,-or-other-microorganism-on-or-in-living-man or--other--living-animals,-but-does-not-include-equipment-used-for-the application-of-pesticides-when-sold-separately--therefrom~~ "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(6) ~~"Land"--means--all--land-and-water-areas,-including-airspace, and-all-plants,--animals,--structures,--buildings,--contrivances,--and machinery--appurtenant--thereto--or-situated-thereon,-fixed-or-mobile, including-any-used-for--transportation~~ "Designated agent" means an employee or agent of the state authorized by the director to perform various duties in connection with enforcement of this act.

(7) ~~"Person"--means--any--individual,--partnership,--association, fiduciary-corporation,-or--any--organized--group--of--persons--whether incorporated-or-not~~ "Device" means an instrument or contrivance, other than a firearm, intended to trap, destroy, control, repel or mitigate any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals, but does not include equipment used for the application of pesticides when sold separately therefrom.

(8) ~~"Plant--regulator"--means--any--substance--or-mixture-of-substances-intended-through-physiological--action,--for--accelerating--or retarding--the--rate-of-growth-or-rate-of-maturation,-or-for-otherwise altering-the-behavior-of-plants-or-the-produce-thereof,-but-shall--not include--substances--to--the--extent--that--they-are-intended-as-plant nutrients,-trace-elements,-nutritional-chemicals,-plant-inoculants-and soil-amendments~~ "Director" means the director of the department of agriculture of the state of Idaho.

(9) ~~"Defoliant"--means--any--substance--or--mixture-of-substances~~

~~intended-for-causing-the-foliage-to-drop-from-a-plant,-with-or-without causing-abscission~~ "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, deliver or offer to deliver, pesticides in this state.

(10) ~~"Desiccant"--means--any--substance--or--mixture-of-substances intended-for-artificially-accelerating-the--drying--of--plant--tissues~~ "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(11) "EPA" means the United States Environmental Protection Agency.

(12) ~~"Environment"-includes-water,-air,-land,-and-all--plants--and man-and-other-animals-living-therein,-and-the-interrelationships-which exist--among--these~~ "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one (1) or more plant nutrients.

(13) ~~"Distribute"-means-to-offer-for-sale,-hold--for--sale,--sell, barter,--ship,--deliver--for--shipment,--or--receive--and,--having--so received,--deliver--or--offer--to--deliver,--pesticides--in-this-state~~ "General use pesticide" means any pesticide which is not a restricted-use pesticide.

(14) "Label or labeling" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers. It would also include all other written, printed or graphic material that accompanies the pesticide or device at any time.

(15) ~~"Spray-adjuvant"-means-any-wetting--agent,--spreading--agent, deposit--builder,--adhesive,--emulsifying-agent,-deflocculating-agent, water-modifier,-or-similar-agent-with-or-without-toxic--properties--of its--own-intended-to-be-used-with-any-other-pesticide-as-an-aid-to-the application-or-to-the-effect-thereof,-and-which-is-in-a-separate--container--from--that-of-the-pesticide-with-which-it-is-to-be-used~~ "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(16) ~~"Pest--control--consultant"-means-an-individual-who-offers-or supplies-technical-advice,-or-recommendations-respecting-the-use-of-an agricultural-pesticide~~ "Misbranded" shall apply to (a) any pesticide or device if its labeling bears any false or misleading statement, design or graphic representation, and (b) any pesticide if such pesticide is not labeled as required by section 22-3402, Idaho Code, and (c) any pesticide if the labeling bears any reference to the registration provisions of section 22-3402, Idaho Code, unless such reference is required by rules promulgated by the director.

(17) ~~"Commercial-applicator"-means-an-individual-who-owns-or-operates-a-business-engaged-in-the-application-of-pesticides-upon-the-land or-property-of-another~~ "Person" means any individual, partnership, association, fiduciary corporation, or any organized group of persons whether incorporated or not.

(18) ~~"Commercial-operator"-means-an-individual-who-uses-pesticides and-is-employed-by-a-licensed-commercial-applicator~~ "Pest" means (a) any insect, rodent, nematode, fungus, weed, or (b) any other form of

terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except virus, bacteria, or other microorganism on or in living man or other living animals, which the director declares to be a pest.

(19) ~~"Limited-applicator"-means-(a)-an-individual-who-is-a-federal employee,-pesticide-industry-representative,-state-of--Idaho--employee or--agent,--counties,--cities,-municipal-corporations,-irrigation-districts,-drainage-districts,-and-public-utilities-employees--or--agents who--uses--or--supervises-the-application-of-restructed-use-pesticides which-are-restricted-to-use-only-by-certified-applicators-and-does-not hold-himself-out-as-a-commercial-applicator,-and-(b)-an-individual-who is-not-a-commercial-applicator,--commercial--operator,--or--a--private applicator,--and--who--uses--or-supervises-the-use-of-a-restricted-use pesticide,-restricted-to-use-only-by-a-certified--applicator--on--land owned--or--rented-by-him,-and-(c)-an-employee-of-a-business,-who-uses, applies-or-supervises-the-application-of-any-restructed-use--pesticide which-is-restricted-to-use-only-by-certified-applicators-on-land-owned by-the-business-for-purposes-other-than-the-production-of-agricultural commodities~~ "Pesticide" means but is not limited to (a) any substance or mixture of substances intended to prevent, destroy, control, repel or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus or fungus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest, and (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and (c) any spray adjuvant.

(20) ~~"Pesticide-industry-representative"-means-an--individual--who is--a-pesticide-manufacturer's-representative,-distributor's-representative,-or-any-field-representative-of--any--company--or--organization that--deals--in--agricultural--commodities,-who-uses-or-supervises-the application-of-restricted-use-pesticides-which-are-restricted--to--use only--by-certified-applicators-solely-for-the-purpose-of-demonstrating the-use-of-the-restricted-use-pesticide~~ "Pesticide dealer" means a person who distributes any restricted-use pesticide or general use pesticide except those exempted in section 22-3406, Idaho Code, or any pesticide whose uses or distribution are further restricted by the director by rule.

(21) ~~"Private--applicator"--means-an-individual-who-uses-or-supervises-the-use-of-any-restricted-use-pesticides-restricted-to-use--only by--certified--applicators--for--the-purpose-of-producing-agricultural commodities-or-forest-crops-on-land-owned-or--rented--by--him--or--his employer-or-if-applied-without-compensation-other-than-trading-of-personal--services--between--producers-of-agricultural-commodities-on-the property-of-another-person~~ "Pesticide equipment" means any equipment, machinery, or apparatus used in the actual application of pesticides including aircraft and ground-spraying equipment.

(22) ~~"Certified-applicator"-means-an-individual-who-has--qualified as--a--commercial-applicator,-commercial-operator,-limited-applicator, or-private-applicator-under-the-provisions-of-this-act-and-the-regulations-promulgated-by-the-director~~ "Pesticide industry representative" means a person who is a pesticide manufacturer's representative, distributor's representative, or any field representative of any company or organization that deals in agricultural commodities, who uses

or supervises the application of restricted-use pesticides solely for the purpose of demonstrating the use of the restricted-use pesticide.

(23) ~~"Pesticide--equipment"--means--any--equipment,--machinery,-or apparatus-used-in-the-actual-application-of-pesticides-including--aircraft--and--ground-spraying-equipment~~ "Plant regulator" means any substance or mixture of substances intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(24) ~~"Under-the-direct--supervision--of--a--certified--applicator" means--unless--otherwise-prescribed-by-its-labeling,-a-pesticide-shall be-considered-to-be-applied-under-the-direct-supervision-of--a--certified--applicator--if--it-is-applied-by-a-competent-person-acting-under the-instructions-and-control-of-a-certified-applicator-who--is--available--if-and-when-needed,-even-though-such-certified-applicator-is-not physically-present-at-the-time-and--place--the--pesticide--is--applied~~ "Private applicator" means a person who: (a) uses or supervises the use of restricted-use pesticides to produce agricultural commodities or forest crops on land owned or rented by him or his employer; or (b) applies restricted-use pesticides on the property of another without compensation other than the trading of personal services between producers of agricultural commodities; or (c) applies pesticides or fertilizers through irrigation systems on land owned or rented by him or his employer.

(25) ~~"Pesticide--dealer"--means--an-individual-who-distributes-any restricted-use--pesticide--or--general--use--pesticide--except---those exempted--in--section-22-3406,-Idaho-Code,-or-any-pesticide-whose-uses or-distribution-are-further-restricted-by-the-director--by--regulation~~ "Professional applicator" means a person who: (a) applies pesticides upon the land or property of another for compensation, or applies pesticides or fertilizers through irrigation systems upon the land or property of another for compensation; or (b) uses or supervises the use of restricted-use pesticides and is not a private applicator; or (c) offers or supplies technical advice or recommendations regarding the use of agricultural pesticides.

(26) ~~"Restricted-use-pesticide"-means-any-pesticide--or--pesticide use--classified--for--restricted--use--by--the--administrator--of--EPA~~ "Restricted area" means an area established under the provisions of section 22-3419, Idaho Code, to prohibit or restrict the application of pesticides in order to prevent injury to land, people, animals, crops or the environment.

(27) ~~"Restricted-area"-means-an-area-established-under-the--provisions--of--section--22-3419,--Idaho--Code,-to-prohibit-or-restrict-the application-of-pesticides-in-order-to-prevent-injury-to-land,--people, animals,-crops-or-the-environment~~ "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator of EPA.

(28) ~~"State--restricted--pesticide--use"--means--any-pesticide-use which,-when-used-as-directed-or-in-accordance-with--a--widespread--and commonly--recognized--practice,--may--be--further--restricted-when-the director-determines,-subsequent-to-a-hearing,-that-additional-restric-~~

~~tions-are-needed-for-that-use-to-prevent-unreasonable-adverse--effects on--the-environment-including-man,-lands,-beneficial-insects,-animals, crops-and-wildlife,-other-than-pests~~ "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a separate container from that of the pesticide with which it is to be used.

(29) ~~"Unreasonable-adverse-effects-on-the-environment"--means--any unreasonable--risk--to-man-or-the-environment,-taking-into-account-the economic,-social,-and-environmental-costs-and-benefits-of-the--use--of any-pesticide~~ "State restricted pesticide use" means any pesticide use which, when used as directed in accordance with a widespread and commonly recognized practice, may be further restricted when the director determines, subsequent to a hearing, that additional restrictions are needed for that use to prevent unreasonable adverse effects on the environment including man, lands, beneficial insects, animals, crops and wildlife, other than pests.

(30) ~~"Wildlife"--means--all--living-things-that-are-neither-human, domesticated,-nor-as-defined-in-this-act,--pests--including,--but--not limited-to,-mammals,-birds-and-aquatic-life~~ "Under the direct supervision of a certified private applicator" means that, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified private applicator if it is applied by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though the certified private applicator is not physically present at the time and place the pesticide is applied.

(31) ~~"Designated--agent"--means--an-employee-or-agent-of-the-state authorized-by-the-director-to-perform--various--duties--in--connection with--enforcement--of--this--act~~ "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(32) ~~"Misbranded"-shall-apply-to-(a)-any-pesticide--or--device--if its--labeling--bears--any--false--or--misleading--statement,-design-or graphic-representation,-and-(b)-any-pesticide-if-such-pesticide-is-not labeled-as-required-by-section-22-3402,-Idaho-Code,-and-(c)-any-pesticide-if-the-labeling-bears-any-reference-to--the--registration--provisions--of--section--22-3402,--Idaho--Code,--unless--such--reference-is required-by-regulations-promulgated-by-the-director~~ "Wildlife" means all living things that are neither human, domesticated, nor as defined in this act, pests, including but not limited to, mammals, birds and aquatic life.

~~(33)-"Adulterated"-means-a-pesticide-is-adulterated-for--the--purpose--of--this-act-if-the-strength-or-purity-of-the-pesticide-is-below the-purported-or-professed-standard-of-quality--as--expressed--in--its labeling,--or-any-substance-has-been-substituted-wholly-or-in-part-for any-ingredient-of-the-pesticide,-or-any-valuable--constituent--thereof has-been-omitted-wholly-or-in-part.~~

~~(34)-"General--use--pesticide"--means-any-pesticide-which-is-not-a restricted-use-pesticide.~~

SECTION 2. That Section 22-3402, Idaho Code, be, and the same is hereby amended to read as follows:

22-3402. REGISTRATION -- LABELS -- INFORMATION REQUIRED -- FEES. (1) Any pesticide which is distributed within this state shall be registered with the department, and such registration ~~whall~~ shall be renewed annually.

(2) The registrant shall file with the department a statement including:

(a) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant; and

(b) the name of the pesticide; and

(c) a complete copy of the labeling except for annual renewals where the registrant has certified that the product label on file with the department is unchanged; and

(d) if requested by the director the registrant shall furnish efficacy data upon which all the label claims are based for those products registered for special local needs as provided for in Section 24(~~e~~c) of the Federal Insecticide, Fungicide, Rodenticide Act; and

(e) such other information as the director may require.

(3) Contents of the label:

(a) All pesticide labels shall contain statements, words, graphic material and any other information required by federal laws; and

(b) all labels for spray adjuvants shall contain but are not limited to:

1. The name of the pesticide; and

2. the name and address of the manufacturer. An unqualified name and address listed on the label shall be considered the manufacturer's name and address; and

3. the registrant's name and address. If the registrant's name appears on the label and the registrant is not the manufacturer, it must be qualified by appropriate wording such as "packaged for or distributed by"; and

4. the net contents; and

5. the name and type of functioning agents. If more than three (3) agents are present, only the three (3) principal agents need be named; and

6. the total percentage of constituents ineffective as a spray adjuvant; and

7. directions for use.

(4) Pesticides which have identical ingredient statements, identical label claims, are manufactured by the same company, and the labels of which bear a designation identifying the products as the same pesticide may be registered as a single pesticide provided the additional product names and labels are supplied and specified as one (1) pesticide.

(5) The director may register a pesticide if he determines that, when considered in connection with any restrictions imposed under section 22-3419, Idaho Code:

(a) Its composition is such as to warrant the proposed claims for it; and

(b) its labeling and other material required to be submitted comply with requirements of federal law and Idaho law; and

(c) it will not cause an unreasonable adverse effect on the environment; and

(d) in the case of an application for registration for a special local need:

1. A special local need exists, and

2. authority to issue the registration in question has been obtained from the administrator of EPA, pursuant to Section 24(~~e~~c), Federal Insecticide, Fungicide, Rodenticide Act.

(6) The registrant shall pay an annual registration fee as prescribed by ~~regulation~~ rule.

(7) If the application for renewal is not filed with the department prior to January 1 of each year a late penalty fee of five dollars ($5.00) per product shall be assessed and added to the original fee and shall be paid prior to the issuing of the renewal registration. No penalty fee shall be assessed if the applicant furnishes an affidavit stating that he did not distribute such unregistered pesticide subsequent to the expiration of registration of that pesticide.

(8) The director, whenever he deems it necessary in the administration of this act, may require the submission of the complete formula of any pesticide.

(9) A registration shall expire on December 31 following issuance unless the registration has been suspended or revoked as provided for in paragraph (10) of this section.

(10) Refusal to register, suspension:

(a) If it does not appear to the director that the composition of the pesticide is such as to warrant the proposed claims for it, or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this act or ~~regulations~~ rules adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this act so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the director may refuse to register the pesticide. The applicant may request a hearing as provided for in the provisions of chapter 52, title 67, Idaho Code.

(b) When the director determines that a pesticide or its labeling does not comply with the provisions of this act or the ~~regulations~~ rules adopted thereunder, or when necessary to prevent unreasonable adverse effects on the environment, he may suspend, revoke, or modify the registration of such pesticide in accordance with the provisions of chapter 52, title 67, Idaho Code.

(11) Exemptions:

(a) The following pesticides are exempt from subsection (1) of this section:

1. A pesticide that is shipped intrastate from one plant to another operated by the same person solely for the purpose of repackaging or for use as a constituent part of another pesticide produced at the second plant; and

2. a pesticide labeled for experimental use only under the

provisions of Section 5 of the Federal Insecticide, Fungicide, Rodenticide Act or section 22-3403, Idaho Code; and

3. a pesticide that is transported through the state to a destination outside of the state; and

4. a pesticide that is manufactured within the state solely for the purpose of exportation.

(b) Federal, state of Idaho, and other governmental agencies are exempt from subsections (6) and (7) of this section.

SECTION 3. That Section 22-3403, Idaho Code, be, and the same is hereby amended to read as follows:

22-3403. EXPERIMENTAL PERMITS. Provided that the state is authorized by the Administrator of EPA to issue experimental permits and subject to the terms and conditions of such authorization, the director may:

(1) Issue an experimental permit to any ~~individual~~ person applying for an experimental permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide for a special local need under section 22-3402(5), Idaho Code, and that the pesticide use ~~to be made~~ under the proposed terms and conditions would not cause unreasonable adverse effects on the environment.

(2) Prescribe terms, conditions, and period of time for the experimental permit.

(3) Revoke or modify any experimental permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

SECTION 4. That Section 22-3404, Idaho Code, be, and the same is hereby amended to read as follows:

22-3404. PESTICIDE APPLICATORS -- CLASSIFICATION LICENSING REQUIREMENTS. (1) The director may classify pesticide applicator licenses issued under this act. Such classifications may include, but are not limited to, ~~commercial applicators, limited applicators,~~ professional and private applicators. Separate licensing requirements and testing procedures may be utilized for each classification.

(2) ~~Commercial~~ Professional Applicators -- no ~~individual~~ person shall act as a ~~commercial~~ professional applicator without first obtaining a ~~commercial~~ professional applicator's license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides in areas relevant to the operations he intends to undertake; and

(c) show proof of financial responsibility as prescribed by ~~regulation~~ rule; and

(d) ~~an applicant must pay an annual license fee and registration fee for each piece of spraying equipment as prescribed by regula-~~

~~tion;-and~~

~~(e)~~ an examination fee will be charged as prescribed by ~~regulation~~ rule and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(~~f~~e) if at any time a licensed ~~commercial~~ professional applicator fails to maintain the financial responsibility required by paragraph (c) of this subsection, his license shall be automatically suspended until the department receives verification that he is in compliance with paragraph (c) of this subsection.

(3) ~~Commercial-Operators~~ Private Applicator -- no ~~individual~~ person shall act as a ~~commercial--operator~~ private applicator without first obtaining a ~~commercial--operator~~ private applicator license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides in areas relevant to the operations he intends to undertake or proper equipment and methods for injecting pesticides or fertilizers through irrigation systems; and

(c) ~~an-examination-fee-will-be-charged-as-prescribed--by--regulation--and--an--additional--examination-fee-of-five-dollars-($5.00)-shall-be-charged-when-an-exam-is-requested-at-other-than--a--regularly-scheduled-examination-date;-and~~

~~(d)~~ an applicant must pay ~~an-annual~~ a license fee as prescribed by ~~regulation;-and~~ rule.

~~(e)--an-applicant-must-be-employed-by-a-licensed-commercial-applicator.~~

~~(4)--Limited-Applicator----no-individual-shall-act--as--a--limited applicator--without--first--obtaining--a--limited-applicator's-license issued-by-the-department.~~

~~(a)--Application-for-a-license-shall-be-on-a--form--prescribed--by the-department;-and~~

~~(b)--an--applicant-must-be-at-least-eighteen-(18)-years-of-age-and must-pass-the-department's-examination-in-order-to-demonstrate-his knowledge-of-how-to-use,-apply-and-handle-pesticides-in-areas-relevant-to-the-operations-he-plans-to-undertake;-and~~

~~(c)--an-examination-fee-will-be-charged-as-prescribed--by--regulation--and--an--additional--examination-fee-of-five-dollars-($5.00)-shall-be-charged-when-an-exam-is-requested-at-other-than--a--regularly-scheduled-examination-date;-and~~

~~(d)--an--applicant-must-pay-an-annual-license-fee-as-prescribed-by regulation.~~

~~(5)--Private-Applicator----no-individual-shall-act--as--a--private applicator--without--first--fulfilling-the-licensing-requirements-prescribed-by-regulation.~~

~~(a)--Application-for-a-license-shall-be-on-a--form--prescribed--by the-department;-and~~

~~(b)--an-applicant-must-be-at-least-eighteen-(18)-years-of-age;-and~~

~~(c)--an--applicant-must-pay-a-license-fee-as-prescribed-by-regulation.~~

(~~6~~4) If the director finds an applicant qualified for a ~~commercial--applicator's--license;--operator's-license;-limited-applicator's license~~ professional or private applicator's license; and if an applicant applying for a license to engage in the application of pesticides has met all of the requirements of any applicable federal or state laws, ~~and~~ regulations and rules, the director shall issue ~~such~~ the license. The license or permit may restrict the applicant to the use of a certain type or types of equipment or pesticides. If a license or permit is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(~~7~~5) The director may by ~~regulation~~ rule require ~~commercial--or limited~~ professional applicators to maintain and furnish records forthwith pertaining to the application of pesticides and other relevant information as he may deem necessary.

~~(8)--License-expiration:~~

~~(a)--Licenses--issued-to-commercial-applicators;-commercial-operators;-and-limited-applicators-shall-expire-on-December-31;-following-issuance-unless-it-has-been-suspended-or-revoked--as--provided for-in-section-22-3409;-Idaho-Code;-and~~

(~~b~~6) ~~L~~licenses issued to professional and private applicators shall expire as designated by the director unless suspended or revoked as provided for in section 22-3409, Idaho Code.

(~~9~~7) Exemptions:

(a) The following ~~individuals~~ persons are exempt from subsections (2), (3)~~,~~ and (4)~~,-(5)-and-(6)~~ of this section:

1. Any ~~farmer~~ person applying pesticides other than restricted-use pesticides ~~restricted-to-use-only-by-certified applicators~~ for himself or on an exchange of service basis, and who does not publicly hold himself out as a ~~commercial~~ professional applicator; and

2. any ~~individual~~ person using hand-powered equipment to apply pesticides other than restricted-use pesticides ~~restricted--to-use-only-by-certified-applicators~~ to lawns, or to ornamental trees and shrubs owned by such person, or as an incidental part of his business of taking care of yards for remuneration, and is not holding himself out as a ~~commercial~~ professional applicator; and

3. any industry, governmental, University of Idaho research personnel and extension research personnel who apply pesticides other than restricted-use pesticides ~~restricted-to--use only--by--certified--applicators~~ to experimental plots or to demonstrate the use of pesticides ~~and-do--not--publicly--hold themselves-out-as-commercial-applicators~~; and

4. any veterinarian who applies pesticides as an integral part of his business and does not publicly hold himself out as a ~~commercial~~ professional applicator.

(b) Federal, state, and other governmental agencies are exempt from the licensing fees provision of subsections (2)~~,~~ and (3) ~~and (4)~~ of this section.

(c) Professional applicators who do not apply pesticides may receive an exemption from the proof of financial responsibility required in subsection (2)(c) of this section, upon submitting a completed form prescribed by the department.

SECTION 5. That Section 22-3405, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Section 22-3406, Idaho Code, be, and the same is hereby amended to read as follows:

22-3406. PESTICIDE DEALERS. No ~~individual~~ person shall act as a pesticide dealer without first obtaining a pesticide dealer's license issued by the department.

(1) Licensing:

(a) Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by ~~regulation~~ rule; and

(b) an applicant who sells restricted-use pesticides must pass the department's examination in order to demonstrate his knowledge of how to use and handle pesticides in areas relevant to the operation he intends to undertake; and

(c) such application shall be due on or before ~~July~~ September 1 of each year; and

(d) a license shall be required for each location, outlet, or warehouse from which such pesticides are distributed; and

(e) for an applicant selling restricted-use pesticides an examination fee will be charged as prescribed by ~~regulation~~ rule and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date.

(2) Records and Reports:

(a) Restricted-use pesticides or devices: The director shall require a pesticide dealer to keep accurate sale and distribution records of restricted-use pesticides or devices as prescribed by ~~regulation of restricted-use pesticides or devices~~ rule;

(i) The director may also require a pesticide dealer to maintain other records and furnish reports for restricted-use pesticides or devices he determines necessary to implement the provisions of this act; and

(ii) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

(iii) The dealer shall be required to post total sales of each restricted-use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by ~~regulation~~ rule.

(b) General use pesticides: The director shall require a pesticide dealer to keep accurate sale and distribution records as prescribed by ~~regulation~~ rule of general use pesticides except those exempted in subsection (4) of this section.

(i) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

(ii) The dealer shall be required to report total sales of each general use pesticide by county and shall not include detailed customer sales records or customer invoice records.

This report shall be furnished to the director no more than two (2) times per year as prescribed by ~~regulation~~ rule; and (iii) The director may require dealers to furnish other reports of these records in the case of emergency as provided by ~~regulation~~ rule.

(3) Pesticide dealers shall sell restricted-use pesticides ~~restricted--to-use-only-by-certified-applicators~~ only to licensed ~~commercial-applicators,-limited--applicators,~~ professional and private applicators, and dealers.

(4) Exemptions:

(a) A manufacturer's representative or wholesale distributor shall be exempt from subsection (1) of this section provided such representative or distributor does not have a warehouse in Idaho that pesticides are sold, stored or distributed from; and

(b) federal, state and other governmental agencies are exempt from the examination and licensing fees of this section; and

(c) the director may exempt a pesticide from the provisions of subsection (1) or (2) of this section by ~~regulation~~ rule if it is determined that licensing or recordkeeping is not necessary for selling the pesticide.

(5) A user of a pesticide, without obtaining a pesticide dealer's license, may for the exclusive purpose of keeping it from becoming a waste, distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide.

SECTION 7. That Section 22-3408, Idaho Code, be, and the same is hereby amended to read as follows:

22-3408. STOP SALE, USE OR REMOVAL ORDER. The department may issue and enforce a written stop sale, use or removal order to the owner or custodian of any pesticide or device to hold such pesticide or device at a designated place when the department finds such pesticide or device being distributed in violation of any of the provisions of this act~~,-regulations~~ or rules, or is likely to cause unreasonable adverse effects on the environment ~~until-released-by-written-order-of the-director~~. The director shall release the pesticide or device ~~so withdrawn~~ by written order when the owner or custodian has complied with all of the provisions of this act and ~~regulations~~ rules.

SECTION 8. That Section 22-3409, Idaho Code, be, and the same is hereby amended to read as follows:

22-3409. DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE OR PERMIT. The director is authorized subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, to deny, suspend, revoke or modify any license or permit provided for in this act in any case in which he finds that the holder of an applicator's license, operator's license or permit has been convicted or is subject to a final order imposing a civil penalty under Section 14, Federal Insecticide, Fungicide, Rodenticide Act, or that there has been a failure or refusal to comply with the provisions of this act or ~~regulations~~ rules promulgated by the director.

SECTION 9. That Section 22-3411, Idaho Code, be, and the same is hereby amended to read as follows:

22-3411. CHANGE OF ADDRESS OR PLACE OF BUSINESS. Any ~~individual~~ person who has been issued a license or permit under the provisions of this act shall immediately notify the department in writing when he changes his address or place of business.

SECTION 10. That Section 22-3416, Idaho Code, be, and the same is hereby amended to read as follows:

22-3416. COOPERATION WITH OTHER AGENCIES. The director is authorized to cooperate with and enter into agreements with any other state or federal agency in order to carry out the provisions of this act and to assure uniformity of rules and regulations.

SECTION 11. That Section 22-3418, Idaho Code, be, and the same is hereby amended to read as follows:

22-3418. RESTRICTED PESTICIDE USE. (1) The director may by ~~regulation~~ rule restrict or prohibit the use of pesticides if he finds that the labeled use of such pesticides requires the ~~regulations~~ rules restricting their use are necessary to prevent injury to land, people, animals, crops or the environment other than the pests of vegetation which they are intended to destroy.

(2) The areas affected, and the time and conditions of use of such restricted-use pesticides shall be prescribed by ~~regulation~~ rule.

SECTION 12. That Section 22-3419, Idaho Code, be, and the same is hereby amended to read as follows:

22-3419. PROCEDURE FOR ESTABLISHING A RESTRICTED AREA. (1) The director may upon his own initiative, or upon the petition of a number of owners, lessees or operators of land in an area within a county or two (2) or more contiguous counties in the state may, if it is deemed necessary, issue a proposal to establish a restricted area. The proposal shall set forth the boundaries of the area and the ~~regulations~~ rules proposed to govern the use of pesticides. The director shall hold a hearing in accordance with the provisions of the ~~A~~administrative ~~P~~procedures ~~A~~act, chapter 52, title 67, Idaho Code, at a place in reasonable proximity to the proposed area. As soon as possible after completion of the hearing, the director shall make ~~regulations~~ rules applicable thereto or refuse to take such action. The order shall be based on substantial evidence of record at the hearing and shall include findings of fact upon which it is based; Provided, however, that whenever twenty-five (25) or more landowners, representing at least seventy percent (70%) of the acres of land situated within the proposed area, shall sign a petition requesting that a referendum be held, the director shall then conduct a referendum as set forth in subsection (2) of this section.

(2) Whenever in the judgment of the director, the need for the creation of a restricted area cannot be adequately determined by the director after investigation, the director shall conduct a referendum

on this question of necessity, by ballot in the area concerned at a public hearing, after notice, setting the time and place, once each week for two (2) weeks before the hearing has been published in a newspaper of general circulation in the area affected. Any ~~individual~~ person owning, leasing or operating three (3) acres or more within the proposed area is eligible to vote in the referendum. Unless the votes cast in favor of the creation of a restricted area constitute a two-thirds (2/3) majority of those voting, the area shall not be created. If there is such majority, the director shall then issue a proposal in accordance with subsection (1) of this section.

SECTION 13. That Section 22-3420, Idaho Code, be, and the same is hereby amended to read as follows:

22-3420. PROHIBITED ACTS. No person shall:

(1) Use a pesticide in a manner inconsistent with its labeling except as provided for by ~~regulation~~ rule.

(2) Make pesticide recommendations in a manner inconsistent with its labeling except as provided for by ~~regulation~~ rule.

(3) Make false or misleading claims through any media relating to the effect of pesticides or application methods to be utilized.

(4) Operate a faulty or unsafe pesticide spray apparatus, aircraft, or other application device or equipment.

(5) Apply ineffective or improper pesticides.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this act.

(7) Apply pesticides in a faulty, careless, or negligent manner.

(8) Refuse or neglect to keep and maintain records required by the provisions of this act, or to make reports when and as often as required.

(9) Distribute, sell or offer for sale any pesticide or device which is misbranded.

(10) Formulate, distribute, sell or offer for sale any pesticide which is adulterated.

(11) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken container.

(12) Refuse or neglect to comply with any limitations or restrictions placed on a license or permit issued under the provisions of this act.

(13) Refuse or neglect to comply with any other provisions of this act or ~~regulation~~ rule, or any lawful order of the director.

(14) Aid or abet a licensed or an unlicensed ~~individual~~ person to evade the provisions of this act, conspire with such licensed or an unlicensed person to evade the provisions of this act, or allow one's license or permit to be used by another ~~individual~~ person.

(15) Make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.

(16) Impersonate any federal, state, county or city inspector or official.

(17) No person shall use or supervise the use of any restricted-use pesticide ~~which is restricted to use by certified applicators~~, or any state restricted-use pesticide ~~use which is restricted to use by~~

~~certified--applicators,~~ without that ~~individual's~~ person's first complying with the licensing requirements pursuant to this act, and such other restrictions as had been determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator, ~~individuals~~ persons, or land, provided, that a competent ~~individual~~ person who is not a certified applicator but an employee of a licensed ~~limited-or~~ private applicator may use a restricted-use pesticide or a state restricted-use pesticide under the direct supervision of the licensed ~~limited--or~~ private applicator unless otherwise prescribed by the labeling of the pesticide.

SECTION 14. That Section 22-3421, Idaho Code, be, and the same is hereby amended to read as follows:

22-3421. ADOPTION AND SCOPE OF ~~REGULATIONS~~ RULES. (1) The director is authorized to adopt appropriate ~~regulations~~ rules for carrying out the purpose and provisions of this act including but not limited to ~~regulations~~ rules providing for:

(a) The collection and examination of samples of pesticides or devices; and

(b) the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; and

(c) procedures in making pesticide recommendations; and

(d) procedures for obtaining permits;

(e) regulating the labeling of devices; and

(f) procedures to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons. For the purpose of this section, the department may become a hazardous waste generator, and may set fees to partially offset an agricultural chemical waste disposal program's cost.

(2) Such rules ~~and regulations~~ shall be promulgated in accordance with chapter 52, title 67, Idaho Code.

SECTION 15. That Section 22-3422, Idaho Code, be, and the same is hereby amended to read as follows:

22-3422. PENALTIES FOR OPERATING WITHOUT LICENSE. Any ~~individual~~ person operating as a ~~pest control consultant, commercial applicator, limited applicator,~~ professional or private applicator~~,--commercial operator,~~ or dealer without a license shall forfeit to the state for each day's operation one hundred dollars ($100) as a civil penalty and such operation may be enjoined upon complaint of the director.

SECTION 16. That Section 22-3423, Idaho Code, be, and the same is hereby amended to read as follows:

22-3423. PENALTY FOR VIOLATIONS. (1) Any person who shall forge, alter, counterfeit, simulate or falsely represent, or who shall without proper authority use any license issued by the director under this act, or who shall violate or fail to comply with any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or imprisoned in the county

jail for not less than three (3) months nor more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any provision of this act or any ~~regulations~~ rules promulgated under this act may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars ($3,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedures act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule ~~or regulation~~ shall be deposited in the state treasury and credited to the pesticide account of the department.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interests will be best served by suitable warnings or other administrative action.

SECTION 17. That Section 22-3424, Idaho Code, be, and the same is hereby amended to read as follows:

22-3424. REVIEW OF ACTION OF DIRECTOR. Any ~~individual~~ person who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with the provisions of the ~~A~~administrative ~~P~~procedures ~~A~~act, chapter 52, title 67, Idaho Code. The review may be obtained by filing in the district court within thirty (30) days' notice of the action of the director, a written petition praying that such action be set aside. A copy of such petition shall forthwith be delivered to the director, and within thirty (30) days thereafter the director shall certify and file in the district court of the area affected a transcript of any record pertaining thereto, including a transcript of evidence received at any hearing of referendum. The district court shall give notice, by United States mail, to the director of the department of agriculture, at Boise, Idaho, and to the petitioner or petitioners, of the time and place at which ~~he~~ the court will hear such petition, at which time any interested party may be heard. Upon completion of the hearing the court shall affirm, set aside or modify the action of the director, except that the findings of the director as to the facts, if supported by substantial evidence, shall be conclusive.

SECTION 18. That Section 22-3426, Idaho Code, be, and the same is hereby amended to read as follows:

22-3426. UNIFORMITY OF STATE PESTICIDE ~~REGULATION~~ RULE. Notwithstanding any other provision of law to the contrary, no city, county, taxing district or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, resolution or statute regarding pesticide sale, use, or application including without limitation: registration, notification of use, advertising and marketing, distribution, application methods, applicator training and certification, storage, transportation, disposal, disclosure of confidential information or product composition. Nothing contained in this section shall prohibit or limit fire prevention personnel or fire extinguishing personnel of a city, county or fire protection district from conducting inspections pursuant to or enforcing the Uniform Fire Code.

Approved February 9, 1996.

CHAPTER 23
(H.B. No. 555)

AN ACT

APPROPRIATING MONEYS TO THE REGULATORY BOARDS IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 299, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 299, Laws of 1995, there is hereby appropriated to the regulatory boards in the Department of Self-Governing Agencies the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS:			
FROM:			
State Regulatory Fund	$2,400	$20,500	$22,900
B. COMMISSION ON HISPANIC AFFAIRS:			
FROM:			
General Fund	$2,400		$ 2,400
TOTAL	$4,800	$20,500	$25,300

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 9, 1996.

CHAPTER 24
(H.B. No. 485)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCE TO THE INTERNAL REVENUE CODE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 19~~95~~6.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved February 14, 1996.

CHAPTER 25
(H.B. No. 554)

AN ACT

RELATING TO THE APPROPRIATION FOR PUBLIC SCHOOLS FOR FISCAL YEAR 1996; AMENDING CHAPTER 89, LAWS OF 1995; PROVIDING FOR A TRANSFER FROM THE BUDGET RESERVE FUND TO THE GENERAL FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 89, Laws of 1995, be, and the same is hereby amended to read as follows:

SECTION 1. It is legislative intent that the following amount shall be expended from state sources for public schools for the period July 1, 1995, through June 30, 1996:

FROM:

General Fund ~~$664,000,000~~ 659,920,000

Dedicated Funds:		
Endowment Fund Income	~~$24,000,000~~	
	27,100,000	
Department of Lands	4,501,400	
Liquor Fund	1,200,000	
Miscellaneous Receipts	3,298,600	
Total Dedicated Funds		~~33,000,000~~
		36,100,000
TOTAL		~~$697,000,000~~
		696,020,000

SECTION 2. There is hereby appropriated from the General Fund for public schools, the following amount to be transferred to the Public School Income Fund for the period July 1, 1995, through June 30, 1996:

FROM:

General Fund	~~$664,000,000~~
	659,920,000

SECTION 3. There is hereby appropriated from the Public School Income Fund to be expended for the Educational Support Program pursuant to law and the provisions of this act, not to exceed ~~$697,000,000~~696,020,000 for the period July 1, 1995, through June 30, 1996.

SECTION 4. There is hereby appropriated from the Public School Income Fund the amount necessary for the Unemployment Insurance Program to be expended according to Section 72-1349C, Idaho Code, for the period July 1, 1995, through June 30, 1996.

SECTION 5. It is legislative intent that $1,000,000 of the moneys appropriated in this act shall be distributed as follows: $500,000 for academic improvement and $500,000 for reading improvement. The moneys for reading improvement shall be allocated to the districts on the basis of fall student enrollment.

SECTION 6. It is legislative intent that $10,400,000 of the moneys appropriated in this act shall be expended by the Superintendent of Public Instruction as follows: $3,400,000 for ongoing expenditures and $7,000,000 for one-time expenditures for the Public School Technology Program upon direction of the State Council for Technology in Learning, in accordance with Section 33-4806, Idaho Code.

SECTION 7. It is legislative intent that an amount not to exceed $80,000 of the $10,400,000 referenced in Section 6 of this act shall be expended by the Superintendent of Public Instruction for the various expenses of the State Council for Technology in Learning as approved by the State Board of Education.

SECTION 8. It is legislative intent that ~~$1,000,000~~20,000 of the moneys appropriated in this act be expended by the Superintendent of Public Instruction for school improvement projects and activities as recommended by the Idaho School Reform Committee and approved by the State Board of Education.

SECTION 9. It is legislative intent that $1,000,000 of the moneys appropriated in this act be distributed for support of programs for students with non-English or limited English proficiency. Unless otherwise provided for in statute, the funding for limited English proficiency programs shall be allocated to school districts based upon the population of limited English proficient students under rules established by the State Board of Education.

SECTION 2. If the unexpended and unencumbered balance in the General Fund as of June 30, 1996, is negative, the State Controller shall make a cash transfer of the amount of the negative balance or $9,200,000, whichever is less, from the Budget Reserve Fund to the General Fund.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 14, 1996.

CHAPTER 26
(H.B. No. 535)

AN ACT

RELATING TO EMERGENCY MEDICAL SERVICES; REPEALING SECTIONS 39-131 THROUGH 39-136, IDAHO CODE; AMENDING SECTION 39-140, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE APPLICATION TO EMERGENCY MEDICAL SERVICES; AMENDING SECTION 39-141, IDAHO CODE, TO REDESIGNATE THE SECTION, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-141, IDAHO CODE, TO DEFINE AUTHORIZED ACTIONS; AMENDING SECTION 39-142, IDAHO CODE, TO CLARIFY APPLICATION OF LIABILITY TO PERSONS CERTIFIED UNDER THIS ACT; AMENDING SECTION 39-143, IDAHO CODE, TO CLARIFY APPLICATION OF THIS ACT WHEN THERE IS FAILURE TO OBTAIN CONSENT; AMENDING SECTION 39-144, IDAHO CODE, TO INCLUDE NON-TRANSPORT SERVICES AND VEHICLES WITHIN THE PROVISIONS OF THIS ACT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 39-145, IDAHO CODE, TO STRIKE OBSOLETE LANGUAGE, TO PROVIDE RULEMAKING AUTHORITY TO THE BOARD OF MEDICINE AND TO CLARIFY APPLICATION OF THE SECTION.

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

SECTION 1. That Sections 39-131 through 39-136, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 39-140, Idaho Code, be, and the same is hereby amended to read as follows:

39-140~~39~~. ~~BASIC LIFE SUPPORT~~ EMERGENCY MEDICAL SERVICES -- STATEMENT OF INTENT. It is the purpose of the legislature of the state of

Idaho in the adoption of this act to recognize the importance of the delivery of emergency ~~care~~ medical services and to provide reasonable regulation of the same. For this purpose, this act specifically states that the provisions of section 54-1803, Idaho Code, shall not be so construed as to prohibit or penalize emergency ~~care~~ medical services rendered by ~~basic-life-support-personnel-as-these-terms-are-defined-in this-act~~ a person authorized to render emergency medical services by this act, if such emergency medical service is rendered under the responsible supervision and control of a licensed physician.

SECTION 3. That Section 39-141, Idaho Code, be, and the same is hereby amended to read as follows:

39-14~~1~~0. DEFINITIONS. As used in this act:

(1) "Ambulance" means any privately or publicly owned ground vehicle, nautical vessel, fixed wing aircraft or rotary wing aircraft used for, or intended to be used for the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with the provisions of this act and specifications established by the board of health and welfare.

(2) "Board of health and welfare" means the Idaho board of health and welfare.

(3) "Board of medicine" means the Idaho board of medicine as provided in chapter 18, title 54, Idaho Code.

(4) "Certified ~~Basic-Life-Support~~ Personnel" means individuals who have completed training and successfully passed examinations for training and skills proficiency in one (1) or several levels ~~of--basic life-support-activity-as-prescribed-and~~ as certified by the department of health and welfare. These several levels of ~~basic-life-support-services~~ certified personnel shall include:

(a) FR -- "First Responder" (hereafter FR) means an individual certified by the EMS bureau of the Idaho department of health and welfare as a FR on the basis of successful completion of a FR course approved by the board of health and welfare and subsequent required continuing training.

(b) EMT-B -- "Emergency Medical Technician-Basic" (hereafter EMT-B) means an individual certified by the EMS bureau of the Idaho department of health and welfare on the basis of successful completion of an EMT-B course approved by the board of health and welfare and subsequent required continuing training.

(c) "Ambulance Rating" means a certification issued by the EMS bureau of the Idaho department of health and welfare to an EMT-B on the basis of successful completion of supervised infield ambulance experience as defined by the board of health and welfare.

(d) "Advanced Emergency Medical Technician-Ambulance" (hereafter advanced EMT-A) means a person who:

(i) Is certified by the EMS bureau of the Idaho department of health and welfare on the basis of successful completion of EMT-A training and in addition, has completed at least fifty (50) hours of advanced training in such techniques as intravenous fluid therapy, antishock trouser application, airway management, and subsequent required continued train-

ing; and

(ii) Has received additional training by a licensed physician:

(A) To administer drugs under written or oral authorization of a licensed physician; and

(B) To perform such other acts under written or oral authorization of a licensed physician as shall be authorized by the board of medicine; and

(iii) Has been examined and certified as an advanced EMT-A by an authorized representative of the department.

(e) "Emergency Medical Technician-Paramedic" (hereafter EMT-P) means a person who:

(i) Has completed all the requirements for certification as an EMT-P; and

(ii) Has successfully completed a course in intensive patient care including the required training under the supervision of a licensed physician, including training in cardiac defibrillation, cardiac monitoring, endotracheal intubation and drug administration; and

(iii) Has been examined and certified as an EMT-P by an authorized representative of the department.

(5) "Department" means the Idaho department of health and welfare.

(~~4~~6) "Emergency Medical Services" means the services utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(7) "Non-Transport Service" means a service licensed by the department of health and welfare, EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended to be the service that will actually transport sick or injured persons.

(~~5~~8) "Non-Transport Vehicle" means any vehicle licensed by the department of health and welfare, EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons.

(9) "Supervision" means the medical direction by a licensed physician of activities provided by certified personnel affiliated with a licensed ambulance or non-transport service, including, but not limited to: establishing standing orders and protocols, reviewing performance of certified personnel, providing instructions for patient care via radio or telephone, and other oversight.

(~~6~~10) "Transfer" means the transportation of a patient from one (1) medical care facility to another.

SECTION 4. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-141, Idaho Code, and to read as follows:

39-141. AUTHORIZED ACTIONS. Persons certified by the department shall be authorized to perform such acts under written or oral autho-

rization of a licensed physician as shall be established by rules of the board of medicine, including, but not limited to, administration of intravenous solutions and drugs, cardiac defibrillation, antishock trouser application, airway management, endotracheal intubation, and other patient care.

SECTION 5. That Section 39-142, Idaho Code, be, and the same is hereby amended to read as follows:

39-142. LIABILITY. No act or omission of any ~~basic--life--support personnel~~ person who ~~are~~ is duly certified under this act by the department of health and welfare done or omitted in good faith while rendering emergency ~~care~~ medical services to a person or persons who are perceived to need immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury shall impose any liability upon those personnel, the ~~general~~ supervising physician, the hospital, the organization providing the service, or upon a federal, state, county, city or other local governmental unit, or upon employees of such governmental unit, unless such provider of care or such personnel be shown to have caused injury and damages to such person or persons as a proximate result of his, her or their reckless or grossly negligent misconduct, which shall be the sole grounds for civil liability of such persons in the provision of care or assistance under this act, regardless of the circumstance under which such care or assistance may be provided. This section shall not relieve the organization or agency operating the service from the duty of securing, maintaining and operating, the equipment designated for use in performing the emergency ~~care~~ medical services.

SECTION 6. That Section 39-143, Idaho Code, be, and the same is hereby amended to read as follows:

39-143. FAILURE TO OBTAIN CONSENT. No ~~basic-life-support-personnel~~ person certified under this act or physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency ~~care~~ medical, surgical, hospital or health services to any individual regardless of age where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, that ~~the-services-were-provided~~ such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. The provision or refusal of consent under this act shall be governed by chapter 43, title 39, Idaho Code.

SECTION 7. That Section 39-144, Idaho Code, be, and the same is hereby amended to read as follows:

39-144. AMBULANCE MINIMUM STANDARDS. Each ambulance service and non-transport service shall be licensed by the department and shall meet the following standards ~~by July 1, 1993~~:

(1) Ambulance vehicles -- Each new ambulance vehicle purchased after the effective date of these standards shall conform to the ambu-

lance vehicle specifications for that type established by the board of health and welfare. The patient compartment of each ambulance vehicle shall be maintained in a clean and sanitary condition.

(2) Ambulance equipment -- Each ambulance shall be equipped with the patient care items deemed essential for ~~for~~ that type of ambulance by the board of health and welfare.

(3) Ambulance personnel -- There shall be at least two (2) ambulance crew members on each patient transport, with the crew member delivering patient care being, at a minimum, a state certified emergency medical technician (EMT), except that with the patient's and the patient's physician's permission, an EMT attendant shall not be required on routine, nonemergency transfer calls.

(4) Ambulance dispatch -- Each ambulance service shall have a twenty-four (24) hour dispatch arrangement and shall respond to calls on a twenty-four (24) hour basis.

(5) Ambulance inspections and licensing -- The department of health and welfare, EMS bureau, shall conduct inspections at least annually related to ambulance service licensing or shall contract to have the inspections carried out. Each ambulance and ~~nontransport~~ non-transport vehicle shall have a current state license in order to operate.

(6) Ambulance minimum standards waiver -- The controlling authority providing ambulance services may petition the board of health and welfare for waiver of the ambulance standards of this act, if compliance with these standards would cause undue hardship on the community being served, or would result in abandonment of ambulance services.

(7) All ambulances in service on the effective date of this act are accorded "grandfather rights," and are therefore exempt from the ambulance vehicle specifications established by the board of health and welfare, whether or not such ambulances continue under the control of the same authority.

SECTION 8. That Section 39-145, Idaho Code, be, and the same is hereby amended to read as follows:

39-145. RULES ~~AND REGULATIONS~~. (1) The board of medicine is authorized and directed to adopt appropriate rules defining the allowable scope of practice and acts and duties which can be performed by persons certified by the department and the required level of supervision by a licensed physician.

(2) The board of health and welfare is authorized and directed to ~~establish~~ adopt appropriate rules~~, regulations~~ and standards concerning the administration of this act, including criteria for training programs, certification of personnel, ~~for~~ licensure of ambulances~~, determination of acts which may be performed by basic life support personnel~~ and non-transport services, licensure of ambulance and non-transport vehicles, establishment of fees for training, inspections, and certifications, and appropriate requirements for recertification of personnel and equipment~~, and other necessary and proper matters~~. The rules of the board of health and welfare must be consistent with the rules adopted by the board of medicine.

(3) Additionally, the ~~board~~ department shall ~~prescribe~~ develop guidelines, standards and procedures for ~~handling or containment of~~

reducing exposure to pathogens from human blood, tissue or fluids ~~encountered at crime and accident scenes~~. Such guidelines, standards and procedures shall be ~~provided~~ made available to all law enforcement personnel, all emergency medical services personnel ~~and all fire department personnel~~, and such other emergency personnel as ~~necessary~~ request such information.

Approved February 14, 1996.

CHAPTER 27
(S.B. No. 1290)

AN ACT

RELATING TO PUBLIC SCHOOL FUNDING; AMENDING SECTION 33-1707, IDAHO CODE, TO CHANGE THE DATES WHEN REIMBURSEMENT FOR DRIVER TRAINING PROGRAMS SHALL OCCUR.

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

SECTION 1. That Section 33-1707, Idaho Code, be, and the same is hereby amended to read as follows:

33-1707. REIMBURSEMENT -- DETERMINATION -- CERTIFICATION. a. From the data provided by the school district, as required by section 33-1706, Idaho Code, the state department of education shall compute the average of the number of pupils enrolling in the course and those completing the same, and determine for such average number, the per-pupil cost thereof.

The amount due the district from the driver training fund in the state treasury shall be the total cost of operating the program, or the average of the number enrolling in the course and those completing the same, multiplied by one hundred ten dollars ($110), whichever is the lesser.

b. On or before the fifteenth day of ~~March~~ February, and the ~~fifteenth~~ thirtieth day of ~~August~~ June, and the fifteenth day of ~~October~~ September in each year, the state superintendent of public instruction shall certify to the state controller a list of school districts having submitted the reports required in section 33-1706, Idaho Code, and the amount of money due to each as computed under the provisions of subsection a. of this section. The state controller shall draw his warrants against the driver training account in the state treasury, in favor of the several districts entitled thereto, in the amount so certified. Annually, not later than the first day of September in each year, the state superintendent of public instruction shall cause the supervisor of driver training to prepare a report listing the names of the school districts having submitted the reports as required in section 33-1706, Idaho Code, and the amounts of money paid each as computed under the provisions of subsection a. of this section.

Approved February 14, 1996.

CHAPTER 28
(H.B. No. 392)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-604, IDAHO CODE, TO REVISE RESIDENCY REQUIREMENTS, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-605, IDAHO CODE, TO REVISE RESIDENCY REQUIREMENTS, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-607, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-608, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-609, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-610, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-611, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-612, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-613, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-614, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-615, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-616, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-617, IDAHO CODE, TO DELETE PETITION REQUIREMENTS; AMENDING SECTION 34-618, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 34-619, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-620, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-621, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 34-622, IDAHO CODE, TO DELETE PETITION REQUIREMENTS AND TO INCREASE FILING FEES; AMENDING SECTION 34-623, IDAHO CODE, TO DELETE PETITION REQUIREMENTS; AMENDING SECTION 34-624, IDAHO CODE, TO DELETE PETITION REQUIREMENTS; REPEALING SECTION 34-626, IDAHO CODE; AMENDING CHAPTER 6, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-626, IDAHO CODE, TO PROVIDE FOR A PETITION IN LIEU OF A FILING FEE; AMENDING SECTION 34-702, IDAHO CODE, TO PROVIDE A NUMERICAL MINIMUM NUMBER OF VOTES THAT CANDIDATES MUST RECEIVE AT A PRIMARY ELECTION; AMENDING SECTION 34-708, IDAHO CODE, TO PROVIDE A SCHEDULE OF THE MINIMUM NUMBER OF SIGNATURES AND TO PROVIDE VERIFICATION REQUIREMENTS; AMENDING SECTION 34-708A, IDAHO CODE, TO PROVIDE VERIFICATION REQUIREMENTS; AMENDING SECTION 34-714, IDAHO CODE, TO DELETE REFERENCE TO A PETITION REQUIREMENT; AMENDING SECTION 34-715, IDAHO CODE, TO DELETE REFERENCE TO A PETITION REQUIREMENT; REPEALING SECTION 34-1904, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-604, Idaho Code, be, and the same is hereby amended to read as follows:

34-604. ELECTION OF UNITED STATES SENATOR -- QUALIFICATIONS. (1) At the general election, 1972, and every six (6) years thereafter, there shall be elected one (1) United States senator. At the general election, 1974, and every six (6) years thereafter, there shall be elected one (1) United States senator.

(2) No person shall be elected to the office of United States senator unless he has attained the age of thirty (30) years at the time of his election, has been a citizen of the United States at least nine (9) years and shall ~~have~~ resided within the state ~~two (2) years next preceding~~ at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~two~~ five hundred ~~fifty~~ dollars ($~~25~~00) which shall be deposited in the general fund.

SECTION 2. That Section 34-605, Idaho Code, be, and the same is hereby amended to read as follows:

34-605. ELECTION OF UNITED STATES CONGRESSIONAL REPRESENTATIVES -- QUALIFICATIONS. (1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each United States congressional district a member of the United States house of representatives and any additional number of representatives to which the state may be entitled in the state at large.

(2) No person shall be elected to the house of representatives unless he has attained the age of twenty-five (25) years at the time of his election, has been a citizen of the United States at least seven (7) years and shall ~~have~~ resided within the state ~~for two (2) years next preceding~~ at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of five hundred (500) qualified electors who reside within the congressional district.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ three hundred ~~fifty~~ dollars ($~~15~~300) which shall be deposited in the general fund.

SECTION 3. That Section 34-607, Idaho Code, be, and the same is hereby amended to read as follows:

34-607. ELECTION OF GOVERNOR -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a governor shall be elected.

(2) No person shall be elected to the office of governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto, a petition which shall contain the signatures of one thousand (1000)~~

~~qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ three hundred ~~fifty~~ dollars ($~~15~~300) which shall be deposited in the general fund.

SECTION 4. That Section 34-608, Idaho Code, be, and the same is hereby amended to read as follows:

34-608. ELECTION OF LIEUTENANT GOVERNOR -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, there shall be elected a lieutenant governor.

(2) No person shall be elected to the office of lieutenant governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto, a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ two hundred dollars ($~~1~~200) which shall be deposited in the general fund.

SECTION 5. That Section 34-609, Idaho Code, be, and the same is hereby amended to read as follows:

34-609. ELECTION OF SECRETARY OF STATE -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a secretary of state shall be elected.

(2) No person shall be elected to the office of secretary of state unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ two hundred dollars ($~~1~~200) which shall be deposited in the general fund.

SECTION 6. That Section 34-610, Idaho Code, be, and the same is hereby amended to read as follows:

34-610. ELECTION OF STATE CONTROLLER -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a state controller shall be elected.

(2) No person shall be elected to the office of state controller unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with

the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ two hundred dollars ($~~1~~2~~00~~) which shall be deposited in the general fund.

SECTION 7. That Section 34-611, Idaho Code, be, and the same is hereby amended to read as follows:

34-611. ELECTION OF STATE TREASURER -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a state treasurer shall be elected.

(2) No person shall be elected to the office of state treasurer unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ two hundred dollars ($~~1~~2~~00~~) which shall be deposited in the general fund.

SECTION 8. That Section 34-612, Idaho Code, be, and the same is hereby amended to read as follows:

34-612. ELECTION OF ATTORNEY GENERAL -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, an attorney general shall be elected.

(2) No person shall be elected to the office of attorney general unless he shall have attained the age of thirty (30) years at the time of his election, is admitted to the practice of law within the state, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ two hundred dollars ($~~1~~2~~00~~) which shall be deposited in the general fund.

SECTION 9. That Section 34-613, Idaho Code, be, and the same is hereby amended to read as follows:

34-613. ELECTION OF SUPERINTENDENT OF PUBLIC INSTRUCTION -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a superintendent of public instruction shall be elected.

(2) No person shall be elected to the office of superintendent of public instruction unless he shall have attained the age of twenty-

five (25) years at the time of his election, is a citizen of the United States, has a bachelor's degree from an accredited college or university, and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ two hundred dollars ($~~1~~200) which shall be deposited in the general fund.

SECTION 10. That Section 34-614, Idaho Code, be, and the same is hereby amended to read as follows:

34-614. ELECTION OF STATE REPRESENTATIVES AND SENATORS -- QUALIFICATIONS. (1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each legislative district such representatives and senators as they may be severally entitled.

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of at least fifty (50) but not more than two hundred (200) qualified electors which reside within the legislative district.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~fifteen~~ thirty dollars ($~~15~~30.00) which shall be deposited in the general fund.

SECTION 11. That Section 34-615, Idaho Code, be, and the same is hereby amended to read as follows:

34-615. ELECTION OF JUSTICES OF THE SUPREME COURT -- QUALIFICATIONS. (1) At the primary election, 1972, and every alternate year thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected justices of the Supreme Court to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) No person shall be elected to the office of justice of the Supreme Court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and has resided within this state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of one thousand (1000) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~one~~ three hundred ~~fifty~~ dollars (~~$15~~300) which shall be deposited in the general fund.

SECTION 12. That Section 34-616, Idaho Code, be, and the same is hereby amended to read as follows:

34-616. ELECTION OF DISTRICT JUDGES -- QUALIFICATIONS. (1) At the primary election, 1974, and every four (4) years thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected in each judicial district a sufficient number of district judges to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) No person shall be elected to the office of judge of the district court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and shall have resided within the judicial district one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state. ~~Each declaration shall have attached thereto a petition which shall contain the signatures of two hundred (200) qualified electors which reside within the judicial district.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~seventy-five~~ one hundred fifty dollars (~~$75.00~~150) which shall be deposited in the general fund.

SECTION 13. That Section 34-617, Idaho Code, be, and the same is hereby amended to read as follows:

34-617. ELECTION OF COUNTY COMMISSIONERS -- QUALIFICATIONS. (1) A board of county commissioners shall be elected in each county at the general elections as provided by section 31-703, Idaho Code.

(2) No person shall be elected to the board of county commissioners unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States, and shall have resided in the county one (1) year next preceding his election and in the district which he represents for a period of ninety (90) days next preceding the primary election.

(3) Each candidate shall file his declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition which contains the signatures of not less than five (5) nor more than ten (10) qualified electors from his commissioner district.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

SECTION 14. That Section 34-618, Idaho Code, be, and the same is hereby amended to read as follows:

34-618. ELECTION OF COUNTY SHERIFFS -- QUALIFICATIONS. (1) At the general election, 1972, and every four (4) years thereafter, a sheriff

shall be elected in every county.

(2) No person shall be elected to the office of sheriff unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition--which contains the signatures of not less than five (5) nor more than ten (10) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

SECTION 15. That Section 34-619, Idaho Code, be, and the same is hereby amended to read as follows:

34-619. ELECTION OF CLERKS OF DISTRICT COURTS -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a clerk of the district court shall be elected in every county. The clerk of the district court shall be the ~~ex-officio~~ ex officio auditor and recorder.

(2) No person shall be elected to the office of clerk of the district court unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition--which contains the signatures of not less than five (5) nor more than ten (10) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

SECTION 16. That Section 34-620, Idaho Code, be, and the same is hereby amended to read as follows:

34-620. ELECTION OF COUNTY TREASURERS -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a county treasurer shall be elected in every county. The county treasurer shall be the ~~ex-officio~~ ex officio public administrator and ~~ex-officio~~ ex officio tax collector.

(2) No person shall be elected to the office of county treasurer unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition--which contains the signatures of not less than five (5) nor more than ten (10) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

SECTION 17. That Section 34-621, Idaho Code, be, and the same is hereby amended to read as follows:

34-621. ELECTION OF COUNTY ASSESSORS -- QUALIFICATIONS. (1) At the general election, 1974, and every four (4) years thereafter, a county assessor shall be elected in every county.

(2) No person shall be elected to the office of county assessor unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition--which contains the signatures of not less than five (5) nor more than ten (10) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

SECTION 18. That Section 34-622, Idaho Code, be, and the same is hereby amended to read as follows:

34-622. ELECTION OF COUNTY CORONERS -- QUALIFICATIONS. (1) At the general election, 1986, and every four (4) years thereafter, a coroner shall be elected in every county.

(2) No person shall be elected to the office of coroner unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition--which contains the signatures of not less than five (5) nor more than ten (10) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ~~ten~~ forty dollars ($~~1~~40.00) which shall be deposited in the county treasury.

SECTION 19. That Section 34-623, Idaho Code, be, and the same is hereby amended to read as follows:

34-623. ELECTION OF COUNTY PROSECUTING ATTORNEYS -- QUALIFICATIONS. (1) At the general election, 1984, and every four (4) years thereafter, a prosecuting attorney shall be elected in every county.

(2) No person shall be elected to the office of prosecuting attorney unless he has attained the age of twenty-one (21) years at the time of his election, is admitted to the practice of law within this state, is a citizen of the United States and a qualified elector within the county.

(3) Each candidate shall file his declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition which contains the signatures of not less than five (5) nor--more than ten (10) qualified electors.~~

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall

be deposited in the county treasury.

SECTION 20. That Section 34-624, Idaho Code, be, and the same is hereby amended to read as follows:

34-624. ELECTION OF PRECINCT COMMITTEEMEN -- QUALIFICATIONS. (1) At the primary election, 1980, and every two (2) years thereafter, a precinct committeeman for each political party shall be elected in every voting precinct within each county. The term of office of a precinct committeeman shall be from the eighth day following the primary election until the eighth day following the next succeeding primary election.

(2) No person shall be elected to the office of precinct committeeman unless he has attained the age of eighteen (18) years at the time of his election, is a citizen of the United States and shall have resided within the voting precinct for a period of six (6) months next preceding his election.

(3) Each candidate shall file a declaration of candidacy with the county clerk. ~~Each declaration shall have attached thereto a petition which contains the signatures of not less than five (5) nor more than ten (10) qualified electors from his precinct.~~

(4) No filing fee shall be charged any candidate at the time of his filing his declaration of candidacy.

SECTION 21. That Section 34-626, Idaho Code, be, and the same is hereby repealed.

SECTION 22. That Chapter 6, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-626, Idaho Code, and to read as follows:

34-626. PETITION IN LIEU OF FILING FEE. In lieu of paying the filing fee, candidates may qualify for the offices mentioned in section 34-604 through section 34-623, Idaho Code, by filing a declaration of candidacy and a nominating petition. The petition shall contain the signatures of qualified electors as follows:

(a) One thousand (1,000) for any statewide office;

(b) Five hundred (500) for any congressional district office (all signatures within proper district);

(c) Two hundred (200) for the office of district judge (all signatures within proper district);

(d) Fifty (50) for any legislative district office (all signatures within proper district);

(e) Five (5) for any county office (county commissioner signatures shall be within commissioner district).

Signatures on such nominating petitions shall be verified in the manner prescribed in section 34-1807, Idaho Code.

SECTION 23. That Section 34-702, Idaho Code, be, and the same is hereby amended to read as follows:

34-702. REQUIREMENTS FOR WRITE-IN CANDIDATES AT PRIMARY. In addi-

tion to possessing all other qualifications, in order to become a candidate of a political party at the general election, those candidates whose names are written in at the primary election must receive at least ~~as many write-in votes at the primary election--as--the--minimum number--of--signatures required on the petition which must be attached to the declaration of candidacy for that office~~ the following number of write-in votes at the primary election:

(1) One thousand (1,000) for any statewide office;

(2) Five hundred (500) for a congressional district office;

(3) Fifty (50) for a legislative district office;

(4) Five (5) for a county office;

file a declaration of candidacy for that office, and must pay the filing fee required for that office within ten (10) days following the primary election canvass; provided, however, that no write-ins shall be allowed for judicial office.

SECTION 24. That Section 34-708, Idaho Code, be, and the same is hereby amended to read as follows:

34-708. INDEPENDENT CANDIDATES. (1) No person may offer himself as an independent candidate at the primary election.

(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, between 8 a.m. on the tenth Monday preceding the primary election and 5 p.m. on the eighth Friday preceding the primary election. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks election. Each such declaration must be accompanied by a petition containing ~~the names of--qualified--electors in--the same number as is required for political party candidates filing for the same office according to--the--provisions--of--chapter--6, title--34,--Idaho--Code,--and--must--be accompanied by the filing fees required by chapter 6, title 34, Idaho Code, for political party--candidates filing for the same office.~~ the following number of signatures of qualified electors:

(a) One thousand (1,000) for any statewide office;

(b) Five hundred (500) for any congressional district office;

(c) Fifty (50) for any legislative district office;

(d) Five (5) for any county office;

(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state.

SECTION 25. That Section 34-708A, Idaho Code, be, and the same is hereby amended to read as follows:

34-708A. INDEPENDENT CANDIDATES FOR PRESIDENT AND VICE-PRESIDENT. Persons who desire to be independent candidates for the offices of president and vice-president, must file, prior to August 25 of the election year, declarations of candidacy as independent candidates. Such declarations must state that such persons are offering themselves as independent candidates and must declare that they have no political party affiliation. The declarations shall have attached thereto a petition signed by a number of qualified electors not less than one percent (1%) of the number of votes cast in this state for presidential electors at the previous general election at which a president of the United States was elected.

The candidates for president and vice-president shall be considered as candidates for one (1) office, and only one (1) such petition need be filed for both offices.

Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code.

SECTION 26. That Section 34-714, Idaho Code, be, and the same is hereby amended to read as follows:

34-714. FILLING VACANCIES IN SLATE OF POLITICAL PARTY CANDIDATES OCCURRING PRIOR TO PRIMARY ELECTION. (1) Vacancies that occur before the primary election in the slate of candidates of any political party because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate, shall be filled in the following manner if only one (1) candidate declared for that particular office:

(a) By the county central committee if the vacancy occurs for the office of precinct committeeman or for a county office.

(b) By the legislative district central committee if the vacancy occurs for the office of state representative or state senator.

(c) By the state central committee if the vacancy occurs for a federal or state office.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the primary ballot, file a declaration of candidacy and pay the required filing fee~~, but the petition otherwise required to accompany such declaration shall not be required from the candidate~~.

(2) No central committee shall fill any vacancy which occurs within ten (10) days prior to the primary election. Vacancies which occur during this ten (10) day period because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate shall be filled according to the provisions of section 34-715, Idaho Code.

(3) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

SECTION 27. That Section 34-715, Idaho Code, be, and the same is hereby amended to read as follows:

34-715. FILLING OF VACANCIES OCCURRING BEFORE OR AFTER PRIMARY ELECTION. Vacancies that occur during the ten (10) day period before a

primary election, or after the primary election but at least ten (10) days before the general election in the slate of candidates of any political party, except candidates for precinct committeeman, shall be filled in the following manner:

(1) By the county central committee if it is a vacancy by a candidate for a county office.

(2) By the legislative district central committee if it is a vacancy by a candidate for the state legislature.

(3) By the state central committee if it is a vacancy by a candidate for a federal or a state office.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the general ballot, file a declaration of candidacy and pay the required filing fee~~, but the petition otherwise required to accompany such a declaration shall not be required from the candidate~~.

Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

SECTION 28. That Section 34-1904, Idaho Code, be, and the same is hereby repealed.

SECTION 29. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Law Without Signature.

CHAPTER 29
(S.B. No. 1310)

AN ACT

RELATING TO REGISTER OF FARM NAMES; REPEALING SECTION 31-2403, IDAHO CODE, TO REPEAL A SERVICE NO LONGER PROVIDED.

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

SECTION 1. That Section 31-2403, Idaho Code, be, and the same is hereby repealed.

Approved February 15, 1996.

CHAPTER 30
(H.B. No. 620)

AN ACT

RELATING TO THE APPROPRIATION FOR THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED; AMENDING SECTION 1, CHAPTER 194, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 194, Laws of 1995, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission for the Blind and Visually Impaired the following amounts, to be expended according to the designated standard classifications from the listed funds, for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$ 687,500	~~$102,100~~ 132,100	~~$35,000~~ 5,000	$434,500	$1,259,100
Adaptive Aids and Appliances Fund		32,800			32,800
Randolph Sheppard Fund	32,200	7,000		91,300	130,500
Rehabilitation Revenue and Refunds Fund	41,800	32,500		12,400	86,700
Federal Grant Fund	921,500	452,300	24,600	364,600	1,763,000
Miscellaneous Revenue Fund		16,600	5,000	8,800	30,400
TOTAL	$1,683,000	~~$643,300~~ 673,300	~~$64,600~~ 34,600	$911,600	$3,302,500

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 15, 1996.

CHAPTER 31
(H.B. No. 619)

AN ACT

RELATING TO THE DEPARTMENT OF CORRECTION; AMENDING SECTION 2, CHAPTER 347, LAWS OF 1995; AUTHORIZING AN INCREASE IN THE LIMIT ON THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 2, Chapter 347, Laws of 1995, be, and the same is hereby amended to read as follows:

SECTION 2. There is hereby appropriated to the Department of Correction the following amounts, to be expended for designated programs according to designated standard classifications from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	$ 2,422,400	~~$1,666,300~~	$ 328,200	~~$4,000,800~~	~~$ 8,417,700~~
		1,728,200		3,366,500	7,845,300
Parolee Supervision Fund	39,900	14,300			54,200
Miscellaneous Revenue Fund	800	7,000			7,800
TOTAL	$ 2,463,100	~~$ 1,687,600~~	$ 328,200	~~$4,000,800~~	~~$ 8,479,700~~
		1,749,500		3,366,500	7,907,300
B. IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$ 8,975,400	$ 986,100	$ 184,600		$10,146,100
Penitentiary Endowment Fund		1,071,500			1,071,500
Federal Grant Fund	119,900	1,600			121,500
Miscellaneous Revenue Fund	~~52,500~~				~~52,500~~
	215,800	16,200			232,000
TOTAL	~~$ 9,147,800~~	~~$ 2,059,200~~	$ 184,600		~~$11,391,600~~
	9,311,100	2,075,400			11,571,100
C. IDAHO CORRECTIONAL INSTITUTION - OROFINO:					
FROM:					
General Fund	~~$ 3,787,500~~	~~$ 1,016,200~~	$ 336,800	$ 49,700	~~$ 5,190,200~~
	3,632,800	1,115,800			5,135,100
Work Crews - Inmate Labor Fund	185,700	47,400			233,100
Miscellaneous Revenue Fund		~~800~~			~~800~~
	53,400	2,500			55,900
TOTAL	~~$ 3,973,200~~	~~$ 1,064,400~~	$ 336,800	$ 49,700	$ 5,424,100
	3,871,900	1,165,700			

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
D. NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:					
FROM:					
General Fund	$ 1,876,500	$ ~~688,600~~	$ ~~129,200~~	$ 223,000	$ ~~2,917,300~~
		759,500	181,600		3,040,600
Work Crews - Inmate Labor Fund	91,200	96,200	5,900		193,300
Miscellaneous Revenue Fund		~~1,100~~			~~1,100~~
TOTAL	$ 1,967,700	$ ~~784,800~~	$ ~~135,100~~	$ 223,000	$ ~~3,110,600~~
		856,800	187,500		3,235,000
E. SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$ 3,543,300	$ ~~987,300~~	$ ~~139,300~~		$ ~~4,669,900~~
		1,126,500	167,700		4,837,500
Work Crews - Inmate Labor Fund	625,400	384,300			1,009,700
TOTAL	$ 4,168,700	$ ~~1,371,600~~	$ ~~139,300~~		$ ~~5,679,600~~
		1,510,800	167,700		5,847,200
F. IDAHO MAXIMUM SECURITY INSTITUTION - BOISE:					
FROM:					
General Fund	$ ~~6,698,500~~	$ ~~1,389,600~~	$ ~~217,200~~		$ ~~8,305,300~~
	6,560,600	1,560,800	252,900		8,374,300
Miscellaneous Revenue Fund	24,300	1,600			25,900
TOTAL	$ 6,584,900	$ 1,562,400	$ 252,900		$ 8,400,200
G. ST. ANTHONY WORK CAMP:					
FROM:					
General Fund	$ 1,232,500	$ 304,800	$ 77,100		$ 1,614,400
Federal Grant Fund		22,800			22,800
Work Crews - Inmate Labor Fund	294,700	347,300	43,400		685,400
TOTAL	$ 1,527,200	$ 674,900	$ 120,500		$ 2,322,600
H. POCATELLO WOMENS CORRECTIONAL CENTER:					
FROM:					
General Fund	$ 2,489,100	$ ~~688,800~~			$ ~~3,177,900~~
		713,800			3,202,900
Inmate Labor Fund	30,700	9,100	$ 22,800		62,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	81,500	6,400			87,900
TOTAL	$ 2,601,300	$ 729,300	$ 22,800		$ 3,353,400
I. FIELD AND COMMUNITY SERVICES:					
FROM:					
General Fund	$ ~~7,466,400~~	$ ~~1,251,200~~	$ ~~642,300~~		$ ~~9,359,900~~
	7,370,400	1,264,200	668,100		9,302,700
Parolee Supervision Fund	1,099,200	118,900	12,400		1,230,500
Federal Grant Fund	292,500	84,200			376,700
Miscellaneous Revenue Fund	13,300	~~16,700~~			~~30,000~~
		32,100			45,400
Community Work Centers - Inmate Labor Fund		294,700			294,700
TOTAL	$ ~~8,871,400~~	$ ~~1,765,700~~	$ ~~654,700~~		$~~11,291,800~~
	8,775,400	1,794,100	680,500		11,250,000
J. PAROLE COMMISSION:					
FROM:					
General Fund	$ 391,600	$ 134,200	$ 4,300		$ 530,100
K. INSTITUTIONAL SUPPORT:					
FROM:					
General Fund	$ 1,249,600	$ ~~2,240,700~~	$ 65,700		$ ~~3,556,000~~
		4,475,000			5,790,300
Federal Grant Fund	231,100	60,800			291,900
Work Crews - Inmate Labor Fund	70,000	3,200			73,200
Miscellaneous Revenue Fund		131,300			131,300
TOTAL	$ 1,550,700	$ ~~2,304,700~~	$ 65,700		$ ~~3,921,100~~
		4,670,300			6,286,700
GRAND TOTAL	$~~43,249,000~~	$~~13,925,500~~	$~~2,186,400~~	$~~4,273,500~~	$~~63,634,400~~
	43,213,600	16,923,400	2,351,500	3,639,200	66,127,700

SECTION 2. In addition to the full-time equivalent positions authorized in Section 3, Chapter 347, Laws of 1995, the Department of Correction is authorized one (1.0) full-time equivalent position for the programs specified in Section 1 of this act in accordance with Section 67-3519, Idaho Code, and no more than one thousand one hundred sixty-four and fifty-three one hundredths (1,164.53) full-time equivalent positions at any point during the period July 1, 1995, through June 30, 1996.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 15, 1996.

CHAPTER 32
(H.B. No. 507)

AN ACT

RELATING TO LEGISLATIVE PERFORMANCE EVALUATIONS; AMENDING SECTION 67-460, IDAHO CODE, TO CLARIFY POWERS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE TO ISSUE AND ENFORCE SUBPOENAS UNDER CONDITIONS SPECIFIED.

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

SECTION 1. That Section 67-460, Idaho Code, be, and the same is hereby amended to read as follows:

67-460. POWERS OF COMMITTEE. The joint legislative oversight committee shall have the following powers:

(1) To direct the management system analyst and staff in the development of performance evaluation surveys and work plans in concert with agencies and programs.

(2) To direct the management system analyst and staff in accordance with section 67-461, Idaho Code, to review the performance outcomes of any state agency and to prepare preliminary performance outcome findings for presentation to the joint legislative oversight committee.

(3) To direct the management system analyst and staff to prepare a request for proposal (RFP) for the evaluation of the performance outcome findings of a given agency or program. Such RFP shall be submitted for bids to independent contractors to conduct a final performance evaluation and present recommendations to implement actions necessary to carry out such findings.

(4) To contract with private individuals or entities for the conduct of performance evaluations or portions thereof.

(5) To examine witnesses, to require the appearance of any person and the production of ~~any~~ papers or records, including books, accounts, documents, computer records, and other materials, and to order the appearance of any person for the purpose of producing ~~any~~

papers or records, including books, accounts, documents, computer records, and other materials, as is provided other legislative committees.

(6) To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee deems the administration of an oath necessary and advisable as provided by law.

(7) To determine that a witness has perjured himself by testifying falsely before the committee, and to direct the attorney general to institute legal proceedings as provided by law.

(8) To issue subpoenas upon the signature of either of the cochairmen; provided that the district court in and for the county in which any inquiry, evaluation, investigation, hearing or proceeding may take place shall have the power to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or the refusal to testify or produce papers or records, including books, accounts, documents, computer records, and other materials, in court.

Approved February 19, 1996.

CHAPTER 33
(H.B. No. 402)

AN ACT

RELATING TO BONDED WAREHOUSES; AMENDING SECTION 69-202, IDAHO CODE, TO REVISE THE DEFINITION OF PRODUCER.

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

SECTION 1. That Section 69-202, Idaho Code, be, and the same is hereby amended to read as follows:

69-202. DEFINITIONS. As used in this chapter:

(1) "Agricultural commodity" means any grain, dry peas, dry beans, leguminous or other small seeds and feeds (not including minerals).

(2) "Commodity dealer or dealer" means any person who solicits, contracts for, negotiates the consignment or purchase, or obtains from an Idaho producer or producers, title, possession or control of any agricultural commodity through his place of business located in the state of Idaho or through his place of business located outside the state of Idaho for the purposes of sale or resale or who buys, during a calendar year, at least ten thousand dollars ($10,000) worth of agricultural commodities from an Idaho producer or producers of the commodities. Commodity dealer or dealer shall not mean any person who purchases agricultural commodities for his own use as seed or feed.

(3) "Contract" means a written agreement between two (2) or more parties for the sale of an agricultural commodity stipulating the terms and conditions of performance of the parties and includes but is not limited to, those contracts commonly referred to as credit sales, deferred payment, deferred or price later contracts.

(4) "Department" means the Idaho department of agriculture.

(5) "Depositor" means any person who deposits an agricultural commodity in an Idaho state licensed warehouse for storage, handling, processing, reconditioning or shipment, or who is the owner or legal holder of a negotiable warehouse receipt, outstanding scale weight ticket, nonnegotiable warehouse receipt or other evidence of such deposit, or any person whose agricultural commodity has been sold to or is under control of a warehouseman for selling, processing, reconditioning or handling whether or not such agricultural commodity is within the warehouse.

(6) "Director" means the director of the department of agriculture.

(7) "Failure" means:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty (60) days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(8) "Historical depositor" means any person who, in the normal course of business operation has consistently made deposits in the same warehouse of commodities produced on the same land. In addition, anyone purchasing or leasing that particular land directly from the original depositor or receiving that particular land by devise, descent, bequest or gift directly from the historical depositor shall also be considered an historical depositor with regard to the commodities produced on that land.

(9) "Person" means any individual, firm, association, corporation or partnership.

(10) "Producer" means ~~any person who is~~ the owner, tenant or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(11) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal commodity warehouse, public warehouse or other structure or facility in which agricultural commodities are received for storage, shipment, processing, reconditioning or handling.

(12) "Receipt" means a warehouse receipt.

(13) "Revocation" means the permanent removal of a warehouse license following a hearing on violations of this chapter by the hearing officer or director.

(14) "Scale weight ticket" means a load slip or other evidence, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of this chapter, upon initial delivery of the commodity to the warehouse.

(15) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities

are customarily received from dealers rather than producers and where the commodities are accumulated prior to shipment.

(16) "Suspension" means the temporary removal of a warehouse license by the department pending a hearing for violations of this chapter. Correction of the violations prior to a hearing may result in the reinstatement of a license without a hearing.

(17) "Termination" means the expiration of a warehouse license due to failure to meet minimum licensing requirements, failure to renew a warehouse license or as requested by the licensee, unless a complaint has been filed against the licensee alleging a violation of any provision of this chapter.

(18) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued by a warehouseman, except scale weight tickets.

(19) "Warehouseman" means a person operating or controlling a public warehouse.

Approved February 19, 1996.

CHAPTER 34
(H.B. No. 407)

AN ACT

RELATING TO BONDED WAREHOUSE LAW; AMENDING SECTION 69-208, IDAHO CODE, TO CONFIRM BOND COVERAGE FOR COMMODITY INDEMNITY ACCOUNT PAYMENTS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 69-266, IDAHO CODE, TO CLARIFY REIMBURSEMENT RIGHTS AND ACCRUAL OF CAUSE OF ACTION.

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

SECTION 1. That Section 69-208, Idaho Code, be, and the same is hereby amended to read as follows:

69-208. BOND OF APPLICANT FOR LICENSE -- ADDITIONAL BOND -- ADDITIONAL OBLIGATIONS -- CERTIFICATE OF DEPOSIT, ANNUITY OR IRREVOCABLE LETTER OF CREDIT IN LIEU OF BOND. Each warehouseman applying for a license to conduct a warehouse in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the department a good and sufficient bond other than personal security to the state to secure the faithful performance of his obligations as a warehouseman under all the laws of the state, <u>including obligations arising by operation of the commodity indemnity account program,</u> and the rules ~~and regulations~~ prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural commodities in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department shall determine that a bond approved by it is, or for any cause has become, insufficient, it may require an addi-

tional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.

The bond shall be approved by the department and shall be conditioned upon the faithful performance by the warehouseman of the duty to keep in the warehouse for the depositor the agricultural commodity delivered and to deliver the agricultural commodity to or for such depositors. The bond shall also be conditioned upon the faithful performance by the warehouseman of any additional obligations involving marketing transactions with a depositor.

The warehouseman may give a single bond meeting the requirements as provided in this chapter and all warehouses operated by the warehouseman shall be as one (1) warehouse for the purpose of compliance with the provisions of this section. Any changes in the capacity of a warehouse or installation of any new warehouses involving a change in the bond liability under the provisions of this chapter shall be reported to the department prior to the operation thereof.

At the discretion of the director, any person required to submit a bond to the department in accordance with this chapter, may at his option give to the department a certificate of deposit, an annuity or an irrevocable letter of credit payable to the director as trustee in lieu of the bond required herein. The principal amount of the certificate, annuity or letter of credit shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit or annuity shall be payable to the purchaser of the certificate or annuity. The certificate, annuity or letter of credit shall remain on file with the department until it is released, cancelled or discharged by the director. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each certificate of deposit, annuity or letter of credit given in lieu of such bond.

Under provisions of this chapter, an irrevocable letter of credit shall not be acceptable unless it is issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation. Under the provisions of this chapter, an annuity shall not be accepted by the department unless it is issued by an insurance company, bank or other financial institution found acceptable by the director and shall have a cash value equal to the bond requirement less any penalty for early withdrawal.

SECTION 2. That Section 69-266, Idaho Code, be, and the same is hereby amended to read as follows:

69-266. PAYMENT FROM ACCOUNT -- DEBT OF WAREHOUSEMAN OR DEALER <u>OR SURETY -- REIMBURSEMENT -- ACCRUAL OF CAUSE OF ACTION.</u> Amounts paid from the commodity indemnity account in satisfaction of any approved claim shall constitute a debt and obligation of the warehouseman<u>,</u> ~~or~~ <u>dealer, or surety</u> against whom the claim was made. The director may bring suit on behalf of the commodity indemnity account in the district court of Ada county to recover from the warehouseman<u>,</u> ~~or~~ dealer<u>, or surety</u> the amount of the payment made from the commodity indemnity account, together with costs and attorneys' fees incurred in maintain-

ing the suit. In the event the department initiates an action against a warehouseman, dealer, or surety the department's claim is deemed to accrue and relate back to the time that each producer who received a commodity indemnity account payment incurred a loss in the facility. In no event shall a commodity indemnity account payment be deemed to be beyond the reimbursement from the warehouseman, dealer, or surety merely because the payment may have occurred after the facility closed.

Approved February 19, 1996.

CHAPTER 35
(H.B. No. 432)

AN ACT

RELATING TO THE IDAHO TRANSPORTATION DEPARTMENT DIRECTOR DISTRICTS; AMENDING SECTION 21-136, IDAHO CODE, TO PROVIDE FOR APPOINTMENT OF MEMBERS OF THE ADVISORY BOARD OF AERONAUTICS TO REPRESENT THE SIX TRANSPORTATION DEPARTMENT DIRECTOR DISTRICTS; AND AMENDING SECTION 40-514, IDAHO CODE, TO PROVIDE FOR APPOINTMENT OF MEMBERS OF THE PUBLIC TRANSPORTATION SERVICES ADVISORY COUNCIL AND REGIONAL ADVISORY COMMITTEES FROM THE SIX TRANSPORTATION DEPARTMENT DIRECTOR DISTRICTS.

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

SECTION 1. That Section 21-136, Idaho Code, be, and the same is hereby amended to read as follows:

21-136. APPOINTMENT OF MEMBERS -- TERM -- VACANCIES. For the purposes of selection of members of the advisory board of aeronautics, one (1) member shall be appointed ~~from each of the three (3) districts~~ to represent director districts no. 1 and 2, one (1) member to represent director districts no. 3 and 4, and one (1) member to represent director districts no. 5 and 6, as provided in section 40-303, Idaho Code.

Each of the enumerated districts shall, at all times, be represented by one (1) board member, appointed from ~~that district~~ one (1) of the two (2) director districts represented. The governor shall appoint, subject to confirmation by the senate, the board members for terms of three (3) years. The term of each member shall begin immediately upon his appointment and qualification. Each member shall hold office after the expiration of his term until his successor has been appointed. Not less than fifteen (15) days before the expiration of the term of appointment of each member, the governor shall appoint a successor and submit the appointment to the senate for confirmation. Should any member of the board resign, die, remove from the district from which he was appointed, or otherwise be removed from office, a vacancy shall exist, and during the recess of the legislature, the governor shall within thirty (30) days appoint a successor with like qualifications, to serve for the remainder of the retiring member's

unexpired term. If a vacancy occurs within forty-five (45) days after the convening of the legislature and while it is still in session, the governor shall make and submit to the senate for its approval a nomination to fill the vacancy.

SECTION 2. That Section 40-514, Idaho Code, be, and the same is hereby amended to read as follows:

40-514. PUBLIC TRANSPORTATION SERVICES -- PUBLIC TRANSPORTATION SERVICES ADVISORY COUNCIL CREATED -- INTERAGENCY WORKING GROUP CREATED -- REGIONAL ADVISORY COMMITTEES CREATED. (1) The department shall coordinate planning of public funds from all sources expended on public transportation services in Idaho, and all state agencies and public entities shall annually report to the department the amount of funding, personnel and vehicles directed to provide transportation for Idaho citizens. Upon receipt of such information, the department shall:

(a) Develop a uniform data collection system which includes funding, personnel and equipment information on all state and other publicly-supported transportation services;

(b) In cooperation with other state agencies and public entities, develop a comprehensive plan for public transportation;

(c) Provide assistance to operators of local and regional transportation systems that are consistent with public program objectives;

(d) Maintain a state commitment to improve public transportation for presently served areas and unserved areas; and

(e) Increase the efficiency and productivity of publicly-funded transportation services.

(2) There is hereby created the public transportation services advisory council to advise the Idaho transportation department.

The advisory council shall be composed of six (6) members appointed by the Idaho transportation board. ~~Two~~ One (~~2~~1) members shall be appointed from each of the ~~three~~ six (~~3~~6) transportation department director districts as provided in section 40-303, Idaho Code. The term of each member shall be six (6) years and the initial appointments to the council shall be such that one (1) member shall be appointed each year thereafter.

The number of council meetings per year shall not exceed the number of meetings authorized by the board.

Members of the advisory council shall be reimbursed according to the provisions of section 59-509(g), Idaho Code.

(3) The director of the Idaho transportation department together with the directors of the affected state agencies shall establish an interagency working group to advise and assist the department in analyzing public transportation needs, identifying areas for coordination, and developing strategies for eliminating procedural and regulatory barriers to coordination at the state level. The group shall undertake detailed work assignments related to transportation services which promote cooperation and collaboration among systems.

The working group shall be composed of one (1) staff representative from each of the following agencies which expend public funds for transportation services:

(a) Idaho office on aging;
(b) Idaho head start association;
(c) Idaho department of health and welfare;
(d) Idaho department of education;
(e) Idaho transportation department;
(f) Community transportation association;
(g) Idaho council on developmental disabilities; and
(h) Any other participating agency.

Members of the working group shall be reimbursed by their respective agencies according to the provisions of section 59-509(b), Idaho Code.

(4) The transportation board shall appoint ~~two~~ one (~~2~~1) regional advisory committee~~s~~ within each of the ~~three~~ six (~~3~~6) transportation department director districts as provided in section 40-303, Idaho Code. Each committee shall be composed of not ~~more than~~ four (4) members who shall advise and assist the council members in planning, resource identification, coordination and evaluation of regional and local transportation services. The term of each regional advisory committee member shall not exceed three (3) years and members may be reappointed. The number of committee meetings per year for each of the committees shall not exceed the number authorized by the board. Members shall be reimbursed by the department for travel and expenses according to the limits specified in section 67-2008, Idaho Code.

Approved February 19, 1996.

CHAPTER 36
(H.B. No. 494, As Amended)

AN ACT
RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTIONS 37-2705, 37-2709 AND 37-2711, IDAHO CODE, TO CONFORM WITH FEDERAL REGULATIONS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(2) Acetylmethadol;
(3) Allylprodine;
(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);

(5) Alphameprodine;
(6) Alphamethadol;
(7) Alpha-methylfentanyl;
(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
(9) Benzethidine;
(10) Betacetylmethadol;
(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
(12) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
(13) Betameprodine;
(14) Betamethadol;
(15) Betaprodine;
(16) Clonitazene;
(17) Dextromoramide;
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;
(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-Methylfentanyl;
(35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
(36) Morpheridine;
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(38) Noracymethadol;
(39) Norlevorphanol;
(40) Normethadone;
(41) Norpipanone;
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(44) Phenadoxone;
(45) Phenampromide;
(46) Phenomorphan;
(47) Phenoperidine;
(48) Piritramide;
(49) Proheptazine;
(50) Properidine;
(51) Propiram;
(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(54) Tilidine;
(55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):
(1) 4-bromo-2,5-dimethoxy amphetamine;
(2) 2,5-dimethoxyamphetamine;
(3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
(4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
(5) 4-methoxyamphetamine (PMA);
(~~4~~6) 5-methoxy-3,4-methylenedioxy-amphetamine;
(~~5~~7) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
(~~6~~8) 3,4-methylenedioxy amphetamine;
(~~7~~9) 3,4-methylenedioxymethamphetamine (MDMA);
(10) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
(11) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-

hydroxy MDA);
(~~8~~12) 3,4,5-trimethoxy amphetamine;
(13) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
(~~9~~14) Bufotenine;
(1~~0~~5) Diethyltryptamine (DET);
(1~~1~~6) Dimethyltryptamine (DMT);
(1~~2~~7) Ibogaine;
(1~~3~~8) Lysergic acid diethylamide;
(1~~4~~9) Marihuana;
(~~1~~5~~2~~0) Mescaline;
(~~1~~6~~2~~1) Parahexyl;
(~~1~~7~~2~~2) Peyote;
(~~1~~8~~2~~3) N-ethyl-3-piperidyl benzilate;
(~~1~~9~~2~~4) N-methyl -3- piperidyl benzilate;
(2~~0~~5) Psilocybin;
(2~~1~~6) Psilocyn;
(2~~2~~7) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

cis or trans tetrahydrocannabinol, and their optical isomers.

cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
~~(23) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;~~
(2~~4~~8) Ethylamine analog of phencyclidine (N-ethyl -1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
(2~~5~~9) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) -pyrrolidine, PCPy, PHP;
(30) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;
(31) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy.

(e) Any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers wherever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Flunitrazepam (also known as "R2", "Rohypnol");
(2) Mecloqualone;
(~~2~~3) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts,

isomers, and salts of isomers:

(1) ~~Fenethylline~~ Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) ~~N-ethylamphetamine,~~ Cathinone (some other names: alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methyl-amino)-propiophenone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);

(5) (t)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethylbenzeneethanamine).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) ~~N,N-dimethylamphetamine (N,N,alpha-trimethylbenzeneethanamine or N,N,alpha-trimethylphenethylamine).~~

~~(4) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl-MDA, MDE and MDEA).~~

~~(5) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine and N-hydroxy-MDA).~~

~~(6)~~ 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).

SECTION 2. That Section 37-2709, Idaho Code, be, and the same is hereby amended to read as follows:

37-2709. SCHEDULE III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (whether optical or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under C.F.R. Sec. 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine;
(3) Chlorphentermine;
(4) Clortermine;
(5) ~~Mazindol;~~
~~(6)~~ Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:
i. Amobarbital;
ii. Secobarbital;
iii. Pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:
i. Amobarbital;
ii. Secobarbital;
iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;
(4) Chlorhexadol;
(5) Lysergic acid;
(6) Lysergic acid amide;
(7) Methyprylon;
(8) Sulfondiethylmethane;
(9) Sulfonethylmethane;
(10) Sulfonmethane;
(11) Tiletamine and zolazepam or any salt thereof.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(5) Not more than 1.8 grams of dihydrocodeine, or any of its

salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and human growth hormones. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.

(1) Boldenone;
(2) Chlorotestosterone (4-chlortestosterone);
(3) Chorionic gonadotropin;
(4) Clostebol;
(5) Dehydrochlormethyltestosterone;
(6) Dihydrotestosterone (4-dihydrotestosterone);
(7) Drostanolone;
(8) Ethylestrenol;
(9) Fluoxymesterone;
(10) Formebulone;
(11) Human growth hormones;
(12) Mesterolone;
(13) Methandienone;
(14) Methandranone;
(15) Methandriol;
(16) Methandrostenolone;
(17) Methenolone;
(18) Methyltestosterone;
(19) Mibolerone;
(20) Nandrolone;
(21) Norethandrolone;
(22) Oxandrolone;
(23) Oxymesterone;
(24) Oxymetholone;
(25) Stanolone;
(26) Stanozolol;
(27) Testolactone;
(28) Testosterone;
(29) Testosterone cypionate;
(30) Testosterone enanthate;
(31) Testosterone propionate;
(32) Trenbolone.

Anabolic steroids that are expressly intended for administration

through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Butorphanol.

(h) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

SECTION 3. That Section 37-2711, Idaho Code, be, and the same is hereby amended to read as follows:

37-2711. SCHEDULE IV. (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) No more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;
(6) Chloral hydrate;
(7) Chlordiazepoxide;
(8) Clobazam;
(9) Clonazepam;
(10) Clorazepate;
(11) Clotiazepam;
(12) Cloxazolam;
(13) Delorazepam;
(14) Diazepam;
(15) Estazolam;
(16) Ethchlorvynol;
(17) Ethinamate;
(18) Ethyl loflazepate;
(19) Fludiazepam;
~~(20) Flunitrazepam;~~
(~~21~~20) Flurazepam;
(~~22~~21) Halazepam;
(~~23~~22) Haloxazolam;
(~~24~~23) Ketazolam;
(~~25~~24) Loprazolam;
(~~26~~25) Lorazepam;
(~~27~~26) Lormetazepam;
(~~28~~27) Mebutamate;
(~~29~~28) Medazepam;
(~~30~~29) Meprobamate;
(~~31~~30) Methohexital;
(~~32~~31) Methylphenobarbital (mephobarbital);
(~~33~~32) Midazolam;
(~~34~~33) Nimetazepam;
(~~35~~34) Nitrazepam;
(~~36~~35) Nordiazepam;
(~~37~~36) Oxazepam;
(~~38~~37) Oxazolam;
(~~39~~38) Paraldehyde;
(~~40~~39) Petrichloral;
(~~41~~40) Phenobarbital;
(~~42~~41) Pinazepam;
(~~43~~42) Prazepam;
(~~44~~43) Temazepam;
(~~45~~44) Tetrazepam;
(~~46~~45) Triazolam;
(~~47~~46) Quazepam;
(47) Zolpidem.

(d) Fenfluramine - Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(1) Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stim-

ulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine ((+)-norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenproporex;
(~~2~~5) Mazindol;
(6) Mefenorex;
(~~3~~7) Pemoline (including organometallic complexes and chelates thereof);
(~~4~~8) Phentermine;
(~~5~~9) Pipradrol;
(~~6~~10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) ~~Cathine-((+)-norpseudoephedrine)~~
~~(2)--Fencamfamin~~
~~(3)--Fenproporex~~
~~(4)--Mefenorex~~
~~(5)~~ Pentazocine.

(~~h~~g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 19, 1996.

CHAPTER 37
(H.B. No. 487)

AN ACT

RELATING TO INDIVIDUAL INCOME TAXES; AMENDING SECTION 63-3030, IDAHO CODE, TO PROVIDE THAT THE REQUIREMENTS FOR RESIDENT INDIVIDUALS TO FILE IN THIS STATE ARE THE REQUIREMENTS FOR AN INDIVIDUAL TO FILE A FEDERAL RETURN, TO PROVIDE THE REQUIREMENTS FOR FILING FOR NONRESIDENT INDIVIDUALS AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3030, Idaho Code, be, and the same is hereby amended to read as follows:

63-3030. PERSONS REQUIRED TO MAKE RETURNS OF INCOME. (a) Returns with respect to taxes measured by income in this ~~act~~ chapter shall be made by the following:

(1) ~~(A)~~ Every resident individual ~~having--for--the--current taxable--year-a-gross-income-of-one-thousand-dollars-($1,000) or-more,-except-that-a-return-shall-not--be--required--of--an individual--(other-than-an-individual-referred-to-in~~ required to file a federal return under section 6012(a)(1)~~(G)~~ of the Internal Revenue Code)--

~~(i)---who-is-not-married-(determined-by-applying-section 7703-of-the-Internal-Revenue-Code),-who-is-not-a-surviving--spouse--(as-defined-in-section-2(a)-of-the-Internal Revenue-Code)-and-for--the--taxable--year--has--a--gross income-of-less-than-three-thousand-three-hundred-dollars ($3,300),-or~~

~~(ii)--who--is--a-surviving-spouse-(as-defined-in-section 2(a)-of-the-Internal-Revenue-Code)-and-for--the--taxable year--has-a-gross-income-of-less-than-four-thousand-four hundred-dollars-($4,400),-or~~

~~(iii)-who-is-entitled-to-make-a-joint-return-under--section--6013--of-the-Internal-Revenue-Code-and-whose-gross income,-when-combined--with--the--gross--income--of--his spouse-is,-for-the-taxable-year,-less-than-five-thousand four--hundred-dollars-($5,400)-but-only-if-such-individual-and-his-spouse,-at-the-close-of--the--taxable--year, had-the-same-household-as-their-home.~~

~~Clause--(iii)--shall--not--apply-if-for-the-taxable-year-such spouse-makes-a-separate-return-or-any-other-taxpayer-is-entitled-to-an-exemption-for-such-spouse-under-section-151(c)--of the-Internal-Revenue-Code.~~

~~(B)--The-three-thousand-three-hundred-dollars-($3,300)-amount specified--in--subparagraph-(A)(i)-shall-be-increased-to-four thousand-three-hundred-dollars-($4,300)-in--the--case--of--an individual-entitled-to-an-additional-standard-deduction-under section--63(f)(1)--of-the-Internal-Revenue-Code,-and-the-five thousand-four-hundred-dollars-($5,400)--amount--specified--in subparagraph-(A)(iii)-shall-be-increased-by-one-thousand-dollars--($1,000)--for-each-individual-entitled-to-an-additional standard-deduction-under-section--63(f)(1)--of--the--Internal Revenue-Code.~~

(2) ~~An--individual-who-is-referred-to-in-section-6012(a)(1)(G)-of the-Internal-Revenue-Code,-who-has-income-other-than-earned-income of-one-thousand-dollars-($1,000)-or-more,-or-who-has-gross--income of--three--thousand--three--hundred-dollars-($3,300)-or-more-for-a taxable-year.~~

~~(3)~~ Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of ~~the-amounts established-in-subsection-(a)(1)(A)-of-this-section~~ two thousand

five hundred dollars ($2,500), or any part-year resident individual having for the current taxable year a gross income from all sources while domiciled in or residing in Idaho, and from Idaho sources while not domiciled in and not residing in Idaho, which in total are in excess of ~~the--amounts--established--in--subsection (a)(1)(A)--of--this--section~~ two thousand five hundred dollars ($2,500);

(~~4~~3) Every corporation which is transacting business in this state, authorized to transact business in this state or having income attributable to this state, unless exempt from the tax imposed in this ~~act~~ chapter;

(~~5~~4) Every corporation reporting as an S corporation pursuant to Internal Revenue Code sections 1361 through 1379 to the federal government, which is transacting business in this state, authorized to transact business in this state or which has one (1) or more shareholder who is a resident of this state. A corporation which is reporting as an S corporation to the federal government must report to the state of Idaho as an S corporation for and during the same period or periods in which its election to report as such a corporation is effective for federal tax purposes and must identify itself as an S corporation on its income tax return filed with this state;

(~~6~~5) Every estate, the residence of which estate is in Idaho, having a gross income of six hundred dollars ($600) or more for the current taxable year;

(~~7~~6) Every estate, the residence of which is in a state other than Idaho, having a gross income from Idaho sources in excess of six hundred dollars ($600);

(~~8~~7) Every trust, the residence of which trust is in Idaho, having gross income of one hundred dollars ($100) or more for the current taxable year;

(~~9~~8) Every trust, the residence of which is in a state other than Idaho, having a gross income from Idaho sources in excess of one hundred dollars ($100);

(~~10~~9) Every partnership which transacts business or which has one (1) or more partner which is a resident of this state. Such return shall be a supplemental information return and shall include the names and addresses of the persons who would be entitled to share in the net income of the partnership if distributed and the amount of the distributive share of each person. Such return shall be signed by one (1) of the partners.

(b) Returns of fiduciaries and receivers:

(1) Fiduciaries and receivers shall file returns with the state tax commission in accordance with the provisions of section 6012(b) of the Internal Revenue Code.

(c) Certain income earned abroad or from sale of residence: For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 of the Internal Revenue Code (relating to one-time exclusion of gain from sale of principal residence by an individual who has attained age fifty-five (55)) and without regard to the exclusion provided for in section 911 of the Internal Revenue Code (relating to income earned abroad).

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved February 19, 1996.

CHAPTER 38
(S.B. No. 1311)

AN ACT

RELATING TO COUNTY TREASURER AND TAX COLLECTOR; AMENDING CHAPTER 21, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-2126, IDAHO CODE, TO PROVIDE A REFERENCE FOR THE REDEMPTION OF WARRANTS.

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

SECTION 1. That Chapter 21, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-2126, Idaho Code, and to read as follows:

31-2126. REDEEMING OF REGISTERED WARRANTS. It is the duty of the county treasurer to comply with the requirements of section 31-1507, Idaho Code, if the board of county commissioners declares an emergency pursuant to section 31-1608, Idaho Code.

Approved February 19, 1996.

CHAPTER 39
(S.B. No. 1299)

AN ACT

RELATING TO WORKER'S COMPENSATION COVERAGE FOR CERTAIN RECIPIENTS OF PUBLIC ASSISTANCE; AMENDING CHAPTER 2, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-230, IDAHO CODE, TO AUTHORIZE AGREEMENTS TO ESTABLISH ON-SITE EMPLOYERS' STATUS TO EMPLOYERS WHO EMPLOY RECIPIENTS OF PUBLIC ASSISTANCE AND TO PROVIDE TERMS OF THE WORKER'S COVERAGE.

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

SECTION 1. That Chapter 2, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 72-230, Idaho Code, and to read as follows:

72-230. PUBLIC ASSISTANCE -- COVERAGE. (1) Any employer who

enters into a written agreement with the Idaho department of health and welfare to provide unpaid work experience, training, or both, to any person receiving public assistance benefits, shall be the "on-site employer" and shall be granted all the protections and immunities granted to any employer under the Idaho worker's compensation law.

(2) Any person receiving public assistance benefits pursuant to chapter 2, title 56, Idaho Code, who participates in unpaid work experience, training, or both, shall be deemed to be an employee of the "on-site employer" defined in subsection (1) of this section and shall be entitled to all benefits under the Idaho worker's compensation law.

(3) Any worker's compensation premiums and losses associated with unpaid work experience or training pursuant to this section shall be assessed against the Idaho department of health and welfare. All protections and immunities granted to any employer under the Idaho worker's compensation law shall be extended simultaneously to the "on-site employer" defined in subsection (1) of this section and the department of health and welfare.

Approved February 22, 1996.

CHAPTER 40
(H.B. No. 486)

AN ACT

RELATING TO THE IDAHO INCOME TAX ACT; AMENDING SECTION 63-3013, IDAHO CODE, TO CORRECT THE DEFINITION OF RESIDENT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3022J, IDAHO CODE, AS ADDED BY SECTION 16, CHAPTER 111, LAWS OF 1995, TO CONFORM DEDUCTIONS FOR DONATIONS OF TECHNOLOGICAL EQUIPMENT TO OTHER STATUTES; AMENDING SECTION 63-3026A, IDAHO CODE, TO CLARIFY THE COMPUTATION OF IDAHO TAXABLE INCOME OF PART-YEAR RESIDENTS AND NONRESIDENTS IN REGARD TO INCOME OF PARTNERS OR SHAREHOLDERS IN A PARTNERSHIP OR S CORPORATION AND IN REGARD TO INCOME FROM ESTATES OR TRUSTS; AMENDING SECTION 63-3029B, IDAHO CODE, RELATING TO THE INVESTMENT TAX CREDIT TO CLARIFY THE COMPUTATION OF CREDIT FOR PROPERTY USED BOTH WITHIN AND WITHOUT IDAHO; AMENDING SECTION 63-3045, IDAHO CODE, TO CLARIFY THE ASSESSMENT DATE OF TAXES ASSESSED BY THE STATE TAX COMMISSION; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3013, Idaho Code, be, and the same is hereby amended to read as follows:

63-3013. RESIDENT. The term "resident," for income tax purposes, means any individual who:

(a) Is domiciled in the state of Idaho for the entire taxable year; ~~or as provided in subsection (c) of this section;~~

(b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy

(270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

~~(c)--For purposes of this section:~~

(c) An individual shall not be considered a resident, but may be considered a part-year resident, ~~for--income-tax-purposes~~ during a period of absence from this state described as follows:

(1) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.

(2) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.

(3) During such period, the individual did not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year.

(4) The individual did not, during such period, hold an elective or appointive office of the government of the United States (other than the armed forces of the United States or career appointees in the United States foreign service).

(5) The individual was not, during such period, employed on the staff of an elective officer in the legislative branch of the government of the United States; and

(6) The individual did not, during such period, claim Idaho as his tax home for federal income tax purposes.

(7) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

SECTION 2. That Section 63-3022J, Idaho Code, as added by Section 16, Chapter 111, Laws of 1995, be, and the same is hereby amended to read as follows:

63-3022J. DEDUCTION OF VALUE FOR TECHNOLOGICAL EQUIPMENT. (1) For taxable years commencing on and after January 1, 1985, any individual or corporation may deduct from taxable income an amount equal to the fair market value of technological equipment donated to public elementary or public secondary schools, public universities, private universities, public colleges, private colleges, public community colleges, private community colleges, public technical colleges or private technical colleges, or public libraries and library districts located within the state of Idaho, except that the amount of the deduction shall not reduce taxable income to less than zero. The deduction allowed pursuant to this section shall be in addition to any other deduction allowed pursuant to this chapter. In order to take the deduction pursuant to this section, the taxpayer shall receive a written statement from the donee in which the donee agrees to accept the technological equipment donated.

(2) For the purposes of this section, "technological equipment" means a computer, computer software, scientific equipment or apparatus

to be used by the university, college, community college, technical college, school or library directly or indirectly in the education program of the university, college, community college, technical college, school or library and which is donated to the university, college, community college, technical college, school or library no later than five (5) years after its manufacture has been substantially completed.

(3) For the purposes of this section, a public elementary or public secondary school means one that is located within this state and receives funding pursuant to chapter 10, title 33, Idaho Code.

(4) For the purposes of this section, a public library or library district means one that is located within this state and receives funding pursuant to chapters 26 and 27, title 33, Idaho Code.

(5) For purposes of this section, a public university, public college, public community college or public technical college means one that is located within this state and receives an appropriation from the legislature.

(6) For purposes of this section, a private university, private college, private community college or private technical college means one that is located within this state and is operated on a nonprofit basis.

(7) The state tax commission shall promulgate rules to administer the provisions of this section. The rules shall be promulgated in compliance with chapter 52, title 67, Idaho Code.

SECTION 3. That Section 63-3026A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share

of S corporation income and deductions;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

(iv) ~~Income--of-estates-and-trusts-distributed-or-distributable-to-nonresident-or-part-year-resident-beneficiaries--when such--income--is--from--a~~ A resident estate or trust~~,-or-when such-income-is-derived-from-or-related-to-sources-within-this state~~;

(v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state;

(vi) The conduct of pari-mutuel wagering, charitable gaming or any other form of gambling taking place within this state, except as expressly limited in section 67-7439, Idaho Code.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, transactions and investments made, placed or directed by Idaho resident registered broker-dealers and investment advisers or institutions exempt from registration under the Idaho securities act in securities listed with or through the New York Stock Exchange, the American Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director of the department of finance which generate dividends, interest, capital gains or similar profits or returns for nonresidents not otherwise subject to Idaho income taxation shall not result in the intangible property being deemed to have a situs outside the domicile of the owner.

(c) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or related to sources within this state.

(d) The income of nonresident or part-year resident individuals, trusts or estates which is derived from or related to sources both within and without this state shall be attributable to this state in the manner prescribed in the rules of the state tax commission.

(4) In computing the Idaho taxable income of a part-year or nonresident individual, trust or estate, the standard deduction or itemized deductions, as defined in section 63-3022(1), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the internal revenue code or any allowance in lieu of such deduction, shall be allowed in the proportion that paragraph (a) of this subsec-

tion bears to paragraph (b) of this subsection:

(a) The Idaho taxable income of the taxpayer modified as follows:

(i) No allowance shall be made for either the standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction.

(b) The Idaho taxable income as would be calculated for a resident of Idaho modified as follows:

(i) No allowance shall be made for either a standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction;

(iii) Compensation for active military service in the armed forces shall not be deducted;

(iv) Income earned within the original exterior boundaries of any federally created Indian reservation by an enrolled Indian in a federally recognized Indian tribe on a federally recognized Indian reservation shall be added if not otherwise included.

(5) An adjustment may be made to eliminate distortions in the amount of net income attributable to a taxpayer's activities within the state of Idaho. Such deductions shall be limited to circumstances involving itemized deductions as referred to in subsection (4) of this section and which reflect:

(a) A failure to reflect the net income or deduction after reimbursements have been received; or

(b) A failure to reflect the net amount of mortgage interest income or expense from activities within Idaho.

(6) For the purposes of subsections (1) and (2) of this section, deductions and adjustments allowed in computing the Idaho taxable income of nonresident and part-year resident individuals, trusts and estates shall be prescribed in the rules of the state tax commission. Such rules shall be based upon:

(a) Whether or not the deduction or adjustment is related to the production of income reportable to Idaho;

(b) Whether or not the deduction or adjustment is related to income received, expenses paid, or events of tax consequence which occurred during a portion of a taxable year that the taxpayer was domiciled in or residing in Idaho; or

(c) Any other appropriate basis for making the adjustment. An "appropriate basis" is one which the state tax commission finds is needed to insure that the amount of Idaho taxable income is fairly and reasonably related to a taxpayer's activities in this state.

SECTION 4. That Section 63-3029B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029B. INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

(a) the tax credit carry-overs; and

(b) the tax credit for the taxable year.

(2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.

(3) As used in this section "qualified investment" means certain depreciable property which:

(a) is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the internal revenue code subject to the limitations provided for certain regulated companies in section 46(f) of the internal revenue code and is not a motor vehicle under eight thousand (8,000) pounds gross weight;

(b) is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) has a situs in Idaho.

(4) Notwithstanding the provisions of subsections (1) and (2), the amount of the credit allowed shall not exceed forty-five percent (45%) of the tax liability of the taxpayer.

(5) If the sum of credit carry-overs from the credit allowed by subsection (2) and the amount of credit for the taxable year from the credit allowed by subsection (2) exceed the limitation imposed by subsection (4) for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carry-over to the seven (7) succeeding taxable years. In the case of a group of corporations filing a combined report under section 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (4) of this section, instead of carried over. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the qualified investment property for which the unused credit was granted still maintains Idaho situs. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(6) Any recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of its useful life, shall be determined according to the applicable recapture provisions of the internal revenue code. In the case of a unitary group of corporations, the increase in tax due to the recapture of investment tax credit must be reported by the member of the group who earned the credit regardless of which member claimed the credit against tax.

(7) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the internal revenue code shall be disregarded.

(8) For purposes of this section, property has a situs in Idaho during a taxable year if it is used in Idaho at any time during the taxable year. Property not used in Idaho during a taxable year does not have a situs in Idaho in the taxable year during which the property is not used in Idaho or in any subsequent taxable year. No credit or carry-over of credit is permitted under this section if the credit

or carry-over relates to property that does not have a situs in Idaho during the taxable year for which the credit or carry-over is claimed. The Idaho situs of property must be established by records maintained by the taxpayer which are created reasonably contemporaneously with the use of the property.

(9) In the case of property used both in and outside Idaho, the taxpayer, electing to claim the credit provided in this section, must elect to compute the qualified investment in property with a situs in Idaho for all such investments first qualifying during that year in one, but only one, of the following ways:

(a) the amount of each qualified investment in a specific asset shall be separately computed based on the percentage of the actual use of the property in Idaho by using a measure of the use, such as total miles or total machine hours, that most accurately reflects the beneficial use during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service; provided, that the asset is placed in service more than ninety (90) days before the end of the taxable year. In the case of assets acquired, constructed, reconstructed, erected or placed into service within ninety (90) days prior to the end of the taxable year in which the investment first qualifies, the measure of the use of that asset within Idaho for that year shall be based upon the percentage of use in Idaho during the first ninety (90) days of use of the asset;

(b) the ~~total~~ investment in qualified property used both inside and outside Idaho during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service shall be multiplied by the percent of the investment that would be included in the numerator of the Idaho property factor determined pursuant to section 63-3027, Idaho Code, for the same year.

(10) Only for the purposes of subsections (3)(a) and (7) of this section, references to sections of the "internal revenue code" mean the sections referred to as they existed in the internal revenue code of 1986 prior to November 5, 1990.

SECTION 5. That Section 63-3045, Idaho Code, be, and the same is hereby amended to read as follows:

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the

deficiency.

(b) If the taxpayer files a protest with the tax commission within the period set forth in paragraph (1)(a) of this subsection, and such protest does not comply with the regulations of the tax commission and is therefore inadequate to perfect the taxpayer's right to a redetermination of the deficiency determination, then, the tax commission shall notify the taxpayer, in the same manner as set forth in paragraph (1)(a) of this subsection, of such inadequacies, setting forth in said notice the corrective action to be taken by the taxpayer to perfect his protest. The taxpayer shall thereafter have twenty-eight (28) days from the date of said notice to perfect his protest.

(c) No assessment of a deficiency in respect of the tax imposed by this ~~title~~ chapter, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until ~~the expiration of such time periods, nor, if a protest has been filed, until the decision of the state tax commission becomes final, as provided in section 63-3045B, Idaho Code~~ all appeal rights relating to the deficiency have become final.

(2) Following a protest, the taxpayer has the right to a hearing. The purpose of the hearing is to discuss the deficiency determination and the taxpayer's protest with a commissioner or duly authorized representative of the commission. The meeting shall be held informally and evidence shall be freely admitted regardless of the rules of evidence.

(3) Any hearing conducted under the provisions of this section may be conducted, in whole or in part, by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) A taxpayer has the right to be represented by, or be accompanied by, any person of his choice in any proceeding before the tax commission. If the taxpayer is not present at a proceeding, the representative of that taxpayer must be designated in writing by the taxpayer as shall be prescribed in administrative rules or in any manner acceptable to the tax commission.

(5) If the taxpayer does not file a protest with the state tax commission within the time prescribed in subsection (1)(a) of this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the state tax commission.

(6) (a) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of paragraph (b) of this subsection from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carry back of a net operating loss, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss arises.

(b) By November 1 of each year, the tax commission shall fix the

rate of interest due for the succeeding calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund. The rate of interest, rounded to the nearest whole number, shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the mid-term federal rate as it applies on October 15 of that year.

(7) When the time provisions contained in this section conflict with the provisions of section 63-4208, Idaho Code, relating to the assessment of taxes on illegal possession of controlled substances, the provisions of section 63-4208, Idaho Code, shall prevail.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved February 23, 1996.

CHAPTER 41
(H.B. No. 488)

AN ACT

RELATING TO INCOME TAXES; REPEALING SECTIONS 63-3029E AND 63-3029F, IDAHO CODE; AMENDING SECTION 63-3022H, IDAHO CODE, RELATING TO THE DEDUCTION FOR CAPITAL GAINS, TO DELETE A CROSS REFERENCE, TO DEFINE REVENUE-PRODUCING ENTERPRISE AND TO CORRECT CODIFIER ERRORS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Sections 63-3029E and 63-3029F, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 63-3022H, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022H. DEDUCTION OF CAPITAL GAINS. (1) If an individual taxpayer reports a net capital gain in determining taxable income, sixty percent (60%) of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining ~~Idaho~~ taxable income.

(2) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. Net capital gains treated as ordinary income by the internal revenue code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating

to such property, but not below zero.

(3) As used in this section "qualified property" means the following property having an Idaho situs at the time of sale:

(a) Real property held ~~for~~ at least five (5) years;

(b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise~~, as defined in section 63-3029E, Idaho Code~~;

(c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho.

(d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year~~)~~ is from farming or ranching operations in Idaho.

(e) Timber grown in Idaho and held at least twenty-four (24) months.

(4) If an individual reports a capital gain from qualified property from an S corporation or a partnership, a deduction shall be allowed under this section only to the extent the individual held his interest in the income of the S corporation or the partnership for the time required by subsection (3) of this section for the property sold.

(5) If an individual reports a capital gain from an estate, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the decedent, the estate, or the beneficiary, or a combination thereof.

(6) If an individual reports a capital gain from a trust, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the grantor, the trust, or the beneficiary, or a combination thereof.

(7) As used in this section "revenue-producing enterprise" means:

(a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;

(b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;

(c) The feeding of livestock at a feedlot;

(d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1996.

Approved February 23, 1996.

CHAPTER 42
(H.B. No. 500)

AN ACT

RELATING TO COLLECTION OF STATE TAXES; AMENDING SECTION 63-3050, IDAHO CODE, TO CLARIFY THE AUTHORITY OF THE STATE TAX COMMISSION TO INITIATE JUDICIAL ACTION FOR THE COLLECTION OF UNPAID TAXES OWED TO THE COMMISSION; AND AMENDING SECTION 63-3065A, IDAHO CODE, TO CLARIFY THE AUTHORITY OF THE STATE TAX COMMISSION TO INITIATE JUDICIAL ACTION IN THIS OR ANOTHER STATE AGAINST NONRESIDENTS FOR THE COLLECTION OF UNPAID TAXES OWED TO THE COMMISSION.

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

SECTION 1. That Section 63-3050, Idaho Code, be, and the same is hereby amended to read as follows:

63-3050. ACTION TO COLLECT UNPAID TAX OR DEFICIENCY. Any tax ~~due and unpaid under this act~~ owed the state tax commission, any interest, penalty, additional amount, or addition to such tax, and any tax or any interest, penalty, additional amount, or addition to such tax which has been erroneously refunded and any deficiency shall constitute a debt to the state of Idaho and may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the state of Idaho, in ~~the district~~ any court ~~of Idaho wherein~~ having jurisdiction over the taxpayer ~~resides~~ or ~~owns~~ property owned by or in which the taxpayer has an interest. The remedy herein shall be in addition to any and all other existing remedies.

SECTION 2. That Section 63-3065A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3065A. JURISDICTION OVER NONRESIDENTS. A deficiency assessed and due and payable by a person not within the state may be prosecuted against such person by an action in any court ~~in this state~~ having jurisdiction of the subject matter~~, and the court shall have~~ or in personam jurisdiction of such ~~a~~ person in any ~~such~~ action for taxes ~~imposed and assessed under this act~~, penalty and interest owed the state tax commission. Notice shall be given ~~such person by personal service without the state or by publication,~~ and the action shall proceed in accordance with the applicable rules and statutes regulating civil procedure. ~~in this state; provided, however, that, i~~In the event such notice shall be by publication, notice shall also be mailed by ~~registered or~~ certified mail to such person at his last known address.

Approved February 23, 1996.

CHAPTER 43
(H.B. No. 514)

AN ACT

RELATING TO INCOME TAXES; REPEALING SECTION 63-3025, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 396, LAWS OF 1980; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3025, Idaho Code, as added by Section 1, Chapter 396, Laws of 1980, be, and the same is hereby repealed.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved February 23, 1996.

CHAPTER 44
(H.B. No. 516)

AN ACT

RELATING TO THE STATUTE OF LIMITATIONS ON ASSESSMENTS AND REFUNDS OF INCOME TAXES; AMENDING SECTIONS 63-3068 AND 63-3072, IDAHO CODE, TO PROVIDE THAT WHEN NO RETURN IS FILED A NOTICE OF DEFICIENCY DETERMINATION BY THE STATE TAX COMMISSION IS A RETURN FOR PURPOSES OF BEGINNING THE RUNNING OF THE STATUTE OF LIMITATIONS ON ASSESSMENTS.

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

SECTION 1. That Section 63-3068, Idaho Code, be, and the same is hereby amended to read as follows:

63-3068. PERIOD OF LIMITATIONS FOR ISSUING A NOTICE OF DEFICIENCY AND COLLECTION OF TAX. (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of six (6) years from the date of assessment of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a

notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) In the case of income received during the lifetime of a decedent, a notice of deficiency shall be issued, the tax shall be assessed or any proceeding in court without assessment for the collection of such tax shall be begun, within six (6) months after written request therefore (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent.

(f) When Idaho taxable income or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitation for issuing a notice of deficiency shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the state tax commission by the taxpayer, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (a) and (1) of this section, only those specific items of income, deductions, gains, losses, or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(g) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss claimed in such other tax year may be made and a resulting notice of deficiency may be issued even though such notice of deficiency would otherwise be barred under the provisions of this section.

(h) Notwithstanding any other provisions of this section, when an amended Idaho return is filed within the period of limitations as provided in subsections (a) and (1) of this section, the period of limitations for issuing a notice of deficiency shall be three (3) years from the date the amended return was filed. However, upon the expiration of the period of limitations as provided in subsections (a) and (1) of this section, only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended Idaho return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(i) If a taxpayer has filed an amended federal return, and no

corresponding Idaho amended return has been filed with the state tax commission, then the period of limitations for issuing a notice of deficiency shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the taxpayer of the amended federal return. However, upon the expiration of the period of limitations as provided in subsections (a) and (1) of this section, then only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(j) Notwithstanding any other provisions of this section, a notice of deficiency, related to items on the return of any pass-through entity, as defined in this section, which other taxpayers are required by law to report, shall be issued to such other taxpayers within the later of three (3) years from the due date of the other taxpayers' return, without regard to extensions, three (3) years from the date the other taxpayers' returns were filed, or three (3) years from the date of filing of the pass-through entity's return. If the pass-through entity files an amended return, notices of deficiency may be issued to the other taxpayers within three (3) years from the date the amended return for the pass-through entity was filed with the state tax commission. If the pass-through entity files an amended return with the internal revenue service, or the internal revenue service issues a final determination to the pass-through entity, then the period of limitations for issuing a notice of deficiency to the other taxpayers shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the pass-through entity of the amended federal return or the later of one (1) year from the date of delivery to the state tax commission by the pass-through entity of the final federal determination, three (3) years from the due date of the pass-through entity's return, without regard to extensions, or three (3) years from the date the pass-through entity's return was filed.

(k) For purposes of this section, "pass-through entity" means a partnership, S-corporation, trust, limited liability company or any other entity whose items of income, deductions, gains, losses and credits must be reported by other taxpayer(s). For further purposes of this section, the term "other taxpayer" shall include, by way of unlimiting example, such taxpayers as partners, shareholders, beneficiaries, joint venturers or investors.

(l) Prior to the expiration of the time prescribed in this section for the issuance of a notice of deficiency for the tax imposed in this chapter, both the state tax commission, its delegate or deputy, and the taxpayer may consent in writing to extend the period of time within which a notice of deficiency may be issued. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with this subsection, the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of issuing a notice of deficiency to the other taxpayers reflecting the adjustments to the pass-through entity's return.

(m) The expiration of the period of limitations as provided in this section shall be suspended for the time period during which the state tax commission is prohibited from issuing a notice of deficiency, making the assessment, or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(n) For the purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

SECTION 2. That Section 63-3072, Idaho Code, be, and the same is hereby amended to read as follows:

63-3072. CREDITS AND REFUNDS. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(c) Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (c) and (g) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determina-

tion shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the period of limitations prescribed in subsection (c) of this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carryback.

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

(h) The expiration of the period of limitations as provided in this section shall be suspended for the time period during which the taxpayer is prohibited from claiming a credit or refund of tax, penalties or interest imposed under the provisions of this chapter, and for thirty (30) days thereafter.

(i) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

(j) For purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

Approved February 23, 1996.

CHAPTER 45
(H.B. No. 524)

AN ACT

RELATING TO EVALUATION OF TECHNOLOGY APPLICATIONS IN EDUCATION; AMENDING SECTION 33-4807, IDAHO CODE, TO PROVIDE FOR A COMPREHENSIVE EVALUATION BY THE STATE BOARD OF EDUCATION OF THE RELATIVE IMPACT,

COSTS AND BENEFITS OF CERTAIN EDUCATIONAL TECHNOLOGY PROGRAMS.

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

SECTION 1. That Section 33-4807, Idaho Code, be, and the same is hereby amended to read as follows:

33-4807. EVALUATIONS AND AUDITS. On or before July 1, 1995, the legislative services office shall initiate an interim evaluation of the relative impact, costs and benefits of each of the programs conducted pursuant to the appropriations made for the Idaho educational technology initiative during the second regular session of the fifty-second legislature. The evaluation results shall be reported to the governor, legislature, and state board of education on or before January 1, 1996. On or before July 1, 1996, the ~~legislative--services office~~ state board of education shall initiate a comprehensive evaluation of the relative impact, costs and benefits of each of the programs conducted pursuant to the appropriations made for the Idaho educational technology initiative during the second regular session of the fifty-second legislature. The evaluation results shall be reported to the governor~~,~~ and the legislature~~,-and-state-board-of-education~~ on or before July 1, 1997.

Approved February 23, 1996.

CHAPTER 46
(H.B. No. 528)

AN ACT

RELATING TO THE SALES TAX ACT; AMENDING SECTION 63-3606A, IDAHO CODE, TO MAKE GRAMMATICAL CHANGES; AMENDING SECTION 63-3609, IDAHO CODE, TO DELETE AN OBSOLETE PROVISION; AMENDING SECTION 63-3613, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO FURTHER CLARIFY EXCLUSION OF TRANSPORTATION CHARGES; AMENDING SECTION 63-3619, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3620, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO DELETE A PROVISION CONCERNING COMMINGLED GOODS; AMENDING SECTION 63-3620A, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3621, IDAHO CODE, TO DELETE A PROVISION CONCERNING COMMINGLED GOODS; AMENDING SECTION 63-3622, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE TO SALES; AMENDING SECTION 63-3622D, IDAHO CODE, TO DELETE THE EXCLUSION FROM THE PRODUCTION EXEMPTION FOR PROPERTY USED IN THE PRODUCTION OF LIQUOR; AMENDING SECTION 63-3622K, IDAHO CODE, TO INCLUDE LIMITED LIABILITY COMPANIES WITHIN THE PROVISIONS OF THE SECTION; AMENDING SECTION 63-3622L, IDAHO CODE, TO CORRECT THE REFERENCE TO DE MINIMIS SALES; AMENDING SECTION 63-3622N, IDAHO CODE, TO CLARIFY THE DEFINITION OF DRUGS EXEMPT FROM TAXATION; AMENDING SECTION 63-3623, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3623B, IDAHO CODE, TO INCLUDE AMUSEMENT DEVICES OPERATED BY TOKEN OR CURRENCY AND TO CLARIFY THE TRANSFER OF PERMITS INCIDENT TO A CHANGE IN THE FORM OF DOING BUSINESS AND

BULK SALES; AMENDING SECTION 63-3624, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO CLARIFY THE ASSESSMENT OF SALES TAXES ON TAXABLE TRANSACTIONS NOT TAXED BY THE SELLER; AND AMENDING SECTION 63-3635, IDAHO CODE, TO INCLUDE CROSS REFERENCE TO THE IDAHO INCOME TAX ACT RELATING TO ADMINISTRATIVE DECISIONS OF THE STATE TAX COMMISSION AND JUDICIAL REVIEW OF SUCH DECISIONS.

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

SECTION 1. That Section 63-3606A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3606A. MODULAR BUILDING. The term "modular building," ~~means a modular building,~~ as defined in section 39-4105, Idaho Code, ~~which~~ is a substantially complete~~,~~ building designed to be affixed to real property. The term "modular building," includes all components incorporated in such modular building at the time of manufacture and remaining unchanged at the time of the original retail sale. Furniture, fixtures, furnishings, appliances, and attachments not incorporated as component parts of the modular building at the time of manufacture shall be subject to the sales and use tax separately and distinctly from the sales price of a modular building. Refrigerators, ranges, draperies, and wood burning stoves placed in the modular home by the manufacturer shall be deemed to be components incorporated into such modular building.

SECTION 2. That Section 63-3609, Idaho Code, be, and the same is hereby amended to read as follows:

63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale" or "sale at retail" means a sale of tangible personal property for any purpose other than resale of that property in the regular course of business or lease or rental of that property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) ~~The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his total sales subject to tax under this act.~~

~~(c)~~ For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

SECTION 3. That Section 63-3613, Idaho Code, be, and the same is

hereby amended to read as follows:

63-3613. SALES PRICE. (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules ~~and regulations~~ as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
2. The cost of materials used, labor or service cost, losses, or any other expense.
3. The cost of transportation of the property prior to its sale.
4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

(b) The term "sales price" does not include any of the following:

1. Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.
2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a "new manufactured home" or a "modular building" as defined herein.
3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.
5. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.
6. The amount charged for finance charges, carrying charges, ser-

vice charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

7. Delivery and handling c~~C~~harges for transportation of tangible personal property ~~after-sale~~ to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.

8. Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer.

9. The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code, by a governmental entity pursuant to statute for the purpose of conducting outfitting activities on land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated separately and is presented as a use fee paid by the outfitted public to be passed through to the governmental entity.

(c) The sales price of a "new manufactured home" or a "modular building" as defined in this act shall be limited to and include only fifty-five per cent (55%) of the sales price as otherwise defined herein.

(d) For sales made on and after January 1, 1967, taxes previously paid on amounts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.

(e) Tangible personal property when sold at retail for more than eleven cents ($.11) but less than one dollar and one cent ($1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen per cent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines.

SECTION 4. That Section 63-3619, Idaho Code, be, and the same is hereby amended to read as follows:

63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby imposed upon each sale at retail at the rate of five per cent (5%) of the sales price of all property subject to taxation under this act and such amount shall be computed monthly on all sales at retail within the preceding month.

(a) The tax shall apply to, be computed on, and collected for all credit, instalment, conditional or similar sales at the time of the

sale or, in the case of rentals, at the time the rental is charged.

(b) The tax hereby imposed shall be collected by the retailer from the consumer.

(c) The state tax commission shall provide schedules for collection of the tax on sales which involve a fraction of a dollar. The retailer shall calculate the tax upon the entire amount of the purchases of the consumer made at a particular time and not separately upon each item purchased. The retailer may retain any amount collected under the bracket system prescribed which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting the tax.

(d) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

(e) The tax commission may by ~~regulation~~ rule provide that the amount collected by the retailer from the customer in reimbursement of the tax be displayed separately from the list price, the price advertised on the premises, the marked price, or other price on the sales slip or other proof of sale.

(f) The tax imposed by this act shall apply to the sales of any tangible personal property to contractors purchasing such property for resale to the United States or for use in the performance of contracts with the United States.

SECTION 5. That Section 63-3620, Idaho Code, be, and the same is hereby amended to read as follows:

63-3620. PERMITS -- ISSUANCE -- REVOCATION -- RESALE CERTIFICATES -- PENALTIES. (a) Every person desiring to engage in or conduct business as a seller within this state shall file with the state tax commission an application for a permit. Every application for a permit shall be made upon a form prescribed by the state tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state tax commission may require. The applications, or any information contained thereon, may be made available by the tax commission to authorized representatives of state or federal agencies. The application shall be signed by the owner if he is a natural person; in the case of an association or partnership by a member or partner; in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application. Initial permits shall be issued without charge.

(b) The person signing the application shall certify that the applicant will actively engage in or conduct a business making sales subject to tax under this chapter.

(c) After compliance by the applicant with the requirements set out above and in section 63-3625, Idaho Code, the state tax commission shall grant and issue to each applicant a permit. A permit shall not be assignable, and shall be valid only for the person in whose name it

is issued. The permit or a copy thereof shall at all times be conspicuously displayed at each place where the person to whom it is issued conducts business.

(d) A seller whose permit has been previously suspended or revoked shall pay the state tax commission a fee of ten dollars ($10.00) for the renewal or issuance of a permit in the event of a first revocation and twenty-five dollars ($25.00) for renewal after each successive revocation unless the suspension or revocation is for inactivity pursuant to section 63-3620A, Idaho Code.

(e) Whenever any person fails to comply with any provision of this act relating to the sales tax or any rules ~~or regulations~~ of the state tax commission relating to the sales tax prescribed and adopted under this act, the state tax commission, upon hearing, after giving the person ten (10) days notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The state tax commission shall give to the person written notice of the suspension or revocation of any of his permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The state tax commission shall not issue a new permit after the revocation of a permit unless the commission is satisfied that the former holder of the permit will comply with the provisions of this act relating to the sales tax and the ~~regulations~~ rules of the state tax commission.

(f) A person who engages in business as a seller in this state without a permit or permits, or after a permit has been suspended, and each officer of any corporation which so engages in business is guilty of a misdemeanor punishable by a fine not in excess of one hundred dollars ($100), and each day shall constitute a separate offense.

(g) (i) For the purpose of the proper administration of this act and to prevent evasion of the sales tax, it shall be presumed that all sales are subject to the tax. The burden of proving that a sale is not a sale at retail is upon the person who makes the sale unless he obtains from the purchaser a resale certificate, or has a resale certificate on file from the purchaser, to the effect that the property is purchased for resale. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

(ii) A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be

sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

(iii) The resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(h) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(i) Any person who gives a resale certificate for property which he knows at the time of purchase is not to be resold or rented by him in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment for a period not in excess of one (1) year, or by both such fine and imprisonment.

~~(j) If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but with such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.~~

SECTION 6. That Section 63-3620A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3620A. REVOCATION OR CANCELLATION OF PERMITS HELD BY PERSONS NOT ACTIVELY ENGAGED IN BUSINESS. (1) A permit shall be held only by persons actively engaged in making sales subject to tax under this chapter. Any person not so engaged shall forthwith surrender his permit to the state tax commission for cancellation. The state tax commission may revoke the permit of a person not actively engaged in making sales subject to tax under this chapter.

(2) The state tax commission may provide by ~~regulation~~ rule for the temporary suspension of permits held by persons engaged in seasonal business or who may otherwise temporarily not be actively engaged in the business of making sales subject to tax under this

chapter.

(3) A person holding a seller's permit who, for a period of twelve (12) consecutive months, reports no sales subject to tax may be deemed by the state tax commission to be a person not actively engaged in making sales subject to tax under this chapter.

SECTION 7. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 1965, for storage, use, or other consumption in this state at the rate of five per cent (5%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the

resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the person selling the property from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

(g) ~~If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.~~

~~(h)~~ Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dollars ($100), and each violation shall constitute a separate offense.

(~~i~~h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(~~j~~i) It shall be presumed that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the

property was not purchased for storage, use, or other consumption in this state.

(~~k~~j) When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(~~l~~k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state, or to the use of household goods, personal effects and private automobiles by a bona fide resident of this state, if such articles were acquired by such person in another state while a bona fide resident thereof and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial.

(~~m~~l) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

(1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or

(2) The state of Idaho; or

(3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

SECTION 8. That Section 63-3622, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622. EXEMPTIONS -- EXEMPTION CERTIFICATES -- PENALTIES. (a) To prevent evasion of the sales and use tax, it shall be presumed that all ~~articles~~ sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption certificate. The exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption. It shall be presumed that sales made to a person who has completed an exemption certificate

for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

A seller may accept an exemption certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption certificate that is not readable, legible or copyable.

(b) Any person who gives an exemption certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(c) The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. The claim shall be in substantially the same form as required by the tax commission. Unless the purchaser has an exemption certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

SECTION 9. That Section 63-3622D, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622D. PRODUCTION EXEMPTION. There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

(1) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale.

(2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.

(3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the product or for removing impurities from the product or

otherwise placing the product in a more marketable condition as part of an operation described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.

(4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.

(5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (2), (3) and (4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section 63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at retail within or without this state, without regard to the ownership of the product being produced.

(d) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(e) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(f) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars ($100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) Property used in research or development.

(4) Property used in transportation activities.

(5) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become

a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(6) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(7) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(8) Motor vehicles licensed or required to be licensed by the laws of this state or another state or any aircraft.

(9) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F, 63-3622G~~,~~ and 63-3622I ~~and 63-3622~~M, Idaho Code.

(10) Tangible personal property described in section 63-3622HH, Idaho Code.

(g) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund.

SECTION 10. That Section 63-3622K, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622K. OCCASIONAL SALES. (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term "occasional sale" means:

(1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a "retailer" under section 63-3610(c), Idaho Code.

(2) Any transfer of all or substantially all of the property held or used by a person in a business requiring a seller's permit when, after such transfer, the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purpose of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having a "real or ultimate ownership" of the property of such corporation or other

entity.

(3) A transfer of capital assets to or by a business when the transfer is accomplished through an adjustment of the beneficial interest of the business and the transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, on the capital assets, incidental to:

(i) A division of joint venture, or partnership, or limited liability company assets among the members or partners in exchange for a proportional reduction of the transferee's interest in the joint venture, or partnership, or limited liability company. For the purposes of this section, the term "limited liability company" means a business organization as defined in chapter 6, title 53, Idaho Code;

(ii) The formation of a partnership, or joint venture, or limited liability company by the transfer of assets to the partnership, or joint venture, or limited liability company or transfers to a partnership, or joint venture, or limited liability company in exchange for proportionate interests in the partnership, or joint venture, or limited liability company;

(iii) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for stock in proportion to assets contributed;

(iv) The transfer of assets of shareholders in the formation or dissolution of a corporation;

(v) The transfer of capital assets by a corporation to its stockholders in exchange for surrender of capital stock;

(vi) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty per cent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(vii) The transfer of assets from a subsidiary corporation which is owned at least eighty per cent (80%) by the parent corporation to a parent corporation or another subsidiary which is owned at least eighty per cent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.

(4) The sale, but not the lease or rental, of a capital asset in substantially the same form as acquired by the transferor and on which the transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.

(5) The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expense attributable to such "separate division,

branch, or identifiable segment" could be separately ascertained from the books of accounts and records.

(6) Sales by persons who are not defined as "retailers" in section 63-3610, Idaho Code.

(7) Sales of animals by any 4-H club or FFA club held in conjunction with a fair or the western Idaho spring lamb sale.

(c) As used in this section, the term "occasional sale", when applied to the sale of a self-propelled motor vehicle, means only:

(1) Sales of motor vehicles between members of a family related within the second degree of consanguinity, unless a sales or use tax was not imposed on the sale of that motor vehicle at the time of purchase, in which situation the sale is taxable.

(2) Sales of motor vehicles that fall within the scope of the transactions detailed in subsection (b)(2) through (b)(5) of this section.

(d) The exemption provided by subsections (b)(1), (b)(4) or (b)(6) of this section shall not apply to the sale, purchase or use of aircraft, as defined in section 21-201, Idaho Code, nor shall it apply to the sale, purchase or use of boats or vessels, as defined in section 67-7003, Idaho Code, nor shall it apply to the sale, purchase or use of snowmobiles, recreational vehicles or off-highway motorbikes, as defined in section 63-3622HH, Idaho Code.

SECTION 11. That Section 63-3622L, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622L. ~~VENDING--MACHINES~~ DE MINIMIS SALES. There is exempted from the taxes imposed by this chapter the sale of articles through a coin-operated vending machine for a total consideration of eleven cents ($.11) or less and individual transactions involving a total sales price of eleven cents ($.11) or less.

SECTION 12. That Section 63-3622N, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622N. PRESCRIPTIONS. (a) There are exempted from the taxes imposed by this chapter the following when administered or distributed by a practitioner licensed by the state under title 54, Idaho Code, to administer or distribute such items or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner licensed by the state under title 54, Idaho Code, to prescribe such items:

(1) Drugs, hypodermic syringes, insulin, insulin syringes, artificial eyes, hearing aids, and hearing aid parts and accessories;

(2) Drugs and supplies used in hemodialysis and peritoneal dialysis;

(3) Braces and other orthopedic appliances;

(4) Catheters, urinary accessories, colostomy supplies, and other prosthetic devices which shall include, but is not limited to, enteral and parenteral feeding equipment and supplies, (tubing, pumps, containers) catheter devices and supplies, but not including eyeglasses and contact lenses;

(5) Equipment and devices or chemical reagents which are used to

test or monitor blood or urine of a diabetic;

(6) Other durable medical equipment and devices and related parts and supplies specifically designed for those products which shall include, but is not limited to: oxygen equipment, oxygen cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and accessories, respiratory therapy equipment, room humidifiers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, IPPB, circuits, devices and supplies, air oxygen mixers, manual resuscitators, nebulizers, tubing, emergency oxygen delivery units, patient care equipment, physical and occupational therapy items, hospital beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift recliners, bedside commodes, overbed tables, patient lifts, patient lift slings, traction stands and pulleys, shower seating, shower grip bars, raised toilet seats, toilet safety frames, walking canes, quad canes and accessories, walkers, wheeled walkers, walker accessories, I.V. stands, crawlers, posture back supports for seating, posture back supports, wheelchairs, crutches, crutch pads, tips, grips, restraints, standing frame devices and accessories, hand exercise equipment and putty, specially designed hand utensils, leg weights, paraffin baths, hydrocollators, hydrotherm heating pads, communication aids for physically impaired, specialized seating, desks, work stations, foam wedges, writing and speech aids for the impaired, dressing aids, button loops and zipper aids, grooming aids, dental aids, eating and drinking aids, splints, holders, household aids for the impaired, shampoo trays, reaching aids, foam seating pads, decubitus seating pads, bed pads, fitted stroller, alternating pressure pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and sleeping cushions, patient transport devices, boards, stairglides, lifts in home, transcutaneous nerve stimulators, muscle stimulators, bone fracture therapy devices.

(b) The term "practitioner" means a physician, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter.

(c) The term "drug" ~~as~~ means a drug which is:

(1) D~~d~~efined in section 54-1705, Idaho Code, and

(2) Either:

(i) listed in a drug compendia which the state board of pharmacy requires to be maintained by Idaho licensed pharmacies, or

(ii) the use of which requires a prescription under state or federal law. The term shall not include articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man.

(d) The term "durable medical equipment" means equipment which:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;
(3) Generally is not useful to a person in the absence of illness or injury; and
(4) Is appropriate for use in the home.

(e) The term "prosthetic device" means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such devices, but shall not include dentures, dental bridgework and other dental or orthodontic appliances.

(f) The sale of dentures, dental bridgework, other dental or orthodontic appliances and related parts for such appliances, by a practitioner to his patient is incidental to the professional services provided and is a sale of services. The practitioner is the consumer of the dentures, dental bridgework, other dental or orthodontic appliances and related parts used by him, and the sale to or use by the practitioner of such tangible personal property is taxable.

SECTION 13. That Section 63-3623, Idaho Code, be, and the same is hereby amended to read as follows:

63-3623. RETURNS AND PAYMENTS. (a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month.

(b) All moneys collected or received by the state tax commission from the taxes, penalties, interest and fees imposed by this act shall be deposited with the state treasurer to be credited by him to the sales tax account created by this act.

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe.

(d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent.

(e) For the purposes of the sales tax, the return shall show the total sales at retail subject to tax under this act during the reporting period. For the purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use, or consumption of which property became subject to the use tax during the reporting period; in the case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use, or consumption of which became subject to the use tax during the reporting period.

(f) The return shall show the amount of the taxes for the period covered by the return and such other information as the state tax commission deems necessary for the proper administration of this act.

(g) The person required to file the return shall mail or deliver the return together with a remittance of any tax due to the state tax commission for the reporting period.

(h) The state tax commission, if it deems it necessary in order to insure payment to or facilitate the collection by the state of taxes, may require returns for periods other than monthly periods.

(i) For the purposes of the sales tax, gross amounts from rentals or leases of tangible personal property which may be subject to tax under this act shall be reported and the tax paid in accordance with such rules ~~and regulations~~ as the state tax commission may prescribe.

(j) The state tax commission for good cause may extend, for not to exceed one (1) month, the time for making any return or paying any amount required to be paid under this act.

(k) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the rate provided in section 63-3045, Idaho Code, from the date on which the tax would have been due without the extension until the day of payment.

(l) Upon the transfer of ownership of a motor vehicle subject to sales or use tax, a certificate of title will be issued to the new owner only upon presentation of evidence of payment of sales or use tax on the transaction.

(m) The owner of a truck, trailer or motor vehicle required to be licensed by the laws of this state shall, upon demand, furnish to the officer issuing such license satisfactory evidence that any sales or use tax to which such truck, trailer or motor vehicle is subject has been paid to this state before any such license shall be issued.

(n) Retail sales of tangible personal property through a vending machine which are taxable upon the purchase price paid by the owner or operator of the vending machine pursuant to subsection (e) of section 63-3613, Idaho Code, shall be reported upon the sales tax return of the owner or operator of the vending machine in the manner by which the tax commission may by ~~regulation~~ rule prescribe.

SECTION 14. That Section 63-3623B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3623B. AMUSEMENT DEVICES. (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices.

(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars ($35.00) for each such device.

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device. Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases.

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) The state tax commission shall suspend or revoke an amusement device permit if it finds that the owner, lessee, or person having the right to impose a charge for the use of the amusement device does not comply with the rules promulgated governing this section, including, but not limited to, failure to answer a question or intentionally make a false statement in or in connection with the application or renewal of an amusement device permit; or allows the use of its amusement device permits by any other business entity or person who owns or operates coin, currency or token operated amusement devices available for commercial use or available to the public for play. If such unauthorized use occurs, the commission may assess the owner, lessee, or person having the right to impose a charge for the use of the amusement device penalties in the amount of two hundred dollars ($200) for each improper use of a permit sticker.

(g) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars ($50.00) for each device for failure to pay timely permit sticker fees.

(2) A person who knowingly secures or attempts to secure an amusement device permit sticker under this section by fraud, misrepresentation, or subterfuge or uses any permit issued under this section in a fraudulent manner shall be subject to a penalty of up to twenty-five thousand dollars ($25,000).

(h) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(i) The commission may revoke all permits of any person who operates any amusement device without complying with the provisions of this section. Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(j) Permits issued under this section are not transferable to another person except as part of a transaction described in paragraphs (2), (3), (4) or (5) of subsection (b) of section 63-3622K, Idaho Code, relating to occasional sales.

SECTION 15. That Section 63-3624, Idaho Code, be, and the same is hereby amended to read as follows:

63-3624. ADMINISTRATION. (a) The state tax commission shall enforce the provisions of this act and may prescribe, adopt, and enforce rules ~~and--regulations~~ relating to the administration and enforcement of this act. The state tax commission may prescribe the extent to which any ~~ruling-or-regulation~~ rule shall be applied without retroactive effect.

(b) The state tax commission shall employ qualified auditors for examination of taxpayers' records and books. The state tax commission shall also employ such accountants, investigators, regional supervisors, assistants, clerks, and other personnel as are necessary for the efficient administration of this act, and may delegate authority to its representatives to conduct hearings, or perform any other duties imposed by this act.

(c) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction.

(d) Retail food stores may petition to the state tax commission to be relieved from the responsibility of retaining detailed invoices of nontaxed sales for which the documentation required in sections 63-3620, 63-3621, or 63-3622, Idaho Code, and any other documentation which may be required by the tax commission, has been obtained by the store from the purchaser. The tax commission shall review each petition and may examine the books and records of the petitioner to insure that the products sold by the petitioner are those sold by a retail food store. The tax commission shall give written notice of its determination to the petitioner as soon as practicable after receiving the written request, but in no event later than sixty (60) days after receiving the petition. As used in this section, "retail food stores" shall mean those retail stores primarily engaged in selling food for home preparation and consumption described in major group 54 of the standard industrial classification manual (SIC) of 1987, as amended, published by the office of management and budget of the executive office of the president of the United States.

(e) The state tax commission, or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(f) Purchasers claiming exemption from tax and retailers whose pertinent records are kept outside of the state must bring the records to Idaho for examination by the state tax commission upon request of the latter, or, by agreement with the state tax commission, permit an auditor designated by the state tax commission to visit the place where the records are kept, and there audit such records.

(g) In the administration of the use tax, the state tax commission may require the filing of reports by any person or class of per-

sons having in his or their possession or custody information relating to sales of tangible personal property the storage, use, or other consumption of which is subject to the tax. The reports shall be filed when the state tax commission requires and shall set forth the names and addresses of purchasers of tangible personal property, the sale price of the property, the date of sale, and such other information as the state tax commission may require.

(h) When the tax commission determines that a retail sale ~~claimed exempt under any of the provisions of this chapter~~ is not exempt and the purchaser has failed to voluntarily ~~report and~~ pay sales or use tax in regard to the property or services purchased ~~on a use tax return~~, the tax commission may collect the sales tax which was due at the time of the sale or the use tax due at the time of storage, use or other consumption of the taxable goods or services by issuing to the purchaser a notice of deficiency determination, asserting tax together with interest, at the rate provided in section 63-3045, Idaho Code, and may assert penalties found elsewhere in this chapter.

(i) If the tax commission determines that the purchaser has repeatedly or intentionally made purchases claimed to be exempt that are not exempt, and the purchaser has failed to voluntarily report and pay use tax in regard to those purchases, or the commission determines that the purchaser has repeatedly or intentionally made purchases claimed to be exempt that are not exempt and has removed the goods from this state, the commission may assert a penalty equal to five percent (5%) of the sales price of the property or two hundred dollars ($200), whichever is greater. The tax commission may abate the penalty when the purchaser establishes during a proceeding for redetermination that there ~~was~~ were reasonable grounds for believing that the purchase was properly exempt from tax.

SECTION 16. That Section 63-3635, Idaho Code, be, and the same is hereby amended to read as follows:

63-3635. COLLECTION AND ENFORCEMENT. The collection and enforcement procedures provided by the Idaho Income Tax Act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042, 63-3043, 63-3044, 63-3045B, 63-3047, 63-3048, 63-3049, 63-3050 through 63-3064, 63-3065A, 63-3071 and 63-3074, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and collection of any amounts due under this act, and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as sales and use tax liens and proceedings.

Approved February 23, 1996.

CHAPTER 47
(S.B. No. 1352)

AN ACT
RELATING TO MINIMUM AUDIT REQUIREMENTS OF LOCAL GOVERNMENTAL ENTITIES; AMENDING SECTION 67-450B, IDAHO CODE, TO REVISE REQUIREMENTS FOR CERTAIN LOCAL GOVERNMENTAL ENTITIES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 67-450B, Idaho Code, be, and the same is hereby amended to read as follows:

67-450B. INDEPENDENT FINANCIAL AUDITS BY GOVERNMENTAL ENTITIES -- FILING REQUIREMENTS. (1) The requirements set forth in this section are minimum audit requirements for all local governmental entities, and include, without limitation, all cities, counties, authorities and districts organized as separate legal and reporting entities under Idaho law, and include the councils, commissions and boards as appointed or elected and charged with fiscal management responsibilities of the local governmental entity.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accounting office. The auditor shall be employed on written contract.

The entity's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The entity shall file two (2) copies of each completed audit report with the legislative council within ten (10) days after receiving the audit from the contracting independent auditor.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of a local governmental entity whose annual budget (from all sources) exceeds two hundred fifty thousand dollars ($250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of a local governmental entity whose annual budget (from all sources) exceeds one hundred thousand dollars ($100,000), but does not exceed two hundred fifty thousand dollars ($250,000) may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the entity's budget does not exceed two hundred fifty thousand dollars ($250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.

(c) The governing body of a local governmental entity whose annual budget (from all sources) exceeds fifty thousand dollars ($50,000), but does not exceed one hundred thousand dollars ($100,000) may elect to have its financial statements reviewed ~~and compiled~~ on a biennial basis and may continue biennial review ~~and~~

~~compilation~~ cycles in subsequent years as long as the entity's annual budget does not exceed one hundred thousand dollars ($100,000) during either year of any biennial period. Biennial reports of review ~~and compilation~~ shall include a review ~~and compilation~~ of each fiscal year since the previous review ~~and compilation~~ report.

(d) The governing body of a local governmental entity whose annual budget (from all sources) does not exceed fifty thousand dollars ($50,000) has no minimum audit requirements under this section.

(e) Federal audit requirements applicable because of receipt of federal assistance supersede the minimum audit requirements provided in this section.

Approved February 23, 1996.

CHAPTER 48
(S.B. No. 1415)

AN ACT

RELATING TO FAIR DISTRICTS; AMENDING SECTION 22-303, IDAHO CODE, TO AUTHORIZE A BOARD OF COUNTY COMMISSIONERS CREATING A FAIR DISTRICT TO SUBDIVIDE THE DISTRICT INTO THE NUMBER OF SUBDIVISIONS THE BOARD DEEMS NECESSARY AND TO PROVIDE FOUR YEAR TERMS OF OFFICE FOR THE BOARD OF DIRECTORS OF A FAIR DISTRICT; AMENDING SECTION 22-304, IDAHO CODE, TO PROVIDE FOR MEETINGS OF THE BOARD OF DIRECTORS OF A FAIR DISTRICT ONCE A MONTH OR MORE FREQUENTLY AS NEEDED TO ACCOMPLISH THE BUSINESS OF THE DISTRICT AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 22-307, IDAHO CODE, TO PROVIDE THAT THE BOARD OF DIRECTORS OF THE DISTRICT SHALL MEET THE SECOND WEEK OF NOVEMBER TO SET A BUDGET FOR THE DISTRICT WHICH SHALL INCLUDE AN APPROPRIATION FROM THE COUNTIES FORMING THE DISTRICT DETERMINED BY A FORMULA BASED ON POPULATION AND ASSESSED VALUATION, TO PROVIDE THAT THE BOARD SHALL CERTIFY TO THE COUNTY CLERK OF EACH OF THE COUNTIES IN THE DISTRICT THE AMOUNT OF THE BUDGET AND THE REVENUE REQUIRED TO BE RAISED BY EACH OF THE COUNTIES IN THE DISTRICT, AND TO REQUIRE THAT THE BOARDS OF COUNTY COMMISSIONERS OF THE COUNTIES IN THE DISTRICT MEET IN JOINT ASSEMBLY WITH THE BOARD OF DIRECTORS OF THE DISTRICT IN JANUARY TO CONSIDER THE BUDGET TO PROVIDE THAT A VICE CHAIRMAN BE ELECTED AT THE MEETING AND TO PROVIDE FOR RECOMMENDATIONS CONCERNING THE BUDGET.

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

SECTION 1. That Section 22-303, Idaho Code, be, and the same is hereby amended to read as follows:

22-303. ORDER CREATING DISTRICT -- SUBDIVISIONS OF DISTRICT -- BOARD OF DIRECTORS. The respective boards shall meet at the time and place fixed, and the petitions of each county shall be duly considered and canvassed, and if all, or at least three (3) of them, are found in

due order and signed by the requisite number of voters, the said commissioners shall jointly make an order creating the proposed district out of the counties in which the petitioners are found to be sufficient and shall give it a name, and at the same time subdivide the district into as many subdivisions as ~~there-are--counties--in--it~~ the commissioners deem necessary, numbering them. The said boards shall at the same time select a board of directors, one (1) from each subdivision, each of whom must reside within the subdivision he represents. Each director shall hold office for the term of ~~two~~ four (~~2~~4) years. Every ~~two~~ four (~~2~~4) years thereafter the board of county commissioners of the counties comprising the fair district shall select a board of directors. In case of a vacancy caused by death, resignation, or otherwise, said vacancy shall be filled for the unexpired term by the board of county commissioners of the county in which the vacancy occurs.

SECTION 2. That Section 22-304, Idaho Code, be, and the same is hereby amended to read as follows:

22-304. DUTIES OF BOARD OF DIRECTORS -- BONDS AND MEETINGS. The board of directors shall be charged with the care and custody of all property of the district fair. They shall file bonds in the sum of one thousand dollars ($1,000) each. They shall designate a place within the proposed district where the fair grounds shall be located and this place shall thereafter be the place of business of said district. They shall meet at this place of business ~~on-the-second-Monday-in--November of--each-year,-and-thereafter-monthly-on-the-second-Monday-of-the~~ once each month, or more frequently if the board deems it necessary to accomplish the business of the fair district. They shall see that all moneys are kept in safe depositories by the treasurer, properly safeguarded by bonds. They shall formulate in writing and file in the district office all plans adopted by them from time to time in connection with the conduct of the affairs of said district. They shall see that all records and accounts are properly kept, supervised and approved; that proper vouchers evidence all disbursements of money; that the records are at all reasonable hours open to the taxpayers of the counties comprising the district. They shall cause to be published in at least one (1) issue of a newspaper in each county comprising said district a detailed statement of the receipts and disbursements of the fair district, within sixty (60) days after the holding of each fair.

SECTION 3. That Section 22-307, Idaho Code, be, and the same is hereby amended to read as follows:

22-307. REVENUE FOR FAIR PURPOSES. Aside from the revenue derived from annual fairs or other exhibitions conducted, the necessary revenue shall be raised as follows: The board of directors shall meet ~~on~~ the second ~~Monday-of-May~~ week of November of each year, and shall make a budget of the amounts required in the conduct of the affairs of the district, for the current year.~~,-and-shall-deduct-therefrom-the-probable-income-from-fairs-and-other-exhibitions-to-be-held--by--said--district--during-the-year,-and-shall-then-apportion-the-remaining-balance among-the-various-counties-forming-said-district,-in-proportion-to-the~~

~~assessed-property-of-each-county-as-determined-by-the-assessment-rolls of-the-current-year;-and~~ Included in the budget shall be an appropriation from the various counties forming the district. Each county's assessment shall be determined by a formula, based upon population and assessed valuation. The board of directors shall certify to each board of county commissioners the amount of said budget, and the amount of revenue to be ~~raised-by-such~~ received from each county ~~for such-special-purposes~~ and shall file a ~~certified~~ copy thereof with the clerk of the board of county commissioners of each of the counties in said district, on or before the second ~~Monday-of-May~~ week of December of each year. The respective boards of county commissioners of the counties comprising said district, shall meet in joint assembly with the directors of the fair district ~~on-the-second-Wednesday-in-May-at-2 o'clock-p.m.~~ in January of each year ~~at-the-place-of-business-of--said fair--district~~, and shall at said meeting organize ~~such-meeting~~ by electing a chairman and ~~secretary~~ vice chairman and shall jointly consider the budget proposed by the board of directors of the district, and shall give such approval or make such ~~amendments-or-modifications~~ recommendations as to them may seem proper and desirable; grant to the board of directors of the district such authority in connection with the proposed expenditures, as said commissioners, by a majority vote may decide, pass resolutions or adopt bylaws that may be necessary for the conduct of said fair, such action to be certified back to the respective counties by the board of directors of the fair district.

A majority vote shall be the vote of a majority of the commissioners present at said meeting, and said majority vote shall be binding upon the respective boards of commissioners of all the counties belonging to said district. If the county commissioners shall fail to hold such joint meeting, or shall fail to take any action, then the budget as prepared by the directors of the fair district shall be, without further action, deemed approved, and the sums of money apportioned to the respective counties in the district shall be the sums to be raised by special levy for said purpose. For the purpose of raising the aforesaid revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective counties, provided, however, that the said levy shall not exceed five thousandths percent (.005%) of the market value for assessment purposes on all of the taxable property in the county, the proceeds of which tax shall be paid into the treasury of the fair district and used for any purpose authorized by this act.

Approved February 23, 1996.

CHAPTER 49
(S.B. No. 1307)

AN ACT

RELATING TO ACKNOWLEDGMENT OF PATERNITY; AMENDING SECTION 7-1106, IDAHO CODE, TO PROVIDE CIRCUMSTANCES UNDER WHICH EXECUTION OF A VOLUNTARY ACKNOWLEDGMENT OF PATERNITY CONSTITUTES A LEGAL FINDING

OF PATERNITY AND CIRCUMSTANCES UNDER WHICH THE ACKNOWLEDGMENT MAY BE RESCINDED; AMENDING SECTION 7-1116, IDAHO CODE, TO INCLUDE REFERENCE TO ADDITIONAL BLOOD TESTING ACCREDITATION BODIES; AMENDING SECTION 7-1121, IDAHO CODE, TO PROVIDE FOR A TEMPORARY SUPPORT ORDER BASED UPON BLOOD TESTS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING CHAPTER 11, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1125, IDAHO CODE, TO PROVIDE THAT THERE SHALL BE NO RIGHT TO JURY TRIAL IN PROCEEDINGS UNDER THIS CHAPTER.

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

SECTION 1. That Section 7-1106, Idaho Code, be, and the same is hereby amended to read as follows:

7-1106. VOLUNTARY ACKNOWLEDGMENTS -- APPROVAL BY COURT -- EFFECT. (1) In lieu of contested paternity proceedings, a verified voluntary acknowledgment of parentage executed jointly by the father and the mother of a child may be filed with a court of competent jurisdiction and proper venue. A voluntary acknowledgment executed after July 1, 1994, shall be admissible as evidence of paternity and shall create a rebuttable presumption of paternity. After filing, either parent may, upon notice to the other parent, move the court for entry of an order of filiation. Upon notice to both parents, the department of health and welfare may move the court for entry of an order of filiation on behalf of a child for whom services are being provided under Title IV-D of the social security act.

(2) A voluntary acknowledgment of paternity executed after July 1, 1996, shall be admissible as evidence of paternity and shall constitute a legal finding of paternity subject to the right of any party executing the acknowledgment to rescind the acknowledgment within the earlier of:

(a) Six (6) months, or less if so prescribed by federal law or regulation, of execution; or

(b) The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(3) After the period for recision, an executed acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the party challenging the acknowledgment. The legal responsibilities, including the obligation to pay child support, or any party to the acknowledgment shall not be stayed except for good cause shown.

(4) Judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(5) An executed acknowledgment of paternity shall be filed with the department of health and welfare, bureau of vital statistics, however, failure to file the acknowledgment shall not affect the validity or legal effect of the acknowledgment.

(6) The voluntary acknowledgment of parentage may also contain agreements regarding custody, support and visitation. Such agreements, if approved by the court, shall have the same force and effect as a judgment of the court. However, the court shall have the same power to investigate the facts regarding custody, support and visitation prior

to entering an order relative to those issues as it would have if no agreement had been filed; and provided further, that an agreement regarding the issues of child support, custody, or visitation shall be approved only if the court finds it to be in the best interest of the child. The court may enter an order for the support of a child upon execution of a voluntary acknowledgment without further proceedings to establish paternity.

SECTION 2. That Section 7-1116, Idaho Code, be, and the same is hereby amended to read as follows:

7-1116. GENETIC TESTS. (1) The court may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to genetic tests. The tests shall be performed by an expert qualified as an examiner of genetic markers. Verified documentation of the chain of custody of the genetic evidence is competent evidence to establish chain of custody. A verified experts' report prepared by a laboratory approved by the American association of blood banks <u>or other accreditation body,</u> pursuant to an order of the court or by voluntary agreement of the parties, shall be admitted at trial unless a challenge to the testing procedures or the genetic analysis has been made twenty-one (21) days before trial. The genetic test report must be served upon the defendant party with the complaint or as soon as it is obtained, and in any event at least twenty-eight (28) days before a trial together with a notice that the genetic test will be admitted unless a challenge to the testing procedures or the genetic analysis has been made by a party at least twenty-one (21) days before trial. A genetic test result with a probability of paternity of at least ninety-eight percent (98%) shall create a rebuttable presumption of paternity.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers present on blood cells and components. Additional tests performed by other experts of the same qualifications may be ordered by the court at the expense of the party requesting additional testing.

(3) In all cases, the court shall determine the number and qualifications of the experts.

(4) The requesting party shall pay the expense of genetic testing; however, the cost of genetic testing shall be recovered by the prevailing party in the action.

(5) Whenever the results of the tests exclude any male witness from possible paternity, the tests shall be conclusive evidence of nonpaternity of the male witness. The refusal of any party to submit to the genetic tests shall be disclosed to the court and is subject to the sanctions within the jurisdiction of the court. If the action was brought by the child's mother, but she refuses to submit herself or the child to genetic tests, the action shall be dismissed.

(6) Any party calling a male witness for the purpose of testifying that he had sexual intercourse with the mother at any possible time of conception shall provide all other parties with the name and

address of the witness twenty (20) days before the trial or pretrial hearing. If a male witness is produced at the hearing for the purpose stated in this subsection, but the party calling the witness failed to provide the twenty (20) day notice, the court may adjourn the proceeding for the purpose of taking a genetic test of the witness prior to hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

SECTION 3. That Section 7-1121, Idaho Code, be, and the same is hereby amended to read as follows:

7-1121. ORDER FOR SUPPORT -- CONTINUANCE BEYOND AGE OF 18 -- OTHER PAYMENTS BY FATHER. (1) In a proceeding in which the court has made an order of filiation, the court shall direct a father possessed of sufficient means or able to earn such means to pay monthly or at other fixed periods a fair and reasonable sum for the support and education of the child until the child is eighteen (18) years of age. If the child continues his formal education subsequent to reaching the age of eighteen (18) years, the court may, in its discretion, order the continuation of support payments until the child discontinues his education or reaches the age of nineteen (19) years, whichever is sooner.

(2) The order of filiation may direct the father to pay or reimburse amounts paid for the support of the child prior to the date of the order of filiation and may also direct him to pay or reimburse amounts paid for: (1) the funeral expenses if the child has died; (2) the necessary expenses incurred by or for the mother in connection with her confinement and recovery; and (3) such expenses in connection with the pregnancy of the mother as the court may deem proper.

(3) If the father is a minor at the time the order is entered, the order shall continue in effect as a valid order after the father reaches majority, and cannot be disaffirmed by the minor himself or personal representatives.

(4) Upon the receipt of a genetic test result with a probability of paternity of at least ninety-eight percent (98%) the court shall, upon motion by a party, order temporary support for the child pending a final order of paternity and support. The support shall be in accordance with the Idaho child support guidelines.

(5) Any child support order issued or modified shall contain a provision allowing the obligee to enforce the order by income withholding and shall include the notice required in section 32-1205, Idaho Code, advising the obligor that the obligee can seek enforcement of the order by means of a mandatory income withholding order issued pursuant to this chapter without further notice to the obligor.

Failure to include this provision does not affect the validity of the support order. If the social security number of the person obligated to make child support payments under the support order or decree is available, the court shall required that the social security number of the obligor be included in the order or decree.

SECTION 4. That Chapter 11, Title 7, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 7-1125, Idaho Code, and to read as

follows:

7-1125. NO RIGHT TO JURY TRIAL. There shall be no right to a jury trial in proceedings under this chapter.

Approved February 23, 1996.

CHAPTER 50
(S.B. No. 1306)

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 56-201, IDAHO CODE, TO FURTHER DEFINE TERMS, TO DELETE OBSOLETE REFERENCES, TO INCLUDE REFERENCE TO ASSISTANCE TO FAMILIES WITH CHILDREN AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 56-202, IDAHO CODE, TO CLARIFY THE DUTIES OF THE DIRECTOR OF THE STATE DEPARTMENT OF HEALTH AND WELFARE AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 56-205, IDAHO CODE; AMENDING SECTION 56-206, IDAHO CODE, TO FURTHER DEFINE GENERAL ASSISTANCE; REPEALING SECTION 56-209, IDAHO CODE; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-209, IDAHO CODE, TO AUTHORIZE THE ADMINISTRATION OF A PROGRAM TO PROVIDE ASSISTANCE TO ELIGIBLE FAMILIES; AMENDING SECTION 56-210, IDAHO CODE, TO ESTABLISH THE METHOD OF DETERMINING THE AMOUNT OF ASSISTANCE, TO PROVIDE THAT ASSISTANCE IS SUBJECT TO AVAILABLE FUNDS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 56-214, IDAHO CODE, TO CORRECT OBSOLETE REFERENCES.

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

SECTION 1. That Section 56-201, Idaho Code, be, and the same is hereby amended to read as follows:

56-201. DEFINITIONS. As used in this act:

(a) "State department" ~~shall~~ means the state department of health and welfare;

(b) "Director" ~~shall~~ means the director of the department of health and welfare;

(c) "Public welfare" ~~shall~~ means public assistance and social services;

(d) "Social services" ~~shall~~ means activities of the department in efforts to bring about economic, social and vocational adjustment of families and persons;

(e) "Public assistance" ~~shall~~ includes general assistance, old-age assistance, aid to the blind, ~~aid to dependent children~~ assistance to families with children, aid to the disabled, and medical assistance;

(f) "General assistance" ~~shall~~ means direct assistance in cash, direct assistance in kind, and supplementary assistance;

(g) "Direct assistance in cash" ~~shall~~ means money payments to ~~needy~~ eligible people not classified as old-age assistance, or aid to

the blind, or ~~aid-to-dependent~~ assistance to families with children, or aid to the disabled, or medical assistance;

(h) "Direct assistance in kind" ~~shall~~ means payments to others on behalf of a person or family ~~in-need~~ for food, rent, clothing, and other normal subsistence needs;

(i) "Supplementary assistance" ~~shall~~ means payments to others in behalf of a person or family ~~in-need~~ for ~~medical--and--surgical--aid, nursing-and-hospital-services,~~ transportation~~,~~ and costs incidental to ~~social--and~~ vocational adjustment or employment~~,-foster-care,-physical and-medical-appliances,-medical--supplies,--and--payments--toward--the funeral-expenses-of-such-persons-when-deceased~~;

(j) "Old-age assistance" ~~shall~~ means money payments to or in behalf of needy aged people;

(k) "Aid to the blind" ~~shall~~ means money payments to or in behalf of blind people who are needy;

(l) ~~"Aid-to-dependent-children"-shall~~ Assistance to families with children" means money payments, direct assistance in kind, supplementary assistance, and social services targeted toward self-sufficiency with respect to or in behalf of ~~needy-dependent~~ eligible families with children~~,-who-are-deprived-of-parental-care-or-support--by--reason--of the--death,--continued--absence--from--the-home,-or-physical-or-mental incapacity-of-a-parent~~;

(m) "Aged" ~~shall~~ means any person sixty-five (65) years or older;

(n) "Aid to the disabled" ~~shall~~ means money payments to or in behalf of needy individuals who are disabled, and whose disability prevents self-support through employment for a period of at least one (1) year from the date of onset of the disability;

(o) "Medical assistance" ~~shall~~ means payments for part or all of the cost of such care and services allowable within the scope of title XIX of the federal social security act as amended as may be designated by department rule ~~and-regulation~~;

(p) "Provider" ~~shall~~ means any individual, partnership, association, corporation or organization, public or private, who provides residential care home services, nursing home services, services offered pursuant to the medicaid program, or services offered pursuant to titles IV or XX of the social security act;

(q) "Needy" ~~shall~~ means the condition where a person or family does not have income and available resources in accordance with the provisions of section 56-210, Idaho Code.

SECTION 2. That Section 56-202, Idaho Code, be, and the same is hereby amended to read as follows:

56-202. DUTIES OF DIRECTOR OF STATE DEPARTMENT OF HEALTH AND WELFARE. The director of the state department of health and welfare shall:

(a) Administer public assistance and social services to eligible people ~~who-are-in-need~~;

(b) Promulgate, adopt and enforce such rules ~~and-regulations~~ and such methods of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code, except as provided in section 56-203A, Idaho Code;

(c) Conduct research and compile statistics relating to public

welfare;

(d) Prepare for the governor and legislature an annual report of activities and expenditures; make such reports in such form and containing such information as the federal government may from time to time require; and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(e) ~~Define blindness in terms of ophthalmic measurements;~~

~~(f) Define dependent children in such terms that will meet the requirements for federal financial participation in aid to dependent children payments;~~

~~(g)~~ Cooperate with the federal government through its appropriate agency or instrumentality in establishing, extending, and strengthening services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent; and to undertake other services for children authorized by law;

(~~h~~f) Cooperate with the federal government through its appropriate agency or instrumentality in establishing and maintaining a comprehensive system of in-home services as defined in section 67-5006, Idaho Code, designed to assist older persons, as defined in section 67-5006, Idaho Code, of Idaho to continue living in an independent and dignified home environment and to undertake other services for older persons as authorized by law.

SECTION 3. That Section 56-205, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 56-206, Idaho Code, be, and the same is hereby amended to read as follows:

56-206. GENERAL ASSISTANCE. Public assistance awarded under the terms of this act which is not classified as old-age assistance, or aid to the blind, or ~~aid to dependent children~~ assistance to families with children, or aid to the ~~permanently and totally~~ disabled, or medical assistance, shall be designated as general assistance.

SECTION 5. That Section 56-209, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-209, Idaho Code, and to read as follows:

56-209. ASSISTANCE TO FAMILIES WITH CHILDREN. The director of the department is authorized to promulgate rules establishing assistance programs for eligible families, including temporary cash assistance, which will promote personal responsibility and self-sufficiency. The department shall define eligibility and other requirements of participation, and may establish time limitations, in conformity with federal law and regulation. The amount and duration of assistance shall be based on available funding.

SECTION 7. That Section 56-210, Idaho Code, be, and the same is hereby amended to read as follows:

56-210. AMOUNT OF ASSISTANCE. ~~(1)~~ The amount of public assistance which any ~~aid-to-dependent-children-recipient~~ eligible person or family may ~~be-eligible-to~~ receive shall be determined in accordance with the rules ~~and--regulations~~ of the state department subject to the availability of funds for such assistance. ~~The-department-shall-establish-a-standardized-level-of-need-for-individuals-in--Idaho--based--on resources--needed--to-provide-a-subsistence-compatible-with-reasonable health-and-well-being.-The-department-may-periodically-redetermine-the need-standard-as-funds-are-available.~~

~~The-calculation-of-the-amount-of-actual-payments-made-to-individuals-shall-reflect-reduction-for-the-income-and-other-resources--available--to--the--recipient;--provided--that-the-department-may-disregard income-to-the-extent-and-in-the-manner-permitted-or-required-by--title IV-A--of--the-social-security-act-as-now-or-hereafter-amended-or-other federal-legislation-affecting-federal-financial-participation--in--his assistance.~~

~~The--amount--of-assistance-payments-made-at-any-time-shall-be-subject-to-the-amount-of-funds-available-to-the-department-for-such--purposes.~~ The department may also increase or decrease the payment ~~standard~~ for groups of cases where the circumstances are specifically identified ~~which-distinguish-application-of-the-need-standard-in-those cases.~~ The department shall be the single state agency for administration of public assistance programs or plans that receive federal funding.

~~(2)--The--amount--of--assistance--which--any--recipient-of-old-age assistance,-aid-to-the-blind,-or-aid-to-the-disabled-shall-be-eligible to-receive-shall-be-determined-in-accordance-with-the-rules-and--regulations--of--the-state-department-subject-to-the-availability-of-funds and-in-accordance-with-title-XVI-of-the-social-security-act.~~

~~(3)--The-amount-of-assistance-which-any-medical-assistance-recipient-shall-be-eligible-to-receive-shall-be-subject-to-reduction-according-to-the-amount-of-funds-as-are-available-to-the-department-for-such assistance.~~

SECTION 8. That Section 56-214, Idaho Code, be, and the same is hereby amended to read as follows:

56-214. AWARD OF PUBLIC ASSISTANCE -- INELIGIBILITY UPON TRANSFER OF PROPERTY. Upon the completion of the investigation, the state department shall determine whether the applicant is eligible for public assistance under the provisions of this act, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin. Public assistance shall be paid in the manner prescribed by the state department.

(1) ~~Aid-to-dependent~~ Assistance to families with children shall not be granted under this act to any person who within six (6) months prior to applying for or at any time during which such assistance is received, has either made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this

act, or who has divested himself of any interest in property without adequate consideration which interest or proceeds therefrom could reasonably be expected to contribute to the support and maintenance of such person and his family, except that any person who is ineligible for public assistance due solely to such assignment or transfer shall become eligible provided:

(a) there is a showing that such person has caused such property to be assigned or transferred back to him; or

(b) there is a showing that the person to whom such property is assigned or transferred has, subsequent to such assignment or transfer, met subsistence and medical care costs exclusive of any obligation for support, of such person or family, according to the department's assistance standard, equal to, or in excess of, the market value of the property so assigned or transferred; or

(c) there is a showing that the subsistence and medical care costs of such person, according to the department's assistance standard, subsequent to such assignment or transfer, equal or exceed the market value of the property so assigned or transferred.

(2) Eligibility for old age assistance under section 56-207, Idaho Code, or aid to the blind under section 56-208, Idaho Code, or aid to the ~~permanently and totally~~ disabled under section 56-209a, Idaho Code, shall be determined by continuing to consider as available any resource that was transferred prior to July 1, 1988, until such resource is fully accounted for under the provisions of section 1613(c) of the social security act as such section read on June 30, 1988.

(3) Eligibility for medical assistance under section 56-209b, Idaho Code, shall continue to apply the rules of the director of the department of health and welfare concerning transfer of property as such rules read on October 29, 1988 to transfers that occur prior to July 1, 1989, to persons other than to the spouse of the person receiving or applying for medical assistance, and to interspousal transfers that occur prior to October 1, 1989.

(4) The provisions of section 1917(c) of the social security act as amended by public law 100-360 and further amended by public law 100-485 and as hereafter amended shall apply as of July 1, 1989, to transfers of assets other than to the spouse, and as of October 1, 1989, to transfers between spouses, except that such provisions shall not apply either to transfers that occurred before July 1, 1988, or to transfers that have been fully accounted for under subsection (3) of this section.

(5) Any funds, securities, accounts, contracts and all other property held in or transferred to a special needs trust as provided in chapter 14, title 68, Idaho Code, section 15-5-409, Idaho Code, and section 15-5-409a, Idaho Code, shall not be considered by the state department in determining whether the applicant is eligible for public assistance under the provisions of this act, so long as the action is permitted under the provisions of section 1917(c) and (d) of the social security act, as amended.

(6) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section that can be

given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

Approved February 23, 1996.

CHAPTER 51
(S.B. No. 1294)

AN ACT

RELATING TO DELIVERY OF WATER IN SUBDIVISIONS; AMENDING SECTION 31-3805, IDAHO CODE, TO PROVIDE FOR THE DEFINITION OF IRRIGATION ENTITY TO BE INCLUDED IN THE ENTIRE CHAPTER; AMENDING SECTION 31-3806, IDAHO CODE, TO PROVIDE FOR IRRIGATION ENTITY'S PARTICIPATION IN CIVIL ACTIONS.

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

SECTION 1. That Section 31-3805, Idaho Code, be, and the same is hereby amended to read as follows:

31-3805. DELIVERY OF WATER. (1) When either a subdivision within the meaning of chapter 13, title 50, Idaho Code, or a subdivision subject to a more restrictive county or city zoning ordinance is proposed within the state of Idaho, and all or any part of said subdivision would be located within the boundaries of an existing irrigation district or other canal company, ditch association, or like irrigation water delivery entity, hereinafter called "irrigation entity" for the purposes of this ~~section~~ chapter, no subdivision plat will be accepted, approved, and recorded unless:

(a) The water rights appurtenant and the assessment obligation of the lands in said subdivision which are within the irrigation entity have been transferred from said lands or excluded from an irrigation district by the owner thereof; or by the person, firm or corporation filing the subdivision plat; or

(b) The owner or person, firm or corporation filing the subdivision plat has provided for underground tile or other like satisfactory underground conduit to permit the delivery of water to those landowners within the subdivision who are also within the irrigation entity, with the following appropriate approvals:

(i) For proposed subdivisions within the incorporated limits of a city, the irrigation system must be approved by the city zoning authority and the city council with the advice of the irrigation entity charged with the delivery of water to said lands.

(ii) For proposed subdivisions located outside incorporated cities but within one (1) mile outside the incorporated limits of any city, both city and county zoning authorities and city council and county commissions must approve such irrigation system in accordance with section 50-1306, Idaho Code. In addition, the irrigation entity charged with the delivery of water to said lands must be advised regarding the irriga-

tion system.

(iii) For proposed subdivisions located in counties with a zoning ordinance, the delivery system must be approved by the appropriate county zoning authority, and the county commission with the advice of the irrigation entity charged with the delivery of water to said lands.

(iv) For proposed subdivisions located in counties without a zoning ordinance, such irrigation system must be approved by the irrigation entity charged with the delivery of water to said lands.

(2) (a) In the event that the provisions of either subsections (1)(a) or (1)(b) of this section have not been complied with, the assessments of the irrigation entity for operation, maintenance, construction, and other valid charges permitted by statute shall in no way be affected. However, any person, firm or corporation or any other person offering such lots in such subdivision for sale, or selling such lot shall, prior to the sale, advise the purchaser in writing as follows:

(i) that water deliveries have not been provided; and

(ii) that the purchaser of the lot must remain subject to all assessments levied by the irrigation entity; and

(iii) that the individual purchaser shall be responsible to pay such legal assessments; and

(iv) that the assessments are a lien on the land within the irrigation entity; and

(v) that the purchaser may at a future date petition the appropriate irrigation entity for exclusion from the irrigation district.

(b) A disclosure statement executed by the purchasers and duly acknowledged, containing the representations required in this subsection of this section, shall be obtained by the seller at the time of receipt of the earnest money from the purchaser, and affixed to the proposed sales contract and a copy thereof shall be forwarded to the appropriate irrigation entity.

SECTION 2. That Section 31-3806, Idaho Code, be, and the same is hereby amended to read as follows:

31-3806. CIVIL ACTION TO ENFORCE. (1) If the owner of the property of the person, firm or corporation filing the subdivision plat fails to comply with either subsection (1)(a) or (1)(b) of section 31-3805, Idaho Code, prior to sale of the lots in the subdivision to purchasers, the owner of the property, or the person, firm or corporation filing the subdivision plat shall be liable to any purchaser for the costs of the lot's exclusion plus all assessments due and owing of the actual cost of installation of an irrigation delivery system not to exceed one thousand five hundred dollars ($1,500) per lot. The purchaser shall have a right to enforce this obligation in a civil action and the purchaser shall have the right to elect exclusion or installation of the system in such action.

(2) Any person, firm or corporation who shall omit, neglect or refuse to provide the purchaser or the irrigation ~~district~~ entity within whose boundaries the land is located, a copy of the disclosure

statement required by subsections (2)(a) and (2)(b) of section 31-3805, Idaho Code:

(a) Shall be liable to the purchaser as provided in subsection (1) of this section.

(b) Shall be liable to the irrigation ~~district~~ entity for its reasonable expense, including employee time, of locating the purchaser and providing the information required in the form and for advising affected purchasers of the lack of a water delivery system and for any assessments on the property that are past due at the time of discovery of the violation. The irrigation ~~district~~ entity affected shall have a right to claim such expenses in a civil action.

(3) In any civil action filed under subsections (1) or (2) of this section, the prevailing party shall be awarded its reasonable costs and attorney's fees and the purchaser and irrigation ~~district~~ entity shall have two (2) years from the date of discovery of the violation to initiate any legal action.

Approved February 27, 1996.

CHAPTER 52
(H.B. No. 495)

AN ACT

RELATING TO CIRCUIT BREAKER PROPERTY TAX RELIEF; AMENDING SECTION 63-117, IDAHO CODE, TO CLARIFY THE DEFINITION OF INCOME BY PROVIDING THAT ALIMONY IS ADDED TO FEDERAL ADJUSTED INCOME ONLY TO THE EXTENT NOT ALREADY INCLUDED IN FEDERAL ADJUSTED GROSS INCOME, TO CLARIFY THAT MEDICAL COSTS MAY BE DEDUCTED FROM INCOME TO THE EXTENT NOT REIMBURSED, TO FURTHER DEFINE HOUSEHOLD, TO CORRECT THE DEFINITION OF CLAIMANT TO REFLECT PERSONS ALLOWED TO FILE A CLAIM UNDER SECTION 63-118, IDAHO CODE, TO CORRECT THE DEFINITION OF OWNER AS IT APPLIES TO PARTIAL OWNERSHIP OF PROPERTY AND TO AMEND THE DEFINITION OF PRIMARY DWELLING PLACE TO STATE THAT A CLAIMANT'S SPOUSE WHO RESIDES IN A CARE FACILITY SHALL BE DEEMED TO RESIDE AT THE CLAIMANT'S PRIMARY DWELLING PLACE AND TO BE A PART OF THE CLAIMANT'S HOUSEHOLD; AMENDING SECTION 63-118, IDAHO CODE, TO PROVIDE RULES FOR DETERMINING ELIGIBILITY FOR CIRCUIT BREAKER RELIEF WHEN PROPERTY IS OWNED BY AN ESTATE OF A DECEASED PERSON; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-117, Idaho Code, be, and the same is hereby amended to read as follows:

63-117. DEFINITIONS. As used in sections 63-117 through and including 63-125, Idaho Code:

(a) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code (as defined by section 63-3004,

Idaho Code), and to the extent not already included in federal adjusted gross income, alimony, support money, income from inheritances, nontaxable strike benefits, the nontaxable amount of any individual retirement account, pension or annuity (including railroad retirement benefits, all payments received under the federal social security act, state unemployment insurance laws, and veterans' disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code), nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities, workmen's compensation and the gross amount of "loss of earnings" insurance. It does not include capital gains, gifts from nongovernmental sources~~,~~ or inheritances~~,--or~~. To the extent not reimbursed, cost of medical care as defined by section 213(d) of the Internal Revenue Code, incurred by the household may be deducted from income. Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant does not file a federal tax return the claimant's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant filed a federal tax return.

(b) "Household" means the claimant and any person or persons who live in the same dwelling, and share its furnishings, facilities, accommodations or expenses. The term includes any person owing a duty of support to the applicant pursuant to section 32-1002, Idaho Code, unless the person qualifies as a "nonhousehold member" pursuant to subsection (c) of this section. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (h)(ii) of this section.

(c) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal care services to the claimant, or who is receiving disability benefits pursuant to subsection (f)(iv) of this section.

(d) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(e) "Homestead" means the dwelling, owner-occupied by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multi-dwelling or multi-purpose building and part of the land upon which it is built. It does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(f) "Claimant" means a person who has filed a claim under the provisions of sections 63-117 through and including 63-125, Idaho Code. On January 1 of the year in which the claim was filed a claimant must ~~own~~ be an owner of a homestead or a person entitled to file a claim under subsection (2) of section 63-118, Idaho Code, and be:

(i) not less than sixty-five (65) years old, or

(ii) a fatherless or motherless child under the age of eighteen

(18) years of age, or
(iii) a widow or widower, or
(iv) a disabled person who is recognized as disabled pursuant to 42 USC 423, 45 USC 228, 45 USC 231, or 5 USC 8337, or
(v) a disabled veteran of any war engaged in by the United States, whose disability is recognized as a service connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice connected disabilities, in accordance with laws and regulations administered by the United States veterans administration, or
(vi) a person as specified in 42 USC 1701 who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage, or otherwise, or
(vii) blind.
(g) (i) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate <u>or who is a person entitled to file a claim under subsection (2)(b) of section 63-118, Idaho Code</u>. "Owner" shall also include any person who as grantor created a revocable trust and named himself as beneficiary of that trust. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract.
(ii) Any partial ownership shall be considered ownership for determining qualification for property tax reduction benefits, however, the amount of tax reduction under section 63-120, Idaho Code, and rules promulgated pursuant to section 63-1204, Idaho Code, shall be ~~reduced to a proportion commensurate with the proportion of~~ <u>computed on the value of the claimant's</u> partial ownership. "Partial ownership," for purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests.
(iii) Where title to property is held by a person who has died without timely filing a claim for property tax reduction, the estate shall be the "owner."
(h) (i) "Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(1) at least six (6) months during the prior year; or
(2) the majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
(3) the majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one

(1) year.

(ii) Notwithstanding the provisions of paragraph (i) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(15), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

(i) "Occupied" means actual use and possession.

SECTION 2. That Section 63-118, Idaho Code, be, and the same is hereby amended to read as follows:

63-118. CLAIM IS PERSONAL -- EXCEPTIONS. (1) The right to file a claim under the provisions of sections 63-117 through and including 63-125, Idaho Code, shall be personal to the claimant and shall not survive his death, except as provided in subsection (2) of this section. Such right may be exercised on behalf of a living claimant by an agent authorized in writing to so act or by a guardian or other representative acting pursuant to judicial authority. If a claimant dies after having filed a timely claim, the amount thereof shall be allowed to his personal representative, if one is appointed, or to surviving heirs.

(2) ~~A claimant's spouse may file a claim subject to the provisions of section 63-121, Idaho Code, on behalf of a claimant who dies on or after January 1, only if the claimant qualified for tax reduction granted under the provisions of sections 63-117 through and including 63-125, Idaho Code, on January 1.~~ In the case of property owned by an estate, the deceased owner's widow or widower:

(a) May file a claim on behalf of his or her deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 of the year in which the claim is filed; or

(b) Be deemed the owner of the property in any year after the year of the death of the spouse.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1996.

Approved March 1, 1996.

CHAPTER 53
(H.B. No. 413, As Amended)

AN ACT
RELATING TO DOMESTIC RELATIONS; AMENDING SECTION 32-1216, IDAHO CODE, TO PROVIDE CONDITIONS WHEN AN EMPLOYER CANNOT DISENROLL A CHILD FROM HEALTH INSURANCE COVERAGE WHICH HAS BEEN ORDERED PURSUANT TO A COURT OR ADMINISTRATIVE ORDER.

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

SECTION 1. That Section 32-1216, Idaho Code, be, and the same is hereby amended to read as follows:

32-1216. HEALTH INSURANCE COVERAGE -- ENFORCEMENT. (1) Where a person is required by court or administrative order to provide health insurance coverage for a dependent child, that person is eligible for family health coverage through an employer and fails to provide such coverage or lets it lapse, the department of health and welfare or other obligee may seek enforcement of the coverage order as provided under this section.

(2) (a) If the obligor parent's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage may result in direct enforcement of the order and orders payments through, or has been submitted to, the department of health and welfare for enforcement, then the department of health and welfare may, without further notice to the obligor, send a notice of intent to enroll to the obligor's employer by certified mail, return receipt requested. The notice shall require the employer to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(b) If the obligor parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the department of health and welfare:

(i) The obligee may, without further notice to the obligor, send a certified copy of the order requiring health insurance coverage to the obligor's employer by certified mail, return receipt requested; and

(ii) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer to enroll the child in the health insurance plan as provided in subsection (3) of this section without regard to any enrollment season restrictions.

(3) Upon receipt of an order that provides for health insurance coverage, or a notice of intent to enroll:

(a) The obligor's employer shall answer the party who sent the order or notice within thirty (30) days and confirm that the child:

(i) Has been submitted in the health insurance plan;

(ii) Cannot be covered, stating the reasons why such coverage cannot be provided.

(b) The employer shall withhold any required premium for the obligor's dependents from the obligor's income or wages;

(c) If more than one (1) plan is offered by the employer, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;

(d) The employer or insurer shall provide the name of the health insurance coverage provider or insurer, the extent of coverage available and other necessary information to the department of health and welfare or other obligee and shall make available any necessary claim forms or enrollment membership cards.

(4) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage may result in direct enforcement of the order, the department of health and welfare or other obligee may serve a written notice of intent to enforce the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for within thirty (30) days of service of the notice, or within thirty (30) days of coverage becoming available, the department of health and welfare or other obligee may proceed to enforce the order directly as provided in subsection (2) of this section.

(5) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department of health and welfare or other obligee may serve a written notice of intent to enroll the child in health insurance coverage on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(6) If the department of health and welfare serves a notice under subsection (5) of this section, the obligor may, within thirty (30) days of the date of service:

(a) File an application for an administrative hearing; or

(b) Provide written proof to the department of health and welfare that the obligor has either applied for, or obtained coverage accessible to the child.

(7) If an obligee other than the department of health and welfare serves a notice under subsection (5) of the section, within thirty (30) days of the date of service, the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(8) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the party who served the notice may enroll the obligor's child in the health insurance coverage specified in the notice directly. The employer shall withhold the amount of the premium from the income of the obligor. The amount to be withheld from the income of the obligor shall not exceed the amount specified in section 11-207, Idaho Code. The employer shall forward the amount of premium withheld to the insurance provider.

(9) If the coverage is terminated or amended, the employer shall mail a notice of termination or amendment to the department of health and welfare or other obligee at the obligee's last known address within forty-five (45) days of the termination date.

(10) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in court at any time to enforce, modify or clarify the original support order.

(11) If the amount of the obligor's income or wages which are withheld under subsection (3)(b) of this section is insufficient to pay the premium for the dependents, the obligor shall, nevertheless, be responsible for payment of the premium.

(12) The ~~department of health and welfare is authorized to adopt reasonable rules to implement the provisions of chapter 12, title 32, Idaho Code, pursuant to chapter 52, title 67, Idaho Code~~ employer shall not disenroll or eliminate coverage of any such child unless:

(a) The employer has been provided satisfactory written evidence that the order requiring such health care coverage is no longer in effect; or

(b) The employer has received confirmation that the child is enrolled in other comparable health care coverage; or

(c) The employer has eliminated family health coverage for all of its employees; or

(d) The employee upon whose employment the health coverage is premised has ceased employment with the employer and reasonable measures have been taken to give notice to the parents or guardians of the child.

Approved March 1, 1996.

CHAPTER 54
(H.B. No. 405)

AN ACT

RELATING TO THE IDAHO SAFE BOATING ACT; AMENDING SECTION 67-7003, IDAHO CODE, TO DEFINE FLOAT HOUSE AND FLOAT TUBE, TO CLARIFY THE DEFINITION OF A VESSEL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-7004, IDAHO CODE, TO ALLOW THE DIRECTOR TO ISSUE HULL IDENTIFICATION NUMBERS FOR CONFISCATED VESSELS; AMENDING SECTION 67-7009, IDAHO CODE, TO EXEMPT FLOAT TUBES FROM NUMBERING REQUIREMENTS; AMENDING SECTION 67-7022, IDAHO CODE, TO RECOGNIZE VESSEL CAPACITY PLATES WITH REGARD TO OVERLOADING; AMENDING SECTION 67-7023, IDAHO CODE, TO RECOGNIZE VESSEL CAPACITY PLATES WITH REGARD TO OVERPOWERING; AND AMENDING SECTION 67-7027, IDAHO CODE, TO INCREASE THE MINIMUM AMOUNT OF DAMAGE REQUIRED FOR SUBMITTING BOATING ACCIDENT REPORTS.

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

SECTION 1. That Section 67-7003, Idaho Code, be, and the same is hereby amended to read as follows:

67-7003. DEFINITIONS. In this chapter:

(1) "Actual physical control" means being in the operator's position of the vessel with the motor running or with the vessel moving.

(2) "Aids to navigation" means such buoys, batons, markers or other fixed objects in the water which are established and used to mark obstructions or to direct navigation through separate channels.

(3) "Authorized vendor" means a retail/commercial enterprise or government office authorized by the department to sell certificates of registration as provided in section 67-7008, Idaho Code.

(4) "Commercial vessel" means any vessel used in the carriage of any person, persons or property for a valuable consideration, whether directly or indirectly flowing to the owner, partner, agent or any other person interested in the vessel.

(5) "Department" means the Idaho department of parks and recreation.

(6) "Director" means the director of the Idaho department of parks and recreation.

(7) "Float house" means a floating structure which is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, has no mode of power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.

(8) "Float tube" means any vessel constructed of canvas, nylon or other material encasing an inflatable inner tube which allows the operator to sit inside with his legs dangling below the vessel.

(9) "Length of vessel" means the distance measured at the centerline at the highest point above the waterline from the fore-part of the outer hull at the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment.

(~~8~~10) "Manufacturer" means any person who is engaged in the business of manufacturing or importing new and unused vessels for the purpose of sale or trade.

(~~9~~11) "Operate" means to navigate or otherwise use a vessel on the water of this state.

(~~10~~2) "Operator" means any person who controls the direction or propulsion of any vessel on the water of this state.

(~~11~~3) "Owner" means any person having a property interest in or entitled to the use or possession of a vessel, including a person entitled to use or possession subject to the interest in another person reserved or created by agreement and securing payment of performance of an obligation, but not including a lessee under lease not intended as security.

(~~12~~4) "Passenger" means every person carried aboard a vessel other than:

(a) The owner or his representative;

(b) The operator;

(c) A bona fide member of the crew engaged in the business of the vessel who has contributed no consideration for carriage and who is paid for his services; or

(d) Any guest on board a vessel which is used exclusively for pleasure purposes who has not contributed any consideration

directly or indirectly for his carriage.

(~~13~~5) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, except the United States and the state of Idaho, and includes any agent, trustee, executor, reserve assignee or similar representative of any of the above.

(~~14~~6) "Private label merchandiser" means any person engaged in the business of selling or distributing, under his own trade name, vessels manufactured by another.

(~~15~~7) "Regatta," "Race," "Marine Event," "Tournament," or "Exhibition" means an organized water event of limited duration which is conducted according to a prearranged schedule.

(~~16~~8) "Regulatory markers" means any fixed or anchored aid to navigation which is established and used, but is not limited to, the bathing beach markers, speed zone markers, information markers, swimming or diving markers, floating mooring buoys, fishing buoys or markers for ski courses or jumps.

(~~17~~9) "Rules of the road" means the statutory and regulatory rules governing the navigation of vessels as published by the United States Coast Guard in Navigational Rules International -- Inland.

(~~18~~20) "Vessel" means every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but does not include float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices ~~including~~ not designed or modified to be used as a means of transportation on the water, such as inflatable air mattresses, single inner tubes, and beach and water toys ~~not designed as a means of transportation on water~~.

(~~2~~19) "Water of this state" means any waters in the state of Idaho over which the state has jurisdiction.

SECTION 2. That Section 67-7004, Idaho Code, be, and the same is hereby amended to read as follows:

67-7004. HULL IDENTIFICATION NUMBER. (1) All vessels, except seaplanes, shall have two (2) identical hull identification numbers permanently displayed and affixed in accordance with federal regulations.

(2) A person who builds or imports a vessel for his own use and not for the purposes of sale shall request a hull identification number from the director and affix the number as instructed.

(3) No person shall destroy, remove, alter, or cover a vessel hull identification number.

(4) The director may issue a hull identification number for any vessel in violation of the provisions of this section.

SECTION 3. That Section 67-7009, Idaho Code, be, and the same is hereby amended to read as follows:

67-7009. EXEMPTION FROM NUMBERING PROVISIONS. A vessel shall not be required to be numbered under this chapter if it is:

(1) Already covered by a number in full force and effect which has been issued to it pursuant to federal law or a federally approved

numbering system of another state, provided that such vessel shall not have been within this state for a period in excess of sixty (60) consecutive days.

(2) A vessel from a country other than the United States using the waters of this state for a period of less than sixty-one (61) consecutive days.

(3) A vessel which is owned by the United States, another state or a political subdivision thereof.

(4) A vessel's lifeboat.

(5) A vessel belonging to a class of vessels which has been exempted from numbering by the department after it has found that the numbering of vessels of such class will not materially aid in their identification and has further found that the vessel would also be exempt from numbering if it were subject to federal law.

(6) A float tube.

SECTION 4. That Section 67-7022, Idaho Code, be, and the same is hereby amended to read as follows:

67-7022. OVERLOADING. It shall be unlawful for any person to operate any vessel loaded with passengers or cargo beyond its safe carrying capacity taking into consideration weather and other existing operating conditions. It is also unlawful for any vessel to exceed the capacity established by a capacity plate required in this chapter.

SECTION 5. That Section 67-7023, Idaho Code, be, and the same is hereby amended to read as follows:

67-7023. OVERPOWERING. It shall be unlawful for any person to operate any vessel with any motor or other propulsion machinery beyond its safe power capacity taking into consideration the type and construction of the vessel and other existing operating conditions. It is also unlawful for any vessel to exceed the capacity established by a capacity plate required in this chapter.

SECTION 6. That Section 67-7027, Idaho Code, be, and the same is hereby amended to read as follows:

67-7027. COLLISIONS, ACCIDENTS AND CASUALTIES -- REPORTS. (1) It shall be unlawful for the operator of any vessel on the water of this state to fail to report any accident or casualty occasioned by the operation of a vessel and as herein provided.

(2) It shall be the duty of the operator of any vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew, passengers and guests to render aid to other persons affected by the collision, accident or other casualty and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(3) It shall be the duty of the operator of any vessel involved in a collision, accident or other casualty resulting in death or injury to a person or damage to property in excess of ~~two~~ five hundred dollars ($~~2~~500):

(a) To immediately, by the quickest means of communication, give notice of the accident to the sheriff of the county in which the accident occurred; and

(b) To file with the sheriff of the county in which the accident occurred, a boating accident report within forty-eight (48) hours of the occurrence if a person dies within twenty-four (24) hours of the occurrence, or in the case of an incapacitating injury or if a person disappears from the vessel. A report shall be filed within ten (10) days of the occurrence or death if an earlier report is not required by this paragraph. The report shall be made on forms provided by the department, but shall not be referred to in any way as evidence in any judicial proceeding. A copy of such report shall also be readily transmitted by the sheriff to the designated state boating safety coordinator.

(4) If the operator of the vessel involved in a collision, accident, or other casualty is incapacitated, and there is another person in the vessel at the time of the accident capable of giving immediate notice of an accident as required herein, the person shall give or cause to be given the notice not given by the operator.

(5) If the operator of the vessel involved in a collision, accident, or other casualty is incapacitated, the investigating law enforcement officer shall file the required form as prescribed by the director.

Approved March 1, 1996.

CHAPTER 55
(H.B. No. 404)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-202, IDAHO CODE, TO CLARIFY THE DEFINITION OF RESIDENT TO PROVIDE THAT MERE OWNERSHIP OF PROPERTY OR PAYMENT OF PROPERTY TAXES DOES NOT ESTABLISH RESIDENCY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 36-202, Idaho Code, be, and the same is hereby amended to read as follows:

36-202. DEFINITIONS. Whenever the following words appear in title 36, Idaho Code, and orders and rules promulgated by the Idaho fish and game commission or the director of the Idaho department of fish and game, they shall be deemed to have the same meaning and terms of reference as hereinafter set forth. The present tense includes the past and future tenses, and the future, the present.

(a) "Title" shall mean all of the fish and game laws and rules promulgated pursuant thereto.

(b) "Commission" shall mean the Idaho fish and game commission. "Commissioner" shall mean a member of the Idaho fish and game commission.

(c) "Department" shall mean the Idaho department of fish and game.

(d) "Director" shall mean the director of the Idaho department of fish and game or any person authorized to act in his name.

(e) "Employee" shall mean any employee of the Idaho department of fish and game whose salary is paid entirely or in part by funds administered by the Idaho fish and game commission and whose appointment is made in accordance with the Idaho personnel commission act and related rules.

(f) "Person" shall mean an individual, partnership, corporation, company, or any other type of association, and any agent or officer of any partnership, corporation, company, or other type of association. The masculine gender includes the feminine and the neuter. The singular, the plural, and the plural, the singular.

(g) "Wildlife" shall mean any form of animal life, native or exotic, generally living in a state of nature.

(h) "Take" shall mean hunt, pursue, catch, capture, shoot, fish, seine, trap, kill, or possess or any attempt to so do.

(i) "Hunting" shall mean chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for, or lying in wait for, any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures thereof.

(j) "Fishing" shall mean any effort made to take, kill, injure, capture, or catch any fish or bullfrog.

(k) "Trapping" shall mean taking, killing, and capturing wildlife by the use of any trap, snare, deadfall, or other device commonly used to capture wildlife, and the shooting or killing of wildlife lawfully trapped, and includes all lesser acts such as placing, setting or staking such traps, snares, deadfalls, and other devices, whether or not such acts result in the taking of wildlife, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife with traps, snares, deadfalls, or other devices.

(l) "Possession" shall mean both actual and constructive possession, and any control of the object or objects referred to; provided that wildlife taken accidentally and in a manner not contrary to the provisions of this title shall not be deemed to be in possession while being immediately released live back to the wild.

(m) "Possession limit" shall mean the maximum limit in number or amount of wildlife which may be lawfully in the possession of any person. "Possession limit" shall apply to wildlife being in possession while in the field or being transported to final place of consumption or storage.

(n) "Bag limit" shall mean the maximum number of wildlife which may be legally taken, caught, or killed by any one person for any particular period of time, as provided by order of the commission. The term "bag limit" shall be construed to mean an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another.

(o) "Buy" shall mean to purchase, barter, exchange, or trade and includes any offer or attempt to purchase, barter, exchange, or trade.

(p) "Sell" shall mean to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging or trading.

(q) "Transport" shall mean to carry or convey or cause to be carried or conveyed from one place to another and includes an offer to transport, or receipt or possession for transportation.

(r) "Resident" shall mean any person who has been domiciled in this state, with a bona fide intent to make this his place of permanent abode, for a period of not less than six (6) months immediately preceding the date of application for any license, tag, or permit required under the provisions of this title or orders of the commission and who, when temporarily absent from this state, continues residency with intent to return, and who does not claim any resident privileges in any other state or country for any purpose. Such privileges include, but are not limited to: state where valid driver's license is issued; state of voter registration; state where resident state income taxes are filed; state where homeowner's tax exemption is granted. Provided that, until any such person has been continuously domiciled outside the state of Idaho for a sufficient period of time to qualify for resident hunting and fishing privileges in his new state of residence, said person shall be deemed not to have lost his residency in Idaho for the purposes of this title. <u>However, mere ownership of real property or payment of property taxes in Idaho does not establish residency.</u> Provided further that:

1. Idaho residents shall not lose their residency in Idaho if they are absent from the state for religious (not to exceed two (2) years) or full-time educational (not to exceed five (5) years) purposes, full time to be defined by the educational institution attended, and do not claim residency or use resident privileges in any other state or country for any purpose.

2. Idaho residents who are in the military service of the United States and maintain Idaho as their official state of residence as shown on their current leave and earnings statement, together with their spouse and children under eighteen (18) years of age living in the household, shall be eligible for the purchase of resident licenses.

3. A member of the military service of the United States or of a foreign country, together with his spouse and children under eighteen (18) years of age residing in his household, who have been officially transferred, stationed, domiciled and on active duty in this state for a period of thirty (30) days last preceding application shall be eligible, as long as such assignment continues, to purchase a resident license.

4. Any person enrolled as a corpsman at a job corps center in Idaho shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

5. Any foreign exchange student enrolled in an Idaho high school shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

~~6.--Any person who owns real property in the state--of--Idaho--and who--pays--property--tax in Idaho shall be subject to the resident definition herein provided.~~

(s) "Senior resident" shall mean any person who is over sixty-five (65) years of age and who has been a resident of the state of Idaho as hereinbefore provided for not less than five (5) years.

(t) "Nonresident" shall mean any person who does not qualify as a resident.

(u) "Order, rule, regulation" are all used interchangeably and each includes the others.

(v) "Blindness" shall mean sight that does not exceed 20/200 as provided by the administrative guidelines of section 56-213, Idaho Code.

(w) "Public highway" shall mean the traveled portion of, and the shoulders on each side of, any road maintained by any governmental entity for public travel, and shall include all bridges, culverts, overpasses, fills, and other structures within the limits of the right-of-way of any such road.

(x) "Motorized vehicle" shall mean any water, land or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power.

(y) "Commercial fish hatchery" shall mean any hatchery, pond, lake or stream or any other waters where fish are held, raised, or produced for sale but shall not include facilities used for the propagation of fish commonly considered as ornamental or aquarium varieties.

(z) "License" shall mean any license, tag, permit or stamp.

(aa) "License vendor" shall mean any person authorized to issue or sell licenses.

Approved March 1, 1996.

CHAPTER 56
(H.B. No. 421)

AN ACT

RELATING TO ACTIONS TO COLLECT CHILD SUPPORT; AMENDING SECTION 5-245, IDAHO CODE, TO PROVIDE THAT AN ACTION OR PROCEEDING TO COLLECT CHILD SUPPORT ARREARAGES MUST BE COMMENCED WITHIN A TIME CERTAIN.

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

SECTION 1. That Section 5-245, Idaho Code, be, and the same is hereby amended to read as follows:

5-245. ACTIONS TO COLLECT CHILD SUPPORT ARREARAGES. An action or proceeding to collect child support arrearages ~~accrued under a support order~~ must be commenced within five (5) years after the child reaches the age of majority or within five (5) years after the child's death, if death occurs before the child reaches majority. An action or proceeding under this section shall include, but is not limited to, exe-

cution on the judgment, order to show cause, garnishment, income withholding, income tax offset or lottery prize offset.

Approved March 1, 1996.

CHAPTER 57
(H.B. No. 517)

AN ACT

RELATING TO THE SEARCH AND RESCUE ACCOUNT; AMENDING SECTION 36-1405, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AND AMENDING SECTION 67-2913, IDAHO CODE, TO INCREASE THE MAXIMUM RECEIVABLE FROM THE COST REIMBURSEMENT SUBACCOUNT, TO INCREASE THE MAXIMUM RECEIVABLE FROM THE EQUIPMENT PURCHASING MATCHING SUBACCOUNT AND TO PROVIDE A THIRTY-FIVE PERCENT TO SIXTY-FIVE PERCENT COST SHARING PERCENTAGE IN THE EQUIPMENT PURCHASING MATCHING SUBACCOUNT.

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

SECTION 1. That Section 36-1405, Idaho Code, be, and the same is hereby amended to read as follows:

36-1405. ADDITIONAL FINE IMPOSED. In addition to the fines imposed in sections 36-1402 and 36-1404, Idaho Code, there is hereby imposed an additional fine of seven dollars and fifty cents ($7.50) against each person convicted as provided in those sections, to be deposited directly to the credit of the search and rescue account created in section 67-29~~0~~13, Idaho Code.

SECTION 2. That Section 67-2913, Idaho Code, be, and the same is hereby amended to read as follows:

67-2913. SEARCH AND RESCUE ACCOUNT. There is hereby created in the dedicated fund the search and rescue account.

(1) Moneys in the account shall be maintained in two (2) subaccounts, identified respectively as the "cost reimbursement subaccount" and the "equipment purchase matching subaccount." Moneys in the cost reimbursement subaccount are perpetually appropriated to and shall be used by the director of the department of law enforcement for the purpose of defraying costs of search and rescue missions conducted by the county sheriff's office at a maximum of ~~one~~ two thousand ~~five hundred~~ dollars ($~~1,5~~2,000) per rescue mission, regardless of the number of counties or county search and rescue organizations involved. Of the additional fine imposed pursuant to section 36-1405, Idaho Code, fifty percent (50%) shall be deposited to the credit of the cost reimbursement subaccount. In the event the balance in the cost reimbursement subaccount exceeds fifty thousand dollars ($50,000), the amount in excess shall be transferred to the equipment purchase matching subaccount.

(2) Fifty percent (50%) of the moneys received pursuant to the provisions of section 36-1405, Idaho Code, and any amount in excess

of fifty thousand dollars ($50,000) in the cost reimbursement subaccount, shall be deposited in the search and rescue account to the credit of the equipment purchase matching subaccount, and are perpetually appropriated to the director of the department of law enforcement for the purposes of the subaccount. Moneys in the equipment purchase matching subaccount shall be used by the director to match local funds for the purchase of equipment for use by local search and rescue units, at a maximum amount of ~~one~~ two thousand dollars ($~~1~~2,000) per unit in any single year. The cost sharing match in the equipment purchase matching subaccount shall be thirty-five percent (35%) local funds to sixty-five percent (65%) from the equipment purchase matching subaccount.

Approved March 1, 1996.

CHAPTER 58
(H.B. No. 515)

AN ACT

RELATING TO PROCEDURES OF THE STATE TAX COMMISSION; AMENDING CHAPTER 5, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-517, IDAHO CODE, AUTHORIZING THE STATE TAX COMMISSION TO ACCEPT TAX RETURNS AND OTHER DOCUMENTS ELECTRONICALLY AND AUTHORIZING THE COMMISSION TO ESTABLISH RULES AND PROCEDURES RELATING TO ELECTRONIC FILING AND ELECTRONIC SIGNATURES.

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

SECTION 1. That Chapter 5, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-517, Idaho Code, and to read as follows:

63-517. FILING OF ELECTRONIC RETURNS AND DOCUMENTS -- ELECTRONIC FUNDS TRANSFERS. Any return or other document filed with or submitted to the state tax commission may be transmitted electronically to the commission when permitted by rules or procedures established by the commission. Payments of any amounts to the commission by electronic funds transfer shall be in accordance with sections 67-2026 and 67-2026A, Idaho Code.

As used in this section, "transmitted electronically" means the use of a telecommunication or computer network to transfer information in an optical, electronic, magnetic or other machine sensible form. The term includes the use of facsimile machines and third party value added networks.

Any return or other document transmitted electronically to the commission and accepted by the commission shall be deemed received on the date it arrives at the commission or at a third party value added network under contract with the commission to receive the return or document. Any payment made electronically shall be deemed paid on the date the funds are available to the state treasurer.

To constitute a properly filed valid tax return or report, a document transmitted electronically or submitted in a physical machine sensible form such as tape or disk must:

(1) Be filed in a format prescribed by the tax commission and be sufficiently free of errors to identify the filer and the tax type and to calculate the amounts due;

(2) Contain the taxpayer's name, address (if required by the tax commission) and identifying number;

(3) Be signed by the taxpayer or other individual effecting the signature or verification; and

(4) Include sufficient information to permit the mathematical verification of any tax liability.

The tax commission may, by rule, prescribe exclusive methods for electronically signing or verifying a return or other document transmitted electronically to the commission that shall have the same validity and consequences as manual signing by the taxpayer or other individual effecting the signature or verification.

Approved March 1, 1996.

CHAPTER 59
(H.B. No. 446)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO EXEMPT EMPLOYER CONTRIBUTIONS TO EMPLOYEE HELD MEDICAL SAVINGS ACCOUNTS FROM THE DEFINITION OF SALARY USED TO CALCULATE BENEFITS IN THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to

another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5B) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Workers' compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and nonmedical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer; or

(b) Elected officials or appointed officials of an employer who receive a salary; or

(c) A person who is separated from service with less than five (5) months of employment and who is reemployed or reinstated by the same employer within thirty (30) days.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving

compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or vocational-technical program at and employed by a state college, university, community college or vocational-technical center when such employment is predicated on student status; or

(f) A person making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board, or;

(g) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city when the city has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather and the growing season, including parks and golf course positions.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, and military service which occurs after the commencement of such contributions.

(23) "Military service" means active duty service in the armed forces of the United States including the national guard and reserves,

under the provisions of title 10, title 32, and title 37, United States code. Provided, however, for the purposes of this chapter, military service SHALL NOT include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted;

(b) Any period which commences more than ninety (90) days after the person ceases to be an employee or ends more than ninety (90) days before the person again becomes an employee unless such ninety (90) day requirements are waived by the board due to circumstances beyond the employee's control; or

(c) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) "Salary" means the total salary or wages paid to a person who meets the definition of employee by an employer for personal services currently performed, including the cash value of all remuneration in any medium other than cash in the amount reported by the employer for income tax purposes, ~~and~~ also including the amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member, but excluding contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K Idaho Code.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an

employee receiving a salary. Service of fifteen (15) days or more during any calendar month shall be credited as one (1) month of service. Service of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested retirement allowance" means the periodic payment becoming payable upon an inactive member's becoming eligible for vested retirement.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved March 1, 1996.

CHAPTER 60
(H.B. No. 502)

AN ACT

RELATING TO MEDICAL SAVINGS ACCOUNTS; AMENDING SECTION 63-3022J, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 362, LAWS OF 1995, TO CORRECTLY DESIGNATE THE SECTION, TO DEFINE TERMS, TO PROVIDE THAT SERVICE CHARGES ARE NOT WITHDRAWALS FROM THE ACCOUNT, TO REQUIRE NONTAXABLE REIMBURSEMENTS TO BE MADE WITHIN THE TIME SPECIFIED, TO ALLOW REVERSAL OF ERRONEOUS DEPOSITS WITHIN THIRTY DAYS, TO PROVIDE ROLLOVER OF FUNDS TO ANOTHER ACCOUNT WITHOUT TAX CONSEQUENCES IF MADE WITHIN SIXTY DAYS, AND TO CLARIFY DEPOSITORY REPORTING REQUIREMENTS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3022J, Idaho Code, as added by Section 2, Chapter 362, Laws of 1995, be, and the same is hereby amended to read as follows:

~~63-3022J~~63-3022K. MEDICAL SAVINGS ACCOUNT. (1) For taxable years commencing on and after January 1, 1995, annual contributions to a medical savings account not exceeding two thousand dollars ($2,000) for the account holder and interest earned on a medical savings account shall be deducted from taxable income by the account holder. For married individuals the maximum deduction shall be computed separately for each individual.

(2) For the purpose of this section, the following terms have the

following meanings unless the context clearly denotes otherwise:

(a) "Account holder" means an individual, in the case of married individuals each spouse, including a self-employed person, on whose behalf the medical savings account is established.

(b) "Dependent" means a person for whom a deduction is permitted under section 151(b) or (c) of the Internal Revenue Code if a deduction for the person is claimed for that person on the account holder's Idaho income tax return.

(c) "Dependent child" means a child or grandchild of the account holder who is not a dependent if the account holder actually pays the eligible medical expenses of the child or grandchild and the child or grandchild is any of the following:

(i) Under nineteen (19) years of age, or enrolled as a full-time student at an accredited college or university.

(ii) Legally entitled to the provision of proper or necessary subsistence, education, medical care or other care necessary for his or her health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States.

(iii) Mentally or physically incapacitated to the extent that he or she is not self-sufficient.

(d) "Depository" means a state or national bank, savings and loan association, credit union or trust company authorized to act as a fiduciary or an insurance administrator or insurance company authorized to do business in this state, a broker or investment advisor regulated by the department of finance, a broker or insurance agent regulated by the department of insurance or a health maintenance organization, fraternal benefit society, hospital and professional service corporation as defined in section 41-3403, Idaho Code, or nonprofit mutual insurer regulated under title 41, Idaho Code.

(e) "Eligible medical expense" means an expense paid by the taxpayer for medical care described in section 213(d) of the Internal Revenue Code, medical insurance premiums, dental and long-term care expenses of the account holder and the spouse, dependents and dependent children of the account holder.

(f) "Long-term care expenses" means expenses incurred in providing custodial care in a skilled nursing facility or intermediate care facility as those terms are defined in section 39-1301, Idaho Code, and for insurance premiums relating to long-term care insurance under chapter 46, title 41, Idaho Code.

(g) "Medical savings account" means an account established with a depository to pay the eligible medical expenses of the account holder and the dependents and dependent children of the account holder. Medical savings accounts shall carry the name of the account holder, a designated beneficiary or beneficiaries of the account holder and shall be designated by the depository as a "medical savings account."

(3) Upon agreement between an employer and employee, an employer may establish and contribute to the employee's medical savings account or contribute to an employee's existing medical savings account. The total combined annual contributions by an employer and the account holder shall not exceed two thousand dollars ($2,000) for the account

holder. Employer contributions to an employee's medical savings account shall be owned by the employee.

(4) Funds held in a medical savings account may be withdrawn by the account holder at any time. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the tax imposed in this chapter. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the depository or the employer of the account holder. Other withdrawals shall be subject to the following restrictions and penalties:

(a) There shall be a distribution penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses. The penalty shall be ten percent (10%) of the amount of withdrawal from the account and, in addition, the amount withdrawn shall be subject to the tax imposed in this chapter. The direct transfer of funds from a medical savings account to a medical savings account at a different depository shall not be considered a withdrawal for purposes of this section. Charges relating to the administration and maintenance of the account by the depository are not withdrawals for purposes of this section.

(b) After an account holder reaches fifty-nine and one-half (59 1/2) years of age, withdrawals may be made for eligible medical expenses or for any other reason without penalty, but subject to the tax imposed by this section.

(c) Upon the death of an account holder, the account principal, as well as any interest accumulated thereon, shall be distributed without penalty to the designated beneficiary or beneficiaries.

(d) Funds withdrawn which are later reimbursed shall be taxable unless redeposited into the account within sixty (60) days of the reimbursement. Deposits of reimbursed eligible medical expenses shall ~~be--allowed-notwithstanding-the-limits-of-subsection-(1)-of this-section~~ not be included in calculating the amount deductible.

(e) Funds deposited in a medical savings account which are deposited in error or unintentionally and which are withdrawn within thirty (30) days of being deposited shall be treated as if the amounts had not been deposited in the medical savings account.

(f) Funds withdrawn which are, not later than the sixtieth day after the day of the withdrawal, deposited into another medical savings account for the benefit of the same account holder are not a withdrawal for purposes of this section and shall not be included in calculating the amount deductible.

(5) Reporting ~~--~~ Depositories shall provide to t~~T~~he state tax commission ~~shall-require~~ the following information ~~to-be-submitted--at least--annually~~ regarding medical savings accounts: the name of the account holder, the address of the account holder, the taxpayer identification number of the account holder, deposits made during the tax year by the account holder, withdrawals made during the tax year by the account holder, interest earned on the proceeds of a medical savings account or other information deemed necessary by the commission. Reports shall be filed annually on or before the last day of February following the year to which the information in the report relates.

(6) Any medical care savings account established pursuant to chapter 53, title 41, Idaho Code, as enacted by Chapter 186, Laws of

1994, may be continued pursuant to the provisions of this section and all duties, privileges and liabilities imposed in this section upon medical care savings accounts and the beneficiaries of those accounts shall apply to medical care savings accounts and their beneficiaries established pursuant to chapter 53, title 41, Idaho Code, as enacted by Chapter 186, Laws of 1994, as if the medical care savings account were a medical savings account established pursuant to this section.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved March 1, 1996.

CHAPTER 61
(S.B. No. 1478)

AN ACT

RELATING TO THE STATE TRUST FOR OUTDOOR RECREATION ENHANCEMENT; AMENDING SECTION 67-4247, IDAHO CODE, TO PROVIDE THAT THE PARK AND RECREATION BOARD MAY RETURN INTEREST INCOME TO THE TRUST TO INCREASE THE TRUST PRINCIPAL, AND THAT THE TRUST SHALL BE PROTECTED FROM APPROPRIATION FOR PURPOSES NOT STATED IN THE ACT; AND AMENDING CHAPTER 42, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4247A, IDAHO CODE, TO ESTABLISH A GRANT EVALUATION COMMITTEE, TO DESCRIBE ITS MEMBERSHIP, APPOINTMENT, TERMS, NOTICE OF AVAILABLE SEATS, NOMINATION, QUORUM AND COMPENSATION.

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

SECTION 1. That Section 67-4247, Idaho Code, be, and the same is hereby amended to read as follows:

67-4247. STATE TRUST FUND FOR OUTDOOR RECREATION ENHANCEMENT -- CREATION, ADMINISTRATION, ELIGIBLE RECIPIENTS. (1) There is hereby created and established in the state treasury a fund to be known and designated as the "state trust for outdoor recreation enhancement (STORE)." The park and recreation board may dedicate funds acquired by gift, agreement, donation, appropriation or otherwise to the STORE fund.

(2) Commencing with the passage and approval of this act, all interest income from the STORE fund is hereby appropriated to, and is to be administered by, the park and recreation board for the purpose of carrying out the provisions of this act.

(a) Up to fifteen percent (15%) of the STORE fund interest income appropriated to the department each year may be used by the department to defray STORE program administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the STORE fund.

(b) The park and recreation board may return ~~up--to--twenty-five~~

~~percent--(25%)--of-the~~ interest income ~~appropriated-to-the-department~~ to the STORE fund to increase the trust principal.

(3) The department shall use the moneys appropriated from the interest income on the STORE fund to:

(a) Operate a grant program to fund capital improvements, repairs, renovations, and land acquisitions that enhance opportunities for outdoor recreation. Indoor swimming pools and indoor ice rinks shall be eligible to receive grant funding provided use is primarily for public recreation. Grant recipients shall be required to provide a fifty percent (50%) match for all grants.

(b) Organize and operate a recreation incentive program to initiate positive growth activities for children and young adults and which will assist rural communities to meet the growing demand for recreation services.

(4) The state of Idaho and any of its subdivisions legally authorized to provide public recreation facilities may apply for and receive grant funds.

(5) Because public, private, and corporate moneys will be contributed to the STORE fund, it is the intent of the legislature to protect the STORE fund against appropriations for purposes other than those stated in this act.

SECTION 2. That Chapter 42, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-4247A, Idaho Code, and to read as follows:

67-4247A. STATE TRUST FUND FOR OUTDOOR RECREATION ENHANCEMENT -- GRANT EVALUATION COMMITTEE. (1) There is established a STORE grant evaluation committee, whose purpose shall be to rank STORE grant applications and projects based on selected criteria and make recommendations for funding to the park and recreation board.

(2) The evaluation committee shall have ten (10) members who shall be appointed to serve staggered terms as follows:

(a) One (1) member from the house, appointed by the speaker of the house for a two (2) year term;

(b) One (1) member from the senate, appointed by the president pro tempore of the senate for a two (2) year term;

(c) One (1) member from the governor's office, appointed by the governor for a four (4) year term.

Members described in paragraphs (d) through (h) shall be appointed by the parks and recreation board to serve three (3) year terms:

(d) One (1) member from a community with a population of less than two thousand (2,000);

(e) One (1) member from a community with a population of two thousand (2,000) to fifteen thousand (15,000);

(f) One (1) member from a community with a population of more than fifteen thousand (15,000);

(g) Three (3) at-large members appointed from the private sector; and

(h) One (1) member from the parks and recreation board.

To the extent practicable, appointments should be made so that the committee is geographically balanced.

(3) As necessary, the parks and recreation board shall provide public notice of available seats on the committee. Any interested individual or organization may nominate individuals to serve on the committee.

(4) A quorum is necessary to conduct committee business. Six (6) people constitute a quorum.

(5) All members of the committee shall serve without compensation. Members who are not state officers or employees shall be reimbursed for actual and necessary expenses as provided in section 59-509(b), Idaho Code, while conducting official committee business.

Approved March 1, 1996.

CHAPTER 62
(H.B. No. 419)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1315, IDAHO CODE, TO INCREASE THE AMOUNT OF WAGES REQUIRED TO BE PAID IN ANY CALENDAR QUARTER FOR PURPOSES OF DEFINING A COVERED EMPLOYER; AMENDING SECTION 72-1336, IDAHO CODE, TO PROVIDE THAT THE GOVERNOR MAY APPOINT AN ADVISORY BODY FOR THE DEPARTMENT AT HIS DISCRETION UNLESS AN ADVISORY BODY IS REQUIRED BY FEDERAL LAW AND TO ELIMINATE THE DIRECTOR'S AUTHORITY TO APPOINT AN ADVISORY COUNCIL; AMENDING SECTION 72-1365, IDAHO CODE, TO PROVIDE THAT INDIVIDUALS FILING A NEW CLAIM FOR UNEMPLOYMENT INSURANCE BENEFITS MAY VOLUNTARILY ELECT TO HAVE FEDERAL INCOME TAX WITHHELD FROM THEIR BENEFIT CHECKS AND TO PROVIDE THAT THE DIRECTOR, IN HIS SOLE DISCRETION, MAY PROMULGATE RULES ALLOWING INDIVIDUALS TO ELECT TO HAVE STATE INCOME TAX WITHHELD FROM THEIR UNEMPLOYMENT INSURANCE BENEFIT CHECKS; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 72-1315, Idaho Code, be, and the same is hereby amended to read as follows:

72-1315. COVERED EMPLOYER. The term "covered employer" means:

(a) Any person who, in any calendar quarter in either the current or preceding calendar year paid for services in covered employment wages of ~~three~~ one thousand five hundred dollars ($~~3~~1,500) or more, or for some portion of a day in each of twenty (20) different calendar weeks, whether or not consecutive, in either the current or preceding calendar year employed at least one (1) individual (irrespective of whether the same individual was in employment in each such day). For purposes of this subsection there shall not be taken into account any wages paid to, or in employment of, an employee performing domestic services referred to in subsection (h) of this section.

(b) All individuals performing services within this state for an employer who maintains two (2) or more separate establishments within

this state shall be deemed to be performing services for a single employer for all the purposes of this act.

(c) Each individual engaged to perform or assist in performing the work of any person in the service of an employer shall be deemed to be engaged by such employer for all the purposes of this act, whether such individual was engaged or paid directly by such employer or by such person, provided the employer had actual or constructive knowledge of the work.

(d) Any employer (whether or not an employer at the time of acquisition) who acquires the organization, trade, or business or substantially all the assets thereof, of another who at the time of such acquisition was a covered employer.

(e) In the case of agricultural labor, any person who:

(1) During any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of twenty thousand dollars ($20,000) or more for agricultural labor, or

(2) On each of some twenty (20) days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) individuals in employment in agricultural labor for some portion of the day.

(3) Such labor is not agricultural labor when it is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act, unless the individual is required to be covered by the federal unemployment tax act.

(f) A crew leader who furnishes members of a crew to perform agricultural labor for another person if:

(1) Such crew leader holds a valid certificate of registration under the migrant and seasonal agricultural worker protection act; or

(2) Substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(3) If such individual is not an employee of such other person within the meaning of section 72-1316(d), Idaho Code.

(g) In the case of any individual who is furnished by a crew leader to perform agricultural labor for another person, such other person and not the crew leader shall be treated as the employer of such individual if such crew leader is not, under the provisions of subsection (f) of this section, considered to be the employer and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(h) In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars ($1,000) or more for such service.

(1) A person treated as a covered employer under this subsection

(h) shall not be treated as a covered employer with respect to wages paid for any service other than domestic service referred to in this subsection (h) unless such person is treated as a covered employer under subsection (a) or (e) of this section, with respect to such other service.

(i) Any governmental entity as defined in section 72-1322C, Idaho Code.

(j) A nonprofit organization as defined in subsection (a) of section 72-1349A, Idaho Code.

(k) An employer who has elected coverage pursuant to the provisions of subsection (c) of section 72-1352, Idaho Code.

SECTION 2. That Section 72-1336, Idaho Code, be, and the same is hereby amended to read as follows:

72-1336. ADVISORY ~~COUNCIL~~ BODY. ~~The--director--shall--appoint--an advisory--council--to-consist-of-not-less-than-seven-(7)-nor-more-than fifteen-(15)-members-and-provide-the-qualifications-of-the-members-and fix-their-term-of-office.-Appointments-of-industry--members--shall--be from--nominations--submitted-by-qualified-representatives-of-industry, and-appointments-of-labor-members-shall-be-from-nominations--submitted by-qualified-representatives-of-labor.-All-appointments-made-under-the provisions--of--this--section--shall-be-subject-to-confirmation-by-the governor.-The-duties-and-functions-of-the-council-shall-be-to--consult with-and-advise-the-director-on-matters-arising-out-of-the-administration--of--the--Employment-Security-Law-as-may-be-necessary-to-meet-the requirements-of-federal-law,-and-whenever--the--director--desires--the advice--of--said--council.~~ If federal law or regulations require the establishment of an advisory body or similar entity for the department, the governor shall establish an entity or appoint an existing body to satisfy the federal requirements. Absent a federal requirement to establish an advisory body, the governor may, in his sole discretion, establish an advisory body or appoint an existing body to serve as the department's advisory body. The governor shall prescribe the duties and functions of the body. Members of the ~~council~~ body shall serve at the pleasure of the governor and shall be compensated on a per diem basis at a rate to be fixed by the ~~director~~ governor, and in addition shall be reimbursed for ordinary and actual expenses.

The director may from time to time appoint special committees as may be required in connection with the administration of this act.

SECTION 3. That Section 72-1365, Idaho Code, be, and the same is hereby amended to read as follows:

72-1365. PAYMENT OF BENEFITS. (a) With respect to unemployment occurring after July 1, 1947, benefits shall be paid from the employment security fund to any unemployed individual who is eligible for benefits as provided by section 72-1366, Idaho Code.

(b) Periodically, the department of health and welfare, bureau of child support enforcement, shall forward to the director a list containing the full name and social security number of persons from whom it is seeking child support. The director shall match the names and social security numbers on the list with its records of individuals

eligible for unemployment compensation, and shall notify the department of health and welfare, bureau of child support enforcement, of the address and amount of compensation due each individual.

(1) Voluntary withholding. The director shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under subsection (7) the amount specified by the individual to the director to be deducted and withheld under this subsection, if subsection (2) below is not applicable.

(2) Involuntary withholding. The director shall withhold any unemployment compensation of any person within the limits established by section 11-207, Idaho Code, upon notification and order by the department of health and welfare, bureau of child support enforcement, to collect any delinquent child support obligation which has been assigned on behalf of any individual to the department of health and welfare under sections 56-203A and 56-203B, Idaho Code, or a child support obligation which the department seeks to collect pursuant to chapter 12, title 7, Idaho Code. The set-off or withholding of any unemployment compensation of a claimant shall become final after the following conditions have been met:

(A) The child support payment to be set-off or withheld is a child support obligation established by order as defined in section 7-1202, Idaho Code.

(B) All liabilities owed by reason of the provisions of section 72-1369, Idaho Code, have been collected by the director.

(C) Notice of the set-off or withholding has been mailed by registered or certified mail from the department of health and welfare, bureau of child support enforcement, to the claimant-obligor at the address listed on the claim.

Within fourteen (14) days after such notice has been mailed (not counting Saturday, Sunday, or state holidays as the 14th day), the claimant-obligor may file a protest in writing, requesting a hearing before the department of health and welfare to determine his liability to the obligee. The hearing, if requested, shall be held within thirty-five (35) days from the date of the initial notice to the claimant-obligor of the proposed set-off. No issues at that hearing may be considered which have been litigated previously. The department of health and welfare shall issue its findings and decision either at the hearing or within ten (10) days of the hearing by mail to the claimant-obligor.

(D) In its decision, the department of health and welfare may order the withholding and set-off of any subsequent unemployment compensation payments which may be due the claimant-obligor until the debt for which set-off is sought and any additional debts which are incurred by the claimant's failure to make additional periodic payments based upon the same court order are satisfied.

(3) Any amount deducted and withheld under subsections (1) or (2) shall be paid by the director to the appropriate state or local child support enforcement agency.

(4) Any amount deducted and withheld under subsections (1) or (2) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For purposes of subsections (1) through (4), the term "unemployment compensation" means any compensation payable under this act, including amounts payable by the director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the director under the provisions of this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(7) The term "child support obligation" is defined for the purposes of these provisions as including only an obligation which is being enforced pursuant to a plan described in section 454 of the social security act which has been approved by the secretary of health and human services under part D of title IV of the social security act.

(8) The term "state or local child support enforcement agency" as used in these provisions means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subsection (7).

(c) Benefits shall be paid only to the extent that moneys are available for such payments in the employment security fund.

(d) All benefits shall be paid at such times not less frequently than biweekly, and in such manner as the director shall by rules prescribe.

(e) Upon request, the department of health and welfare, bureau of child support enforcement, shall make the procedures established in this section for collecting child support available to county prosecuting attorneys. The provisions of this subsection apply only if appropriate arrangements have been made for reimbursement by the requesting prosecuting attorney for the administrative costs incurred by the bureau, which are attributable to the request.

(f) (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to federal and state tax and requirements exist pertaining to estimated tax payments;

(B) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal internal revenue code;

(C) The individual shall be permitted to change a previously elected withholding status once during each benefit year.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the taxing authority as a payment of income tax.

(3) The director shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.
(4) Amounts shall not be deducted and withheld under this subsection until the following deductions are made and withheld in the following order:
(A) First, amounts owed for overpayments of unemployment compensation deducted and withheld pursuant to the provisions of section 72-1369, Idaho Code;
(B) Second, amounts owed for child support obligations deducted and withheld pursuant to the provisions of subsection (b) of this section.
(5) At the director's sole discretion, the director may promulgate rules allowing individuals to elect to have state income tax deducted and withheld from the individual's payment of unemployment compensation.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after passage and approval. Section 3 of this act shall be in full force and effect on and after January 1, 1997.

Approved March 5, 1996.

CHAPTER 63
(H.B. No. 511)

AN ACT
RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1304, IDAHO CODE, TO PROVIDE THAT THE TERM "AGRICULTURAL LABOR" SHALL INCLUDE AQUACULTURE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 72-1304, Idaho Code, be, and the same is hereby amended to read as follows:

72-1304. AGRICULTURAL LABOR. (a) The term "agricultural labor" includes all services performed:
(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural, aquacultural or horticultural commodities, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, fish, poultry, and fur-bearing animals and wildlife.
(2) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is

performed on a farm.

(3) In connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, eviscerating, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural, aquacultural or horticultural commodities, but only if such operator in both the current and preceding calendar year produced more than one-half (1/2) of the commodities with respect to which such service is performed.

(5) In the employ of a group of farm operators (or a cooperative organization of such operators) in the performance of service described in subsection (a)(4), but only if such operators in both the current and preceding calendar year produced more than one-half (1/2) of the commodities with respect to which such service is performed. The term "in the employ of a group of farm operators" shall include any group of farmers, organized or unorganized, who as a group produced more than one-half (1/2) of the crop for which the services are being performed.

(6) The provisions in subsection (a)(4) and (a)(5) shall not be deemed to be applicable with respect to service performed in connection with commercial canning, freezing, or dehydrating, or in connection with any agricultural, aquacultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(b) As used in subsection (a), the term "farm" includes stock, dairy, fish, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, hatcheries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural, aquacultural or horticultural commodities, and orchards.

(c) For purposes of subsection (a), the term "unmanufactured state" means retention of its original form and substance.

(d) For purposes of subsection (a), the term "terminal market" means a place of business to which products are shipped in a sorted, graded, packaged condition, ready for immediate sale.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroactively to January 1, 1996.

Approved March 5, 1996.

CHAPTER 64
(H.B. No. 560)

AN ACT

RELATING TO WILD ANIMALS OR BIRDS DAMAGING PROPERTY; AMENDING SECTION 36-1107, IDAHO CODE, TO CLARIFY WHO MAY DISPOSE OF BEARS, MOUNTAIN

LIONS AND OTHER PREDATORS; AMENDING SECTION 36-1202, IDAHO CODE, TO CLARIFY WHO MAY PROTECT LIVESTOCK; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 36-1107, Idaho Code, be, and the same is hereby amended to read as follows:

36-1107. WILD ANIMALS AND BIRDS DAMAGING PROPERTY. Other provisions of this title notwithstanding, any person may control, trap, and/or remove any wild animals or birds or may destroy the houses, dams, or other structures of furbearing animals for the purpose of protecting property from the depredations thereof as hereinafter provided.

The director may delegate any of the authority conferred by this section to any other employee of the department.

(a) Director to Authorize Removal of Wildlife Causing Damage. Except for antelope, elk, deer or moose when any other wildlife, protected by this title, is doing damage to or is destroying any property or is likely to do so, the owner or lessee thereof may make complaint and report the facts to the director or his designee who shall investigate the conditions complained of. If it appears that the complaint is well-founded and the property of such complainant is being or is likely to be damaged or destroyed by any such wildlife protected under this title, the director may:

1. Send a representative onto the premises to control, trap, and/or remove such protected wildlife as will stop the damage to said property. Any animals or birds so taken shall remain the property of the state and shall be turned over to the director.
2. Grant properly safeguarded permission to the complainant to control, trap and/or remove such protected wildlife or to destroy any houses, dams, or other structures erected by said animals or birds. Any protected wildlife so taken shall remain the property of the state and shall be turned over to the director.
3. Whenever deemed to be in the public interest, authorize or cause the removal or destruction of any dam, house, structure or obstruction erected by any furbearing animals, provided that no liability whatever shall accrue to the department or the director by reason of any direct or indirect damage arising from such destruction or removal.
4. Issue a permit to any bona fide owner or lessee of property which is being actually and materially damaged by furbearing animals, to trap or kill or to have trapped or killed such animals on his own or leased premises. Such permit may be issued without cost to a landholder applicant and shall designate therein the number of furbearing animals that may be trapped or killed, the name of the person who the landowner has designated to take such furbearers and the valid trapping license number of the taker. Furbearers so taken shall be the property of the taker. Beaver so taken shall be handled in the manner provided in section 36-1104, Idaho Code. The term "premises" shall be construed to include any irrigation ditch or right-of-way appurtenant to the land for which said permit is issued.

(b) Control of Depredation of Black Bear, Mountain Lion, and Predators. Black bear, mountain lion, and predators may be disposed of by livestock owners, ~~or~~ their employees, agents and animal damage control personnel when same are molesting livestock and it shall not be necessary to obtain any permit from the department. Mountain lion so taken shall be reported to the director. Livestock owners may take steps they deem necessary to protect their livestock.

(c) Taking of Muskrats in Irrigation Systems Authorized. Muskrats may be taken at any time in or along the banks of irrigation ditches, canals, reservoirs or dams, by the owners, their employees, or those in charge of said irrigation ditches or canals.

SECTION 2. That Section 36-1202, Idaho Code, be, and the same is hereby amended to read as follows:

36-1202. WASTEFUL DESTRUCTION OF WILDLIFE OR MUTILATION UNLAWFUL. It is a misdemeanor for any person to:

(a) Waste. Through carelessness, neglect or otherwise, to allow or cause the waste of any game bird, game animal or game fish or any portion thereof usually eaten by humans.

(b) Destruction -- Mutilation. Capture or kill any game animal, except all carnivores but black bear, and detach or remove from the carcass only the head, hide, antlers, horns or tusks and leave the carcass to waste.

(c) Prima Facie. To fail to properly dress and care for any game animal except all carnivores but black bear killed by him and if the carcass is reasonably accessible; failure to take or transport same to his camp within twenty-four (24) hours shall be prima facie evidence of a violation of the provisions of this section.

(d) Livestock owners, ~~or~~ their employees, agents and animal damage control personnel in protecting ~~their~~ livestock as provided in subsection (b) of section 36-1107, Idaho Code, are exempt from subsections (b) and (c) of this section.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 5, 1996.

CHAPTER 65
(H.B. No. 505)

AN ACT

RELATING TO LEGISLATIVE PERFORMANCE EVALUATIONS; AMENDING SECTION 67-457, IDAHO CODE, TO PROVIDE NAME CHANGES AND TO CLARIFY PROCEDURES OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE; AMENDING SECTION 67-458, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-460, IDAHO CODE, TO FURTHER DEFINE THE POWERS AND DUTIES OF THE COMMITTEE; AMENDING SECTION 67-461, IDAHO CODE, TO MAKE NAME CHANGES AND TO SPECIFY THE CONDUCT AND ISSUANCE OF

REPORTS; AMENDING SECTION 67-463, IDAHO CODE, TO MAKE NAME CHANGES; AND AMENDING SECTION 9-340, IDAHO CODE, TO CLARIFY THE EXEMPTION FROM DISCLOSURE OF RECORDS OF THE DIRECTOR OF LEGISLATIVE PERFORMANCE EVALUATIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-457, Idaho Code, be, and the same is hereby amended to read as follows:

67-457. JOINT LEGISLATIVE OVERSIGHT COMMITTEE -- CREATION. There is hereby created the joint legislative oversight committee which shall be appointed as follows: the president pro tempore of the senate shall appoint majority party members of the senate, the senate minority leader shall appoint minority party members of the senate, the speaker of the house of representatives shall appoint majority party members of the house of representatives and the minority leader of the house of representatives shall appoint minority party members of the house of representatives. Membership on the committee shall be evenly divided between the house of representatives and the senate and shall be evenly divided between the two (2) largest political parties represented in the legislature. The cochairmen of the joint finance-appropriations committee, or their designees, shall be members of the joint legislative oversight committee. The joint legislative oversight committee is hereby created under the jurisdiction of the legislative council for the purpose of conducting performance audits or evaluations, and reviewing all records related thereto, of any state agency at any time as the committee deems necessary. The legislative council shall appoint cochairmen who shall be from different houses of the legislature and who shall be from different political parties and shall determine the size of the committee. ~~The committee shall submit its findings, conclusions and reports to the legislative council, the legislature and to the governor no later than the first day of the second week of each regular session of the legislature.~~ The legislative council, by a seventy-five percent (75%) vote, shall appoint a ~~legislative management systems analyst~~ director of legislative performance evaluations for the purpose of conducting performance audits or evaluations pursuant to sections 67-457 through 67-464, Idaho Code. The director of legislative ~~management systems analyst~~ performance evaluations shall serve at the pleasure of the joint legislative oversight committee. The legislative council shall initially establish the compensation of the director of legislative ~~management systems analyst~~ performance evaluations and thereafter the compensation of the director of legislative ~~management systems analyst~~ performance evaluations shall be established by the joint legislative oversight committee.

SECTION 2. That Section 67-458, Idaho Code, be, and the same is hereby amended to read as follows:

67-458. DEFINITIONS. For the purposes of sections 67-457 through 67-464, Idaho Code:

(1) "Committee" means the joint legislative oversight committee.

(2) "Performance audit or evaluation" shall mean an examination

of the effectiveness of the administration, the ~~sufficiency~~ efficiency and the adequacy of such administration in terms of the programs of the state agency authorized by law to be performed. Such examinations shall include, but not be limited to:

(a) How effectively the programs are administered;

(b) Benefits of each program in relation to the expenditures;

(c) Goals of the programs;

(d) Development of indicators by which the success or failure of a program may be gauged;

(e) Conformity of programs with legislative intent;

(f) Assistance to legislative committees dealing with specific programs;

(g) Impact of federal grant-in-aid programs on agency programs.

(3) "State agency" means each state board, commission, department, office or institution, educational or otherwise, of the state of Idaho. State agency shall also mean any city, county, district or other political subdivision of the state created by statute which has the authority to levy, collect and spend tax moneys.

SECTION 3. That Section 67-460, Idaho Code, be, and the same is hereby amended to read as follows:

67-460. POWERS OF COMMITTEE. The joint legislative oversight committee shall have the following powers:

(1) ~~To--direct--the--management--system--analyst-and-staff-in-the development-of-performance-evaluation-surveys-and-work-plans--in--concert-with-agencies-and-programs.~~

~~(2)~~ To direct the ~~management-system-analyst-and-staff~~ director of legislative performance evaluations in accordance with section 67-461, Idaho Code, to review the performance ~~outcomes~~ of any state agency or program and to prepare ~~preliminary-performance--outcome--findings--for presentation~~ reports for submission to the joint legislative oversight committee.

~~(3)--To--direct-the-management-system-analyst-and-staff-to-prepare a-request-for-proposal-(RFP)-for-the--evaluation--of--the--performance outcome-findings-of-a-given-agency-or-program.--Such-RFP-shall-be-submitted--for-bids-to-independent-contractors-to-conduct-a-final-performance-evaluation-and-present-recommendations-to-implement-actions-necessary-to-carry-out-such-findings.~~

(~~4~~2) To contract with private individuals or entities for the conduct of performance evaluations or portions thereof.

(~~5~~3) To examine witnesses, to require the appearance of any person and the production of any paper or document, and to order the appearance of any person for the purpose of producing any paper or document, as is provided other legislative committees.

(~~6~~4) To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee deems the administration of an oath necessary and advisable as provided by law.

(~~7~~5) To determine that a witness has perjured himself by testifying falsely before the committee, and to direct the attorney general to institute legal proceedings as provided by law.

(6) To conduct meetings at such times as the cochairmen deem necessary.

SECTION 4. That Section 67-461, Idaho Code, be, and the same is hereby amended to read as follows:

67-461. CONDUCT OF AND ISSUANCE OF PERFORMANCE EVALUATION REPORTS. (1) ~~Prior to any~~ In conducting a performance evaluation, the director of legislative ~~management systems analyst~~ performance evaluations shall ~~conduct a survey to~~ obtain an overview of the operations of the agency or program. The survey phase will develop background information, including roles and identities of key personnel, identify actual and potential financial, managerial and operational problem areas and determine whether and to what extent detailed audit tests may be required in each specific area. In consultation with the agency or program, the director of legislative ~~management--systems--analyst~~ performance evaluations will develop a performance evaluation work plan.

(2) Prior to the presentation of any performance evaluation to the committee, the evaluated agency~~,~~ and the governor ~~and the state controller~~ shall have an opportunity to review the performance evaluation ~~findings~~ report and issue a response. The response of the agency~~,~~ and the governor ~~and the state controller~~ to the performance evaluation report shall be included in the ~~performance evaluation~~ final report when it is presented to the committee. All documents, writings and information transmitted pursuant to this subsection shall be deemed confidential and shall not be released to the public prior to the time the committee issues its performance evaluation report pursuant to subsection (3) of this section. Any person violating the provisions of this subsection regarding confidentiality shall be guilty of a misdemeanor.

(3) The committee shall issue performance evaluation reports, favorable or unfavorable, of any state agency, and such reports shall be a public record. Prior to the release of a performance evaluation report, all papers, physical and electronic records and correspondence and other supporting materials comprising the work papers in the possession of the director of legislative ~~council--employee~~ performance evaluations or other entity charged with the preparation of a performance evaluation report shall be confidential and exempt from disclosure pursuant to chapter 3, title 9, Idaho Code. Additionally, all other records or materials in the possession of the director of legislative ~~council~~ performance evaluations or other entity charged with the preparation of a performance evaluation report that would otherwise be confidential or exempt from disclosure shall be exempt from disclosure pursuant to the provisions of chapter 3, title 9, Idaho Code. A final copy of the report ~~signed by the cochairmen of the committee~~, including ~~committee~~ recommendations, the evaluated agency's response, and the governor's response, shall be submitted to the governor~~, to the state controller, to each member of the legislature,~~ and to the official, officer or person in charge of the state agency examined at least one (1) day prior to its release, and shall be made available to each member of the legislature no later than one (1) day following the report's receipt by the joint legislative oversight committee.

(4) The committee may meet in executive session to consider whether to direct the director of legislative performance evaluations

to initiate or continue a performance evaluation or to receive or consider materials exempt from disclosure under subsection (2) or (3) of this section.

SECTION 5. That Section 67-463, Idaho Code, be, and the same is hereby amended to read as follows:

67-463. ASSISTANCE. The office of the attorney general, the office of the state controller and the administrator of the division of financial management are authorized to assist the joint legislative oversight committee in its conduct of performance evaluations if the committee and the director of legislative ~~management systems analyst~~ performance evaluations deems that such offices may be helpful.

SECTION 6. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

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

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

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

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

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

(e) Vital statistics records;

(f) Except as provided in this subsection, all information provided to a law enforcement agency for sex offender registration pursuant to the provisions of section 18-8306, Idaho Code:

(i) Such information shall be available upon request to a law enforcement agency; and

(ii) The information provided pursuant to the provisions of subsections (1) and (3) of section 18-8306, Idaho Code, shall be provided to any person upon written request. Such written request shall include the name, date of birth and social security number of the person for whom the information is requested.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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

(14) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursu-

ant to a statutory requirement for licensing, certification, permit or bonding.

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

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

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

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

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

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or

supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(27) Records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile. If the juvenile is fourteen (14) years or older and is adjudicated guilty of an offense which would be a felony if committed by an adult, the name, offense of which the juvenile was adjudicated and disposition of the court shall be subject to disclosure. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

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

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative council <u>or the director of legislative performance evaluations</u> prior to release of the related final audit and all other records or materials in the possession of the office of the legislative council <u>or the director of legislative performance evaluations</u> that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

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

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may

inspect and copy his personnel records, except for material used to screen and test for employment.

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

(38) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

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

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(39) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(40) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided, however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise

available to any public agency.

(41) Records of laboratory test results provided by or retained by the department of agriculture's quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

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

(43) Records of the sheriff or department of law enforcement received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(43~~3~~4) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(43~~4~~5) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

Approved March 5, 1996.

CHAPTER 66
(H.B. No. 429)

AN ACT

RELATING TO HONORARIUMS FOR MEMBERS OF BOARDS, COMMISSIONS AND COUNCILS; AMENDING SECTION 59-509, IDAHO CODE, TO PROVIDE THAT CERTAIN HONORARIUMS SHALL NOT BE CONSIDERED AS SALARY FOR PURPOSES OF PUBLIC EMPLOYEE RETIREMENT SYSTEM ELIGIBILITY; AMENDING SECTION 54-312, IDAHO CODE, TO PROVIDE CODE REFERENCES CONSISTENT WITH AMENDMENT TO SECTION 59-509, IDAHO CODE, FOR THE STATE BOARD OF ARCHITECTURAL EXAMINERS; AMENDING SECTION 54-706, IDAHO CODE, TO PROVIDE CODE REFERENCES CONSISTENT WITH AMENDMENTS TO SECTION 59-509, IDAHO CODE, FOR THE STATE BOARD OF CHIROPRACTIC PHYSICIANS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-832, IDAHO CODE, TO PROVIDE CODE REFERENCES CONSISTENT WITH AMENDMENTS TO SECTION 59-509, IDAHO CODE, FOR THE IDAHO BOARD OF COSMETOLOGY; AMENDING SECTION 54-1603, IDAHO CODE, TO PROVIDE CODE REFERENCES CONSISTENT WITH AMENDMENTS TO SECTION 59-509, IDAHO CODE, FOR THE STATE BOARD OF NURSING HOME ADMINISTRATORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2304, IDAHO CODE, TO PROVIDE CODE REFERENCES CONSISTENT WITH AMENDMENTS TO SECTION 59-509, IDAHO CODE, FOR THE STATE BOARD OF PSYCHOLOGIST EXAMINERS; AMENDING SECTION 54-3003, IDAHO CODE, TO PROVIDE CODE REFERENCES CONSISTENT WITH AMENDMENTS TO SECTION 59-509, IDAHO CODE, FOR THE STATE BOARD OF LANDSCAPE ARCHITECTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-4106, IDAHO CODE, TO PROVIDE CODE REFERENCES CON-

SISTENT WITH AMENDMENTS TO SECTION 59-509, IDAHO CODE, FOR THE REAL ESTATE APPRAISER BOARD AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-3403, IDAHO CODE, TO INCLUDE THE IDAHO STATE COUNSELOR LICENSING BOARD IN THE AMENDMENTS TO SECTION 59-509, IDAHO CODE, AND TO PROVIDE CONSISTENT CODE REFERENCES.

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

SECTION 1. That Section 59-509, Idaho Code, be, and the same is hereby amended to read as follows:

59-509. HONORARIUMS OR COMPENSATION FOR MEMBERS OF BOARDS, COMMISSIONS AND COUNCILS. The members of part-time boards, commissions or councils shall receive for each day spent in the actual performance of duties, an honorarium, compensation, or expenses, as provided in the following schedule:

(a) Members shall serve without honorarium, compensation, or expense reimbursement of any kind.

(b) Members shall serve without honorarium or compensation of any kind, but shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(c) Members shall serve without honorarium or compensation of any kind, but shall be reimbursed for actual and necessary expenses, without being subject to the limits provided in section 67-2008, Idaho Code.

(d) Members shall receive the sum of fifteen dollars ($15.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(e) Members shall receive the sum of twenty dollars ($20.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(f) Members shall receive the sum of twenty-five dollars ($25.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(g) Members shall receive the sum of thirty-five dollars ($35.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(h) Members shall receive the sum of fifty dollars ($50.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(i) Members shall receive the sum of seventy-five dollars ($75.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(j) Members shall receive an honorarium in the sum of fifteen dollars ($15.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(k) Members shall receive an honorarium in the sum of twenty dollars ($20.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008,

Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(l) Members shall receive an honorarium in the sum of twenty-five dollars ($25.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(m) Members shall receive an honorarium in the sum of thirty-five dollars ($35.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(n) Members shall receive an honorarium in the sum of fifty dollars ($50.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(o) Members shall receive an honorarium in the sum of seventy-five dollars ($75.00) per day, and shall be reimbursed for actual and necessary expenses subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

SECTION 2. That Section 54-312, Idaho Code, be, and the same is hereby amended to read as follows:

54-312. ARCHITECTS -- BOARD OF EXAMINERS -- POWERS AND DUTIES -- COMPENSATION. 1. The board of architectural examiners is hereby created in the department of self-governing agencies. The board of architectural examiners shall consist of six (6) members, to be appointed by the governor, each of whom shall be an architect, and shall have been a resident of and a lawfully practicing architect within the state of Idaho for a period of at least five (5) years next before his appointment. At all times the board shall have at least one (1) member who is engaged primarily in professional architectural education.

2. The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

a. To authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest.

b. To adopt, pursuant to the administrative procedure act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter.

c. To conduct investigations into violations of this chapter.

d. The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to

require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of any district court in this state on application by the board to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

3. Each member of the board of architectural examiners shall be compensated as provided by section 59-509(~~g~~m), Idaho Code.

SECTION 3. That Section 54-706, Idaho Code, be, and the same is hereby amended to read as follows:

54-706. STATE BOARD OF CHIROPRACTIC PHYSICIANS CREATED. (1) There is hereby established in the department of self-governing agencies a state board of chiropractic physicians to be composed of five (5) members. Members of the board of chiropractic examiners, as it exists on the effective date of this act are hereby confirmed as members of the board for the terms to which they were originally appointed. The additional members shall be appointed by the governor, with one (1) member appointed for a term of one (1) year and one (1) member for a term of two (2) years. Thereafter, as each member's term expires, the subsequent appointment shall be for a term of three (3) years. No person may be appointed for more than two (2) consecutive terms.

(2) The board shall be appointed by the governor, and shall consist of four (4) physicians who are licensed to practice chiropractic in this state, and each of whom shall have been engaged continuously in the practice of chiropractic within the state of Idaho for a period of not less than three (3) years prior to ~~this~~ his appointment. Whenever a term of a physician member of the board expires or the office becomes vacant, a notice of such vacancy shall be sent by the board to each licensed physician within the state. During the following thirty (30) days, the board shall receive petitions for nominations for physicians to be appointed to fill said vacancies and, in the event such petitions shall be signed by not less than ten (10) physicians licensed to practice within the state, said petitions shall be forwarded by the board to the governor. The governor shall within fifteen (15) days following receipt of said petitions appoint a physician to fill said vacancy from among the persons nominated by petition as hereinbefore set forth. Appointments to fill vacancies occurring for some other reason than expiration of a term for which a member was appointed, shall be made in the same manner as set forth for the unexpired term. The governor may remove any member of the board found guilty of malfeasance, misfeasance or nonfeasance.

(3) The governor shall appoint a representative of the public as one (1) member of the board who shall be designated as the public mem-

ber. The public member of the board shall be a resident of the state of Idaho who has attained the age of twenty-one (21) years, and shall not be nor shall ever have been a physician, the spouse of a physician, a person licensed under the laws of any state to practice a healing art, or a person who has or has had a material financial interest in providing health care services.

(4) The board shall elect a chairman from its membership. The members of the board, except for state employees, shall be compensated as provided by section 59-509(~~h~~n), Idaho Code. Three (3) members of the board shall constitute a quorum, and the board may act by virtue of a majority vote of members present at a meeting.

SECTION 4. That Section 54-832, Idaho Code, be, and the same is hereby amended to read as follows:

54-832. COMPENSATION AND EXPENSES OF BOARD MEMBERS. Each member of the board shall be compensated as provided by section 59-509(~~h~~n), Idaho Code.

SECTION 5. That Section 54-1603, Idaho Code, be, and the same is hereby amended to read as follows:

54-1603. BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS. (1) There is hereby created in the department of self-governing agencies a board of examiners of nursing home administrators, which board shall consist of five (5) members, and composed of two (2) public or private nursing home administrators, duly licensed and registered under this act, and three (3) other members as hereinafter described, except that such members of the initial board shall be required only to possess the qualifications and be eligible for licensure as required under this act, one (1) member shall be selected from any other profession, agency, or institution concerned with the care of chronically ill and infirm patients; one (1) licensed nurse from the nursing profession; and one (1) member representative of the public at large; but no more than two (2) of the members of the board shall be officials or full-time employees of state or local governments, except that they may be administrators of publicly owned nursing homes. All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state.

(2) One (1) member of the initial board shall be appointed for a one (1) year term of office, two (2) members of the initial board shall be appointed for a two (2) year term of office, and two (2) members of the initial board shall be appointed for a three (3) year term of office. Thereafter, the term of office for each member of the board shall be three (3) years.

(3) (a) Appointments to the board shall be made by the governor after consultation with the executive board of any organized and generally recognized group concerned with nursing home administration. Each member of the board shall hold office until his successor is duly appointed and qualified. Dismissals shall be by the governor, for reasonable cause.

(b) The two (2) nursing home administrators who are members must

be appointed from a list of three (3) submitted by any organized and generally recognized group concerned with nursing home administration.

(c) Members of the board shall be compensated as provided by section 59-509(~~f~~l), Idaho Code.

(4) The board shall elect annually from its membership a chairman and vice chairman. The board shall hold two (2) or more meetings each year. A majority of the board membership shall constitute a quorum.

(5) The board shall exercise its powers and perform its duties and functions specified by this act.

(6) The board may appoint an executive secretary. He shall be the executive officer to the board but shall not be a member of the board. He shall have such powers and shall perform such duties as are prescribed by law and the rules ~~and regulations~~ of the board. A clerk and sufficient deputy clerks to adequately assist the board and the executive secretary in the keeping of the records and in the performance of their duties may be appointed by the board. All employees of the board shall be appointed, and serve in accordance with the provisions of law.

(7) The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

SECTION 6. That Section 54-2304, Idaho Code, be, and the same is hereby amended to read as follows:

54-2304. ESTABLISHMENT OF BOARD OF PSYCHOLOGIST EXAMINERS. There is hereby created in the department of self-governing agencies, an Idaho state board of psychologist examiners as follows:

(a) Said board shall consist of three (3) licensed psychologist members and one (1) public member who is not a practitioner or spouse of a practitioner in any health care field and who is not a convicted felon and who has not been an applicant for licensure as a psychologist, who are citizens of the United States, residents of the state of Idaho, and appointed by the governor for three (3) year terms. The psychologist members' terms shall be staggered such that only one (1) term expires June 30 of each year.

(b) Each psychologist board member shall be licensed under this act.

(c) When the term of each psychologist member of the board ends, the governor shall appoint his successor for a term of three (3) years from a list of eligible candidates for board membership submitted to the governor by the president of the Idaho psychological association. Any vacancy occurring on the board shall be filled by the governor, from a list of all eligible candidates for board membership, by appointment for the unexpired term. The governor may give consideration to recommendations from any source in making appointments of the public member to a full or unexpired term. The governor may remove any board member for misconduct, incompetency, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon.

(d) At all times, the board shall have at least one (1) member who is engaged primarily in rendering services in psychology and at least one (1) member who is engaged primarily in teaching, training,

or research in psychology.

(e) No board member shall serve more than two (2) consecutive terms.

(f) Each board member shall be compensated as provided by section 59-509(~~h~~n), Idaho Code.

(g) The board shall annually in the month of July, hold a meeting, and elect a chairman and vice chairman. The board shall meet at such other times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the governor. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board shall constitute a quorum at any meeting or hearing.

SECTION 7. That Section 54-3003, Idaho Code, be, and the same is hereby amended to read as follows:

54-3003. QUALIFICATIONS -- EXAMINATIONS -- BOARD -- CERTIFICATES OF REGISTRATION -- FEES -- RECIPROCITY -- EXEMPTIONS -- INDIVIDUALS, PARTNERSHIPS AND CORPORATIONS -- RESTRICTION ON USE OF NAME -- SEAL. (a) Application and practice. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this act.

(b) Qualifications. For license as a landscape architect, evidence must be submitted to the board that the applicant:

(1) is eighteen (18) years of age or older;

(2) has, before admission to the examination, completed the course of study in and been graduated from a college or school of landscape architecture approved by the board. He shall also submit, before admission to the examination, evidence of actual practical experience in landscape architectural work of grade and character satisfactory to the board. Each complete year of study in such approved college or school of landscape architecture may be accepted in lieu of one (1) year of such experience, and the applicant must submit evidence of sufficient additional acceptable experience to total four (4) years of combined education and experience. In lieu of graduation from an accredited college or school of landscape architecture, and the practical experience in addition thereto, an applicant may be admitted to the examination upon presenting evidence of at least four (4) years of actual, practical experience in landscape architectural work of a grade and character satisfactory to the board.

(c) Examinations. Examinations for the license shall be held by the board at least once each year, provided that applications shall have been received during the time announced. The board shall adopt rules ~~and regulations~~ covering the subjects and scope of the examinations at the times designated. Every applicant for license as a landscape architect shall be required, in addition to all other requirements, to establish by written examination his competency to plan, design, specify, and supervise the installation of landscape projects. Each written examination may be supplemented by such oral examinations

as the board may determine.

(d) The board. There is hereby created in the department of self-governing agencies an Idaho state board of landscape architects. The board shall consist of three (3) landscape architects. Members of the board shall be appointed by the governor and must be residents of this state, have the qualifications of landscape architects required by this act, and after the initial board is organized be licensed hereunder. The terms of the members of the board first appointed shall expire as follows:

Two (2) members two (2) years later, one (1) member three (3) years later. Thereafter, appointments shall be for four (4) year terms. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment in like manner for the unexpired term. The board may by written agreement authorize the bureau of occupational licenses to act as agent in its interest, and shall have the power to make such rules ~~and regulations~~ as shall be necessary in the performance of its duties. The board shall elect, at its first meeting of every calendar year, from its members, a president, and a secretary who may or may not be a member of the board. The secretary shall hold such office at the pleasure of the board and shall receive a salary fixed by the board. In carrying out the provisions of this act, all members of the board shall be compensated as provided by section 59-509(~~g~~m), Idaho Code. Payment of travel and other expenses shall be made from the occupational licenses fund.

(e) Revenue. Certificates of registration shall expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the board of the required fee.

(1) In case any registrant fails to pay the renewal fee before thirty (30) days after the due date, the renewal fee shall be the current fee plus an amount set by the board; provided, that any registrant in good standing, upon fully retiring from landscape architectural practice, may withdraw from practice by giving written notice to the board and may thereafter resume practice at any time upon payment of the then current renewal fee. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration for a period of one (1) year may be reinstated only on reexamination as is required for new registrants, or reciprocity. The board shall issue a receipt to each landscape architect promptly upon payment of the annual license fee.

(2) Amounts. The amount of fees shall be as determined by the board within the following stated limits:

(A) The application fee not to exceed one hundred dollars ($100).

(B) The fee for examination to be established by board rule not to exceed that charged by the council of landscape architectural registration board plus a twenty-five dollar ($25.00) processing fee.

(C) The fee for an original certificate and the annual license fee not to exceed one hundred twenty-five dollars ($125).

(3) Refund. Fees shall be nonrefundable.

(4) Deposit. All fees received under the provisions of this act shall be deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred by the board under the provisions of this act shall be a charge against and paid from said fund for such purposes, and the funds collected hereunder shall be immediately available for the administration of this act, the provisions of any other law notwithstanding. In no instance will the occupational licenses fund be obligated to pay any claims which in aggregate with claims already paid exceed the income to the occupational licenses fund which has been derived by the application of this act.

(5) Appropriation. The money paid into the occupational licenses fund is continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and in carrying out and enforcing the provisions of this act.

(f) Reciprocal provisions. The board may certify for registration with limited examination an applicant who is legally registered as a landscape architect in any other state or country whose requirements for registration are at least substantially equivalent to the requirements of this state.

(g) Exemptions. (1) None of the provisions of this act shall prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control or supervision of their employers.

(2) None of the provisions of this act shall apply to the business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, gardener, landscape gardener, landscape designer, or landscape contractor, as these terms are generally used, or any other person, including, but not limited to, their right to plan and supervise in connection therewith, except that no such person shall use the designation "landscape architect," "landscape architecture," or any description tending to convey the impression that he is a registered landscape architect unless he is registered as provided in this act.

(3) This act shall not apply to architects, professional engineers, geologists, and land surveyors, licensed to practice their respective professions.

(h) Act applies to natural persons only.

(1) All certificates of registration shall be issued to natural persons only but nothing contained in this act shall prevent a duly registered landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Partners. Each partner in a partnership of landscape architects shall be registered to practice. Subject to this requirement, a partnership of landscape architects may use a partnership name if such name consists of:

(A) The names of two (2) or more landscape architects.

(B) The names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) Any person applying to the licensing official of any county or city for a business license to practice landscape architecture shall at the time of such application exhibit to such licensing official satisfactory evidence under the seal of the board and the

hand of its secretary that such applicant possesses a current registration. The license shall not be granted until such evidence is presented, any contrary provision of any special act or general act notwithstanding.

(i) Qualifications for practice -- seal:

(1) No person shall use the designation "landscape architect" or "landscape architecture," or advertise any title or description tending to convey the impression that he is a landscape architect, or practicing landscape architecture, unless such person is a registered landscape architect. Every holder of a registration certificate shall display it in his principal office, place of business, or place of employment.

(2) Every landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Registered Landscape Architect, State of Idaho," and such other words or figures as the board may deem necessary and prescribe. All drawings and title pages of specifications, prepared by such landscape architect or under the supervision of such landscape architect, shall be stamped with the aforesaid seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer or a licensed land surveyor.

SECTION 8. That Section 54-4106, Idaho Code, be, and the same is hereby amended to read as follows:

54-4106. REAL ESTATE APPRAISERS -- REAL ESTATE APPRAISER BOARD -- POWERS AND DUTIES -- COMPENSATION. (1) There is hereby created in the department of self-governing agencies, a real estate appraiser board, hereinafter referred to as the "board," which shall administer the provisions of this chapter. The board shall consist of five (5) members to be appointed by the governor as follows:

(a) One (1) from the northern district consisting of the counties of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner; one (1) from the southeastern district consisting of the counties of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock; one (1) from the southwestern district consisting of the counties of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley; one (1) from the south central district consisting of the counties of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls; and one (1) from the state at large;

(b) On July 1, 1990, the governor shall appoint the members of the board, each of whom shall be a real estate appraiser with not less than five (5) years experience in the real estate appraisal business in Idaho. The initial appointments shall be for a term of three (3) years. After July 1, 1991, appointments to the board shall be made so as to appoint a board member from the northern district for a three (3) year term and a board member from the south central district for a four (4) year term. Each regular appointment thereafter, other than an appointment to fill an unex-

pired term, shall be for a term of four (4) years and each board member shall hold office until a successor is appointed and qualified. Upon the death, resignation or removal of any member of the board, the governor shall appoint a state licensed or state certified real estate appraiser to fill the unexpired term. Appointments to fill any vacancy other than that resulting from the expiration of a term shall be made for the unexpired term. After July 1, 1991, new board members shall be required to be state licensed or certified real estate appraisers with not less than five (5) years experience in the real estate appraisal business in Idaho;

(c) Within fifteen (15) days after the appointment of the members of the board, the board shall call a meeting and organize by the election of a chairman. Thereafter the chairman may call meetings of the board whenever he deems it advisable but if he refuses to call a meeting upon written demand of the other four (4) members of the board, then such members may call such meeting. Reasonable notice shall be given in writing by mail of such meeting.

(2) The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

(a) To authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest;

(b) To adopt, pursuant to the administrative procedures act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter, and any such rules deemed necessary by the board to keep the Idaho real estate appraisers act in compliance with federal law, rule, regulation or policy;

(c) To conduct investigations into violations of the provisions of this chapter;

(d) To receive applications for and issue licenses or certificates to real estate appraisers pursuant to this chapter;

(e) To hold meetings, hearings and examinations at such places and at such times as it shall designate;

(f) To collect, deposit and disburse application and other fees, as required by this chapter or federal law;

(g) To maintain a register of all state licensed or certified residential and state certified general real estate appraisers; and

(h) To censure a state licensed or certified appraiser or suspend or revoke appraisal licenses or certificates as provided in this chapter, subject to the provisions of the Idaho administrative procedures act, chapter 52, title 67, Idaho Code.

(3) Each member of the board of real estate appraisers shall be compensated as provided in section 59-509(gm), Idaho Code.

SECTION 9. That Section 54-3403, Idaho Code, be, and the same is hereby amended to read as follows:

54-3403. BOARD -- ORGANIZATION AND MEETINGS. There is hereby created in the department of self-governing agencies an Idaho counselor licensing board as follows:

(1) The board shall consist of four (4) members, residents of the

state of Idaho, who shall be appointed by the governor. In making appointments, the governor shall give consideration to recommendations submitted by the Idaho personnel and guidance association in consultation with other state counselor organizations. If recommendations are not made within sixty (60) days of notification and request, the governor may make appointments of any qualified individual.

(2) Beginning July 1, 1982, initial appointments to the board shall be for the following terms: one (1) member for a term ending in one (1) year; one (1) member for a term ending in two (2) years; one (1) member for a term ending in three (3) years; and one (1) member for a term ending in four (4) years.

(3) When the initial term of each member ends, the governor shall appoint the successor for a term of four (4) years from qualified candidates. Any vacancy occurring on the board shall be filled by the governor by appointment for the unexpired term. The governor may remove any board member for misconduct, incompetency, or neglect of duty after giving the board member written notice of the charges and an opportunity to be heard thereon.

(4) At all times, the board shall have two (2) members who are engaged primarily in rendering counseling service; one (1) member who is engaged primarily in teaching, training or research in counseling; and one (1) member from the general public. Except for the initial appointment, all members of the board except the member from the general public shall be licensed under this chapter.

(5) The first appointees, other than the member from the general public, must meet the qualifications for licensure and shall become licensed professional counselors immediately upon their appointment as members of the board.

(6) No board member shall serve more than two (2) full consecutive terms.

(7) The members of the board shall be ~~reimbursed for their actual and necessary expenses, not to exceed state established maximum allowances, and a per diem of thirty five dollars ($35.00) per day for each day of actual service while engaged in performing their duties as members of the board~~ compensated as provided in section 59-509(m), Idaho Code.

(8) The board shall within sixty (60) days after the effective date of this chapter, and annually thereafter hold a meeting and elect a chairman, vice-chairman and secretary from among its members. The board shall meet at such other times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the governor. Notice of all meetings shall be given in the manner prescribed by law. A majority of the board shall constitute a quorum at any meeting or hearing.

(9) The secretary of the board shall take and maintain the minutes of the board proceedings.

Approved March 5, 1996.

CHAPTER 67
(H.B. No. 649)

AN ACT

RELATING TO THE NEW CONSTRUCTION EXCEPTION FOR THE AD VALOREM TAX LIMITATION CAP; AMENDING SECTION 63-2220A, IDAHO CODE, TO PROVIDE FOR NEW CONSTRUCTION OR A CHANGE OF LAND USE CLASSIFICATION TO APPEAR ON THE NEW CONSTRUCTION ROLL; AMENDING CHAPTER 22, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2220B, IDAHO CODE, TO PROVIDE A NEW CONSTRUCTION ROLL TO BE PREPARED BY THE COUNTY ASSESSOR AND TO PROVIDE REQUIREMENTS FOR THE ROLL; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-2220A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2220A. LIMITATION ON BUDGET REQUESTS -- LIMITATION ON TAX CHARGES -- EXCEPTIONS. (1) Except as provided in subsection (2) of this section for tax year 1995, and each year thereafter, no taxing district shall certify a budget request to finance the ad valorem portion of its annual budget that exceeds the greater of:

(a) The dollar amount of ad valorem taxes certified for its annual budget for any one (1) of the three (3) tax years preceding the current tax year, whichever is greater, which amount may be increased by a growth factor of not to exceed three percent (3%) plus the amount of revenue that would have been generated by applying the levy of the previous year, not including any levy for voter approved bonds, override levies, supplemental levies, plant facilities reserve fund levies or school emergency fund levies, to any increase in market value subject to taxation resulting from new construction or change of land use classification as evidenced by the value ~~of either: (i) -- property subject to the occupancy tax pursuant -- to -- chapter -- 39, title 63, Idaho Code, for the preceding tax year; or (ii) new construction based upon a quantitative -- formula -- approved by the state tax commission which uses the value of building permits for the preceding year~~ shown on the new construction roll compiled pursuant to section 63-2220B, Idaho Code; and by the value of annexation during the previous calendar year, as certified by the county assessor;

(b) The dollar amount of ad valorem taxes certified for its annual budget during the last year in which a levy was made; or

(c) The dollar amount of the actual budget request, if the taxing district is newly created; or

(d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code; or

(e) In the case of a nonschool district for which less than the maximum allowable increase in the dollar amount of ad valorem taxes is certified for annual budget purposes in any one (1) year, such a district may, in any following year, recover the foregone increase by certifying, in addition to any increase otherwise

allowed, an amount not to exceed one hundred percent (100%) of the increase originally foregone. Said additional amount shall be included in future calculations for increases as allowed.

(2) No board of county commissioners shall set a levy, nor shall the state tax commission approve a levy for annual budget purposes which exceeds the limitation imposed in subsection (1) of this section, unless authority to exceed such limitation has been approved by a majority of the taxing district's electors voting on the question at an election called for that purpose and held pursuant to section 34-106, Idaho Code, provided however, that such voter approval shall be for a period of not to exceed two (2) years.

(3) The amount of ad valorem tax revenues to finance an annual budget does not include revenues from non-ad valorem tax sources, and does not include revenue from levies that are voter approved for bonds, override levies or supplemental levies or for levies applicable to newly annexed property or for levies applicable to new construction as evidenced by the value of property subject to the occupancy tax pursuant to chapter 39, title 63, Idaho Code, for the preceding tax year and does not include plant facility reserve fund levies or school emergency fund levies.

SECTION 2. That Chapter 22, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-2220B, Idaho Code, and to read as follows:

63-2220B. NEW CONSTRUCTION ROLL. (1) The county assessor shall prepare a new construction roll, which shall be in addition to the real property assessment roll, and the personal property roll, which new construction roll shall show:

(a) The name of the taxpayer;

(b) The description of the new construction, suitably detailed to meet the requirements of the individual county;

(c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;

(d) The amount of taxable market value added to the property on the current year's real property roll that is directly the result of new construction or a change in use of the land or both.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission.

(3) The value shown on the new construction roll may include the value increase from:

(a) Construction of any new structure that previously did not exist; or

(b) Additions or alterations to existing nonresidential structures; or

(c) Installation of new or used manufactured housing that did not previously exist within the county; or

(d) Change of land use classification.

(4) The amount of taxable market value of new construction shall

be the change in net taxable market value that is attributable directly to new construction or a change in use of the land. It shall not include any change in value of existing property that is due to external market forces such as general or localized inflation.

SECTION 3. This act shall be in full force and effect on and after January 1, 1997.

Approved March 5, 1996.

CHAPTER 68
(H.B. No. 434)

AN ACT

RELATING TO REGULATION OF INSURANCE; AMENDING SECTION 41-335, IDAHO CODE, TO PROVIDE THAT THE ANNUAL REPORT OF INSURANCE COMPANIES, WITH CERTAIN EXCEPTIONS, IS A PUBLIC RECORD.

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

SECTION 1. That Section 41-335, Idaho Code, be, and the same is hereby amended to read as follows:

41-335. ANNUAL STATEMENT. (1) Each authorized insurer shall annually on or before March 1, or within any extension of time therefor, not to exceed thirty (30) days, which the director for good cause may have granted, file with the director a full and true statement of its financial condition, transactions and affairs as of the preceding December 31. Unless otherwise required by the director, the statement is to be prepared in accordance with the annual statement instructions and the accounting and procedures manual adopted by the national association of insurance commissioners (NAIC) and is to be submitted on the NAIC annual convention blank form, and any statement, form or other information relating to the compensation of any officer, director or employee will be deemed confidential. At the seasonable request of a domestic insurer the director shall furnish to the insurer the blank form of annual statement to be used by it. The statement shall be verified by the oath of the insurer's president or vice-president, and secretary or actuary as applicable, or if a reciprocal insurer, by the oath of the attorney in fact or its like officers if a corporation.

(2) The statement of an alien insurer shall be verified by its United States manager or other officer duly authorized, and shall relate only to the insurer's transactions and affairs in the United States unless the director requires otherwise. If the director requires a statement as to the insurer's affairs throughout the world, the insurer shall file such statement with the director as soon as reasonably possible.

(3) An insurer which is subject to section 41-337, Idaho Code, (resident agent, countersignature law) shall attach to its annual statement the affidavit required under section 41-339, Idaho Code.

(4) Any insurance company licensed to do business in this state which neglects to file or fails to file in the time prescribed by statute its annual statement or supplemental summary statement requested by the director shall be subject to a penalty of twenty-five dollars ($25.00) per day for each day in default. This penalty will be in addition to any administrative penalty which may be assessed pursuant to sections 41-327 and 41-324, Idaho Code.

(5) Each domestic insurer authorized to do business in this state shall annually, on or before March 1 of each year, file with NAIC its annual financial statement in a form prescribed by the director along with any additional filings prescribed by the director for the preceding year. The information filed with NAIC shall be in the same format and scope as that required by this code. Any amendments or addenda to the annual statement shall also be filed with NAIC.

(6) At time of filing, the insurer shall pay to the director the fee for filing its statement as prescribed by rule of the department of insurance.

(7) The financial statements filed with the director pursuant to this section, with the exception of information relating to officer, director, or employee compensation referred to in subsection (1) of this section, are public records and available to the public, notwithstanding the provisions of section 9-340, Idaho Code.

Approved March 5, 1996.

CHAPTER 69
(H.B. No. 442, As Amended in the Senate)

AN ACT

RELATING TO PUBLIC ADMINISTRATORS; AMENDING SECTION 14-102, IDAHO CODE, TO PROVIDE FOR THE PUBLIC ADMINISTRATOR TO TAKE CHARGE OF PROPERTY UNTIL A PERSONAL REPRESENTATIVE IS APPOINTED; AMENDING SECTION 14-104, IDAHO CODE, TO REQUIRE NOTIFICATION TO THE PUBLIC ADMINISTRATOR; AMENDING SECTION 14-105, IDAHO CODE, TO INCREASE THE INVENTORY AMOUNT BEFORE PROBATE PROCEDURE BEGINS; AMENDING SECTION 14-107, IDAHO CODE, TO REQUIRE NOTIFICATION TO THE PUBLIC ADMINISTRATOR AND TO MAKE CERTAIN ARRANGEMENTS WHERE NO PERSONAL REPRESENTATIVES ARE FOUND; AMENDING SECTION 14-113, IDAHO CODE, TO DELETE AN OUTDATED REFERENCE; AMENDING SECTION 14-117, IDAHO CODE, TO CLARIFY THAT PERSONAL FEES ARE NOT ALLOWED; REPEALING SECTION 15-2-105, IDAHO CODE; AMENDING SECTION 31-2102, IDAHO CODE, TO PROVIDE REFERENCE TO PUBLIC ADMINISTRATOR RESPONSIBILITIES; AND AMENDING SECTION 31-2117, IDAHO CODE, TO REQUIRE NOTIFICATION TO THE PUBLIC ADMINISTRATOR.

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

SECTION 1. That Section 14-102, Idaho Code, be, and the same is hereby amended to read as follows:

14-102. ESTATES TO BE ADMINISTERED. (1) Every public administra-

tor~~,duly qualified,~~ must make an initial determination of the absence of an heir or will, and take charge of the estates of persons ~~dying~~ who, upon their death, reside within his county, as follows:

~~1.~~(a) Of the estates of decedents for which no personal representatives are appointed, and which, in consequence thereof, are being wasted, uncared for or lost and of estates which he is directed to administer by virtue of the provisions of subsection (a)(7) of section 15-3-203 of this code;

~~2.~~(b) Of the estates of decedents who have no known heirs;

~~3.~~(c) Of estates ordered into his hands by the court, and of estates to which the state of Idaho is an heir.

(2) The public administrator must, until a personal representative is appointed, take charge of the property, located in the state of Idaho, of persons dying within his county who resided outside the state at the time of death.

SECTION 2. That Section 14-104, Idaho Code, be, and the same is hereby amended to read as follows:

14-104. DEATH OF INTESTATE STRANGER -- PUBLIC ADMINISTRATOR TO BE NOTIFIED. Whenever a stranger or person without known heirs, dies intestate in the house or premises of another, the possessor of such premises, or anyone knowing the facts, must give ~~immediate~~ notice thereof to the public administrator of the county within forty-eight (48) hours of knowledge of a death; and in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the public administrator, or any party interested.

SECTION 3. That Section 14-105, Idaho Code, be, and the same is hereby amended to read as follows:

14-105. INVENTORY BY PUBLIC ADMINISTRATOR. The public administrator must make and return a perfect inventory of all estates taken into his possession, administer and account for the same, converting the assets into money according to the provisions of this title, subject to the control and direction of the court. When, as shown by the inventory, the estate amounts to less than ~~two hundred fifty~~ one thousand dollars ($~~251~~1,000), no notice to creditors or other formal proceedings by the public administrator are required.~~, but a~~After the payment of the funeral expenses, the expenses of the last sickness, ~~and of~~ administration, and such other expenses as may be deemed appropriate by the public administrator, the court must order the residue, if any, ~~converted into money and~~ paid as may be just to such creditors or heirs as may appear, or into the state treasury ~~as provided in section 15-2-105 of this code~~ with the report of abandoned property required in section 14-517, Idaho Code, upon final distribution of the estate.

SECTION 4. That Section 14-107, Idaho Code, be, and the same is hereby amended to read as follows:

14-107. OFFICERS TO NOTIFY ADMINISTRATOR OF DECEDENT'S PROPERTY. All ~~civil officers~~ public officials must, within forty-eight (48)

hours of knowledge of a death, inform the public administrator of and make available to him all property known to them, belonging to a decedent who resided at the time of death in the county, which is liable to loss, injury or waste, ~~and~~ or which, by reason thereof, ought to be in the possession of the public administrator. The public administrator shall be responsible for determining if any heirs or a will exists and shall make burial arrangements in all cases where there are no known personal representatives.

SECTION 5. That Section 14-113, Idaho Code, be, and the same is hereby amended to read as follows:

14-113. UNCLAIMED MONEYS -- PAYMENT INTO STATE TREASURY -- ESCHEAT. After a final settlement of the affairs of any estate, if there be no heirs or other claimants thereof, the administrator must pay into the state tax commission any and all moneys and effects reported as unclaimed property as required by section 14-517, Idaho Code, and the procedure for distribution of abandoned property outlined in the unclaimed property act shall be followed~~,-except-that-the proceeds-shall-be--distributed--in--the--manner--provided--in--section 15-2-105,-Idaho-Code~~.

SECTION 6. That Section 14-117, Idaho Code, be, and the same is hereby amended to read as follows:

14-117. INTESTATE DECEDENTS WITHOUT HEIRS OR WITHOUT KNOWN HEIRS -- DUTY OF PUBLIC ADMINISTRATOR -- PERSONAL FEES NOT ALLOWED. It shall be the mandatory duty of the several county treasurers as ex officio public administrators to cause to be instituted all probate proceedings necessary for the probate of any estate of a decedent whenever such decedent dies intestate without heirs or without known heirs and no creditor's proceeding or other probate proceeding is instituted within three (3) months after such death. No fee shall be allowed to the public administrator or his attorney personally for any service performed in administration of such estates.

SECTION 7. That Section 15-2-105, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 31-2102, Idaho Code, be, and the same is hereby amended to read as follows:

31-2102. EX OFFICIO TAX COLLECTOR AND EX OFFICIO PUBLIC ADMINISTRATOR. (1) The county treasurer is ex officio tax collector~~.-His~~ with duties ~~in-relation~~ relating to the collection of tax revenue ~~are~~ as prescribed in title 63, Idaho Code ~~relating-to-revenue~~.

(2) The county treasurer is ex officio public administrator and as such shall administer the estates of decedents who resided in the county at the time of death as prescribed in chapter 1, title 14, Idaho Code.

SECTION 9. That Section 31-2117, Idaho Code, be, and the same is hereby amended to read as follows:

31-2117. DISPOSAL OF MONEY OR PROPERTY FOUND ON DEAD BODY. The coroner or other public official must notify the county treasurer, within forty-eight (48) hours of knowledge of a death, of money or other property found on or with a dead body. The treasurer, upon receiving ~~from the coroner or justice acting as coroner money found on a dead body,~~ such funds must ~~place it~~ deposit them to the credit of the county. On receiving other property in like manner he must, within thirty (30) days, sell it at public auction upon reasonable public notice, and must in like manner ~~place~~ deposit the proceeds to the credit of the county.

Approved March 5, 1996.

CHAPTER 70
(H.B. No. 408)

AN ACT
RELATING TO VETERANS; AMENDING SECTION 65-509, IDAHO CODE, TO REVISE THE DEFINITION OF VETERAN.

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

SECTION 1. That Section 65-509, Idaho Code, be, and the same is hereby amended to read as follows:

65-509. "VETERAN" DEFINED. Whenever the term "veteran" is used in the laws of the state of Idaho, it shall be construed to include any person who has served in the active service of the armed forces of the United States during any period of war recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), and who has been discharged from service under ~~other than dis~~honorable conditions.

Approved March 5, 1996.

CHAPTER 71
(H.B. No. 640)

AN ACT
RELATING TO LIBRARY DISTRICTS; AMENDING THE HEADING FOR CHAPTER 27, TITLE 33, IDAHO CODE; AMENDING SECTION 33-2701, IDAHO CODE, TO MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2702, IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS; AMENDING SECTION 33-2703, IDAHO CODE, TO MAKE GRAMMATICAL CORRECTIONS AND CORRECT A REFERENCE; AMENDING SECTION 33-2704, IDAHO CODE, TO REQUIRE A MAP AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2705, IDAHO CODE, TO REQUIRE NOTIFICATIONS AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2706, IDAHO CODE, TO REQUIRE NOTIFICATIONS AND

MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2707, IDAHO CODE, TO REQUIRE NOTIFICATION, MAKE A CITATION CORRECTION AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2708, IDAHO CODE, TO PROVIDE THE PROCEDURE TO AMEND BOUNDARIES AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2709, IDAHO CODE, TO PROVIDE THE PROCEDURE FOR AMENDING BOUNDARIES AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2710, IDAHO CODE, TO PROVIDE THE METHOD OF DETERMINING THE BUDGET FOR CONSOLIDATED LIBRARIES; AMENDING SECTION 33-2711, IDAHO CODE, TO PROVIDE THE METHOD FOR CONSOLIDATION OF LIBRARY DISTRICTS AND MAKE GRAMMATICAL CORRECTIONS; AMENDING CHAPTER 27, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2711A, IDAHO CODE, TO PROVIDE FOR ADJUSTMENT OF BOUNDARY LINES BETWEEN EXISTING PUBLIC LIBRARY DISTRICTS; AMENDING SECTION 33-2713, IDAHO CODE, TO CLARIFY THE METHOD FOR DISSOLUTION OF A LIBRARY DISTRICT; AMENDING SECTION 33-2715, IDAHO CODE, TO MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2716, IDAHO CODE, TO CLARIFY THE METHOD OF FILLING VACANCIES; AMENDING SECTION 33-2717, IDAHO CODE, TO PROVIDE FOR NOTIFICATION AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2717A, IDAHO CODE, TO EXTEND THE DEADLINE FOR FILING AS A WRITE-IN CANDIDATE; AMENDING CHAPTER 27, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2717B, IDAHO CODE, TO PROVIDE FOR WITHDRAWAL OF CANDIDACY; AMENDING CHAPTER 27, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2717C, IDAHO CODE, TO PROVIDE FOR CORRECTION OF BALLOTS; AMENDING SECTIONS 33-2718 AND 33-2719, IDAHO CODE, TO MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2720, IDAHO CODE, TO PROVIDE CLARIFICATION OF POWERS AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2721, IDAHO CODE, TO CLARIFY DUTIES OF THE LIBRARY DIRECTOR AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTIONS 33-2722 AND 33-2724, IDAHO CODE, TO MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2725, IDAHO CODE, TO PROVIDE FOR ADJUSTMENTS TO THE BUDGET AND MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTIONS 33-2726, 33-2727 AND 33-2737, IDAHO CODE, TO MAKE GRAMMATICAL CORRECTIONS; AMENDING SECTION 33-2738, IDAHO CODE, TO PROVIDE FOR TRUSTEE ZONES; AND AMENDING SECTION 33-2740, IDAHO CODE, TO MAKE GRAMMATICAL CORRECTIONS.

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

SECTION 1. That the heading for Chapter 27, Title 33, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 27
PUBLIC LIBRARY DISTRICTS

SECTION 2. That Section 33-2701, Idaho Code, be, and the same is hereby amended to read as follows:

33-2701. PURPOSE AND POLICY. It is hereby declared to be the policy of the state of Idaho, as a part of the provisions for public education, to promote the establishment and development of public library service for all the people of Idaho. It is the purpose of this act to make more adequate provision for an informed electorate by integrat-

ing, extending, and adding to existing library services and resources ~~in such manner~~ so that public library service may be available to children in their formative years and to adults for their continuing education.

SECTION 3. That Section 33-2702, Idaho Code, be, and the same is hereby amended to read as follows:

33-2702. ~~QUALIFIED ELECTOR~~ DEFINITIONS. As used in this chapter:

(1) "Home county" means the county where the designated district headquarters is located when a public library district's boundaries include territory located in more than one (1) county.

(2) "Library director" means the employee of a public library district who is charged with the administration and management of library services for that district.

(3) "Public library district trustee" means a qualified elector living within the boundaries of a public library district who is elected or, appointed temporarily, to fulfill the duties described in this chapter related to the governance of a public library district.

(4) "Qualified elector" means a~~A~~ny person voting, or offering to vote, at an election to create a library district, add territory thereto, or elect trustees thereof, must be, at the time of the election, a resident of the area involved for thirty (30) days prior to the date of the election, registered and an elector within the meaning of section 2, article VI, of the Constitution of the state of Idaho.

SECTION 4. That Section 33-2703, Idaho Code, be, and the same is hereby amended to read as follows:

33-2703. LIBRARY DISTRICTS -- TERRITORY -- ESTABLISHMENT -- LIMITATIONS. A library district may be ~~organized~~ established by vote of the qualified electors of the proposed district in an election called and held as provided by this chapter, with the following limitations:

(1) The district may include incorporated or unincorporated territory or both in one (1) or more counties and may include any of the area thereof except as may be excluded by this section, and as finally fixed and determined by the board of county commissioners.

(2) The territory of the district shall be continuous, and no territory of an incorporated municipality shall be divided.

(3) In the initial ~~organization~~ establishment of a library district the following may be excluded:

(a) A municipality which is already providing library service as established according to section 33-2603, Idaho Code; or

(b) A library district which is already providing library service as established in accordance with the provisions of this chapter.

(4) If, subsequent to the ~~organization~~ establishment of a library district, any area thereof is annexed to a municipality which maintains a tax-supported library, ~~such~~ this area shall cease to be a part of the library district and the ~~board of trustees~~ city council of ~~said~~ the municipality shall so notify the board of county commissioners.

(5) Any proposed library district shall have a population of more than one thousand five hundred (1,500) and an annual budget of not less than twenty-five thousand dollars ($25,000) from ad valorem reve-

nues. Any proposed library district not meeting the above criteria may apply to the state library board for an exemption.

SECTION 5. That Section 33-2704, Idaho Code, be, and the same is hereby amended to read as follows:

33-2704. PETITION -- VERIFICATION -- NOTICE AND HEARING. (1) A petition or petitions, signed by fifty (50) or more qualified electors residing in the proposed library district, giving the name of the proposed district, ~~and~~ describing the boundaries thereof including a map prepared in a draftsmanlike manner, and praying for the ~~organization~~ establishment of the territory therein described as a public library district, shall be filed with the clerk or clerks of the boards of county commissioners of the counties in which the proposed district is situated.

The petition or petitions shall be verified by at least one (1) qualified elector, which verification shall state that the affiant knows that all of the parties whose names are signed to the petition are qualified electors of the proposed district, and that their signatures to the petition were made in his presence. The verification may be made before any notary public.

(2) When ~~such~~ the petition or petitions are presented to the board of county commissioners and filed in the office of the clerk of ~~such~~ the board, the board shall set the time for a hearing, which time shall be not less than three (3) nor more than six (6) weeks from the date of the presentation and filing of the petition. Notice of the time of hearing shall be published by ~~said~~ the board at least once a week for two (2) weeks prior to the time set for the hearing, in a newspaper of general circulation within the county in which the proposed district is situated.

(3) The notice shall state that a library district is proposed to be ~~organized~~ established, giving the proposed boundaries and name thereof, and that any resident elector within the proposed boundaries of the proposed district may appear and be heard in regard to:

(a) The form of the petition;

(b) The genuineness of the signatures;

(c) The legality of the proceedings; and

(d) Any other matters in regard to the creation of the library district.

(4) Concurrently with the notice of hearing, the board of county commissioners shall notify, in writing, the governing body of any tax supported library within the boundaries of the proposed library district. If any ~~such~~ governing body decides that it is not in the best interest of library services to be included within the proposed library district, they shall present a resolution stating ~~such~~ this to the county commissioners, not less than one (1) week prior to the date of hearing.

(5) No later than ~~five (5)~~ ten (10) days after the hearing, the board of county commissioners shall make an order thereon with or without modification, based upon the public hearing and their determination of whether ~~such~~ the proposed library district would be in keeping with the declared public policy of the state of Idaho in regard to library districts as more particularly set forth in section 33-2701,

Idaho Code, and, shall accordingly fix the boundaries and certify the name of ~~such~~ the proposed district in the order granting ~~such~~ the petition. The boundaries so fixed shall be the boundaries of ~~said~~ the district after its ~~organization~~ establishment is completed as provided in this chapter.

SECTION 6. That Section 33-2705, Idaho Code, be, and the same is hereby amended to read as follows:

33-2705. CONDUCT OF ELECTION. Upon the county commissioners having made the order referred to in subsection (5) of section 33-2704, Idaho Code, the clerk of the board of county commissioners shall cause to be published a notice of an election to be held for the purpose of determining whether or not the proposed library district shall be ~~organized~~ established under the provisions of this chapter. The date of this election shall be the next uniform election date as provided for in section 34-106, Idaho Code. Whenever more than one (1) petition is presented to the county commissioners calling for an election to create library districts, the first presented shall take precedence. Notice of the election shall be given, the election shall be conducted, and the returns thereof canvassed as provided for in chapter 14, title 34, Idaho Code, and under the general election laws of the state of Idaho. The ballot shall contain the words "(Name) Library District--Yes" and "(Name) Library District--No," each followed by a box wherein the voter may express his choice by marking a cross "X." The board or boards of election shall make returns and certify the results to the boards of county commissioners within three (3) days after the election, and ~~said~~ the board of county commissioners shall, within seven (7) days after the election, canvass the returns. If a majority of all votes cast be in the affirmative, the board of county commissioners shall, within seven (7) days after the returns have been canvassed, enter an order declaring the library district established, ~~and~~ designating its name and boundaries ~~and name~~ including a map prepared in a draftsmanlike manner. The board of county commissioners shall transmit a copy of the order to the county recorder, county assessor, and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held. A copy of the order shall also be transmitted to the state library board.

SECTION 7. That Section 33-2706, Idaho Code, be, and the same is hereby amended to read as follows:

33-2706. ~~ORGANIZATION~~ ESTABLISHMENT OF LIBRARY DISTRICT EMBRACING MORE THAN ONE COUNTY. When the proposed library district embraces more than one (1) county, the petition and procedure for praying for the ~~organization~~ establishment of the district shall be carried forward in each ~~such~~ county as though that county were the only county affected. Each petition~~, however,~~ shall designate the same ~~county as the~~ home county ~~of~~ for the proposed district.

The board of county commissioners of ~~said~~ the home county shall advise with the board of county commissioners in any other county affected to the end that the election shall be held in each county on

the same day. The board of county commissioners in each county shall proceed in the conduct of the election as though the election were being held only in that county as set forth in section 33-2705, Idaho Code. After the canvass of the returns, the results in each other county shall be certified to the board of county commissioners of the home county, together with all ballots and tally sheets. ~~Said~~ The board of county commissioners of the home county shall canvass all returns and certify the results of the election to the board of county commissioners of any other county affected. The proposal shall be deemed approved only if a majority of all votes cast in each county were cast in the affirmative. If this ~~be~~ is the case, the board of county commissioners of the home county shall enter an order declaring the library district to be created, ~~and defining~~ designating its name and boundaries, including a map prepared in a draftsmanlike manner. A certified copy of ~~said~~ the order shall be ~~sent to~~ transmitted by the board of county commissioners to the county recorder, the county assessor and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held. A copy of this order shall also be transmitted to the board(s) of county commissioners of any other county affected, which shall enter ~~such~~ the order in its minutes~~; and~~. A copy of this order shall also be transmitted to the state library board.

SECTION 8. That Section 33-2707, Idaho Code, be, and the same is hereby amended to read as follows:

33-2707. ADDITION OF TERRITORY NOT HAVING A TAX SUPPORTED LIBRARY TO A LIBRARY DISTRICT -- PETITIONS AND SIGNATURES -- ELECTION. (1) Any area which does not have a tax supported library and which is contiguous to an existing library district may become a part of the district by petition and election.

(2) A petition may arise as set forth in section 33-2704, Idaho Code, in the area seeking to become a part of the library district. A true copy of the petition shall be transmitted to the board of trustees of the district, and to the board of county commissioners in each county affected. The board of trustees of the library district may approve or disapprove ~~such~~ the petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When ~~said~~ the notice carries the approval of the board of trustees of the district, the board of county commissioners in the county in which the petition arose shall enter its order calling for an election on the question. The election shall be held in the area described in ~~which~~ the petition ~~arose~~. Notice of the election shall be given, the election shall be conducted on the next uniform election date as provided in section 34-106, Idaho Code, and the returns thereof canvassed as provided in section 33-2705, Idaho Code. The ballot shall bear the question: "Shall .... become a part of the .... (Name) ~~l~~Library ~~d~~District .... Yes" and "Shall .... become a part of the .... (Name) ~~l~~Library ~~d~~District .... No," each followed by a box in which the voter may express his choice by marking a cross "X". The proposal shall be deemed approved only if the majority of the votes cast in the area seeking to become a part thereof is in the affirma-

tive.

(4) If the proposal has been approved by the majority herein required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, ~~and a~~ including a map prepared in a draftsmanlike manner. A copy of this order shall be transmitted to the board of trustees of the library district, to ~~the~~ each board of county commissioners of the county in which the ~~petition arose~~ district lies, and to the state library board.

(5) ~~Such other notices as may be required by law shall be filed by the~~ The board of trustees of the library ~~district with the state tax commission within ten (10) days of the effective date of the change, including a legal description and map of altered boundaries~~ shall transmit a certified copy of this order to the county recorder, the county assessor of the home county and to the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held.

(6) Addition of new territory to an existing library district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs appointment shall be made as provided in section 33-271~~5~~6, Idaho Code.

SECTION 9. That Section 33-2708, Idaho Code, be, and the same is hereby amended to read as follows:

33-2708. ADDITION OF TERRITORY NOT HAVING A TAX SUPPORTED LIBRARY TO A LIBRARY DISTRICT -- ALTERNATE METHOD. (1) An alternate method of adding territory to a library district may be initiated by a petition or petitions as set forth in section 33-2704, Idaho Code, except that ~~such~~ the petitions must be signed by sixty percent (60%) of the qualified electors in the area to be annexed.

(2) A true copy of the petitions shall be transmitted to the board of trustees of the library district and to the board of county commissioners in each county affected. The board of trustees may approve or disapprove ~~such~~ the petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When ~~said~~ the notice carries the approval of the board of trustees of the district, the board of county commissioners of the county in which the petition arose shall proceed with the required hearing and resolution as outlined in section 33-2704, Idaho Code.

(4) When ~~such~~ the proposal has the approval of the board of county commissioners, the board of trustees of the district and the board of county commissioners shall follow these procedures ~~outlined in subsections (4), (5) and (6) of section 33-2707, Idaho Code:~~

(a) If the proposal has been approved by the majority herein required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map drawn in a draftsmanlike manner, and transmit a copy of the order to the board of county commissioners in the county in which the petition arose. A copy of this order shall also be sent to the state library board.

(b) The board of trustees of the library district shall transmit

a copy of the order to the county recorder, the county assessor of the home county, and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the order was granted.

(c) Addition of new territory to an existing library district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs, appointment shall be made as provided in section 33-2716, Idaho Code.

SECTION 10. That Section 33-2709, Idaho Code, be, and the same is hereby amended to read as follows:

33-2709. EXISTING TAX-SUPPORTED CITY LIBRARIES MAY JOIN LIBRARY DISTRICTS. Any tax-supported city library may join an established library district by majority vote of the qualified electors of ~~the established library district and~~ the city according to procedure set forth in section 33-2707, Idaho Code. A true copy of the petition and the district library board's notice of approval or disapproval shall be sent to the city council. When ~~such~~ the notice carries the approval of the district library board, the city council shall conduct the election and give notice of the results to the library district board and the board of county commissioners.

If the proposal has been approved by the majority required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map drawn in a draftsmanlike manner, and a copy shall be transmitted to the board of trustees of the library district, to the board of county commissioners of the county in which the petition arose, and to the state library board.

The board of trustees of the library district shall transmit a copy of the order to the county recorder, the county assessor of the home county and the state tax commission in a timely manner, but no later than December 15, in the year in which the election was held.

Addition of new territory to an existing library district shall not be considered an initial establishment. The existing district board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs, appointment shall be made as provided in section 33-2716, Idaho Code.

SECTION 11. That Section 33-2710, Idaho Code, be, and the same is hereby amended to read as follows:

33-2710. ~~EQUALIZATION OF LEVY BETWEEN CONSOLIDATING~~ DETERMINATION OF THE AD VALOREM PORTION OF THE BUDGET FOR CONSOLIDATED LIBRARIES -- DISTRICT AND DISTRICT -- DISTRICT AND CITY. (1) When two (2) districts libraries have agreed to consolidate, the ~~tax levies of the two (2) libraries~~ ad valorem portion of the new consolidated district's first budget will be ~~equalized~~ determined in the following manner.

The ~~certified budget figures from~~ ad valorem ~~taxes~~ portion of ~~the~~ each district's most recent annual certified budget will be added together. The resulting figure will ~~provide~~ be considered the ~~base budget amount~~ dollar amount of ad valorem taxes on which to base the

first annual budget for the new consolidated district. The provisions of section 63-2220A, Idaho Code, shall be applied to this dollar amount.

(2) When a tax supported city library has voted to consolidate with a district library, the ~~tax levies of the two (2) libraries need to be equalized to the difference in statutory maximums in the Idaho Code. Equalization~~ ad valorem portion of the new consolidated district's first annual budget will be ~~obtained~~ determined in the following manner.

The ~~certified~~ city library budget figure ~~from ad valorem taxes of the district and the certified budget figure from ad valorem taxes from the~~ will be defined as the budget for library services, whether from the general fund and/or the library fund, in the city's most recent annual certified budget, less fines, fees, and any other identifiable revenues from nontax sources, and any grants made directly to the city library board. The city library ~~fund will be examined for the three (3) year period prior to the year consolidation takes effect. A choice will be made of the figures from the one (1) year with the highest combined~~ budget figure and the ad valorem portion of the public library ~~fund~~ district's most recent annual certified budget will be added together. The resulting figure will ~~provide~~ be considered the ~~base budget~~ dollar amount of ad valorem taxes on which to base the first annual budget for the new consolidated district. The provisions of section 63-2220A, Idaho Code, shall be applied to this dollar amount.

If the city has established a dedicated library fund in the year in which consolidation was approved, those dollars will be removed from the city budget in the fiscal year in which the newly consolidated district begins to levy to provide library services.

(3) In any consolidation, the dollar amount of ad valorem taxes for the new consolidated district's budget shall not exceed six hundredths percent (.06%) of the market value for assessment purposes of all taxable property within the district.

(4) In any consolidation, the existing bonded debt of any district or districts shall not become the obligation of the proposed consolidated library district. The debt shall remain an obligation of the property which incurred the indebtedness.

SECTION 12. That Section 33-2711, Idaho Code, be, and the same is hereby amended to read as follows:

33-2711. ~~ADJUSTMENT OF BOUNDARY LINES OR~~ CONSOLIDATION OF LIBRARY DISTRICTS. When there are two (2) or more library districts, which have at least one (1) common boundary, the boards of trustees of ~~said~~ the library districts, meeting together, may determine that it is in the best interest of library service that ~~the boundary lines be adjusted or that~~ the districts be consolidated, as herein provided.

The boards of trustees shall jointly prepare a petition describing the boundaries of the existing library districts, the names of the existing library districts, and praying for the reorganization of the territory therein described as one (1) or more library districts to be known as the ".... (Name) Library District ~~or Districts~~" and with boundaries as set forth in the petition.

The petition shall be signed by the chairpersons of the library boards upon majority approval of the respective boards involved in the ~~boundary-adjustment-or~~ consolidation.

The petition shall be forwarded to the clerk of the board of county commissioners in all counties affected, who shall verify the signatures, and shall file the petition. Thereupon, the board of county commissioners in all counties affected shall proceed with the hearing and resolution as outlined in section 33-2704, Idaho Code. Upon completion of the hearing, the board of county commissioners shall issue an order granting the petition.

In the order granting the petition ~~and-adjusting-the-boundaries-or establishing~~ of consolidation, the board of county commissioners in all counties affected shall certify the new boundaries and the name of the district ~~or-districts~~.

A copy of the ~~said~~ order shall be transmitted to the board of trustees of the library districts involved, and to the ~~Idaho~~ state library board.

~~Such--o~~Other notices ~~as-may-be~~ required by law shall be filed by the board of trustees of the district, including a legal description and map of altered boundaries prepared in a draftsmanlike manner to be filed with the board(s) of county commissioners, the county recorder, the county assessor of the home county, the state library board, and the state tax commission ~~within-ten-(10)-days-of-the-effective-date-of the--change~~ in a timely manner, but no later than December 15, of the year in which consolidation takes place.

~~Following-a-boundary-adjustment,-t~~The board of county commissioners of the home county of the consolidated public library district shall within ~~five-(5)~~ ten (10) days take action to reaffirm members of the board of trustees, or to appoint members of the board ~~or--boards~~, who ~~may~~ shall be chosen from the members of the boards initiating the ~~boundary-adjustment~~ consolidation. These trustees shall serve until the next annual election of trustees or until their successors are elected and qualified as in section 33-2715, Idaho Code. The board ~~or boards~~ of trustees shall ~~be-sworn-by-a-member-of-the-board-of-county commissioners.~~

~~Following-a-consolidation-the-board-of-county-commissioners-of-the home-county-shall-within-five-(5)-days--appoint--the--members--of--the first--board--of-trustees,-who-shall-serve-until-the-next-annual-election-of-trustees-or-until-their-successors-are-elected-and--qualified. Said--board--shall-be-sworn-by-a-member-of-the-board-of-county-commissioners.~~

~~If-the-property-and-assets-of-a-library-district-become--a--matter of--dispute,--the-state-library-board-shall-make-the-final-decision-as to-their-disposition,-in-accordance-with-procedures-outlined--in--section--33-2713,--Idaho-Code~~ take the oath of office as outlined in section 33-2715, Idaho Code.

SECTION 13. That Chapter 27, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2711A, Idaho Code, and to read as follows:

33-2711A. ADJUSTMENT OF BOUNDARY LINES BETWEEN EXISTING PUBLIC

LIBRARY DISTRICTS. When the boards of two (2) public library districts having a common boundary determine that it is in the best interest of public library service that an adjustment of library district boundaries be made, this adjustment may be made using the following procedure.

The board of trustees shall jointly prepare a petition describing the boundaries of both the existing and proposed public library district, including maps prepared in a draftsmanlike manner, and the names of the public library districts, praying for the reorganization of the territory therein described.

The petition shall be signed by the chairperson of the library boards upon majority approval of the respective boards involved in the boundary adjustment.

The petition shall be forwarded to the clerk of the board(s) of county commissioners in all counties affected, who shall verify the signatures, and shall file the petition. Thereupon, the boards of county commissioners in all counties affected shall proceed with the hearing and resolution as outlined in section 33-2711, Idaho Code. Upon the completion of the hearing, the board of county commissioners shall issue an order granting the petition.

SECTION 14. That Section 33-2713, Idaho Code, be, and the same is hereby amended to read as follows:

33-2713. DISSOLUTION OF LIBRARY DISTRICT. A library district may be dissolved according to procedures followed in its original organization, but not earlier than four (4) years after the date of its establishment. The ballot shall contain the words "Shall (Name) Public Library District be dissolved--Yes" and "Shall (Name) Public Library District be dissolved--No," each followed by a box wherein a voter may express his choice by marking a cross "X". If the library district embraces territory in more than one (1) county, an election for its dissolution shall be deemed approved only if a majority of the votes cast in each such county were cast in the affirmative. If, upon the canvass of ballots, it ~~be~~ is determined that the proposition has been approved, the board of county commissioners of the home county shall enter its order to that effect and transmit a copy of said order to the board of county commissioners in any other county affected, and said order shall by them be made a matter of record. When any library district is dissolved, all property and assets of the library district shall be disposed of by the board of county commissioners of the home county. Receipts from the sale of assets and all unpaid taxes, when collected, shall be first used to retire any indebtedness of the district. Any remainder shall be apportioned to the counties embraced in the library district in proportion to the assessed valuation of each which was included in the library district, and placed in the respective county general expense fund. If, after the application of the tax monies and sale proceeds, indebtedness remains, the board of county commissioners of the home county shall provide for the payment of the remaining indebtedness from special levies certified to each county in proportion to the assessed valuation of each which was included in the district. The tax shall be collected by each county and remitted to the home county for payment of the remaining indebtedness.

SECTION 15. That Section 33-2715, Idaho Code, be, and the same is hereby amended to read as follows:

33-2715. BOARD OF TRUSTEES -- SELECTION -- NUMBER -- QUALIFICATIONS -- TERM -- OATH -- APPOINTMENT OF FIRST BOARD. Each library district shall be governed by a board of trustees of five (5) members elected or appointed as provided by law, who at the time of their selection and during their terms of office shall be qualified electors of the district and if trustee zones have been established under section 33-2718, Idaho Code, shall be a resident of the trustee zone. One (1) trustee shall be elected at each annual trustee election. The regular term of a trustee shall be for five (5) years, or until his successor has been elected and qualified. Within ten (10) days after his appointment an appointed trustee shall qualify and assume the duties of his office. An elected trustee shall qualify and assume the duties of his office at the annual meeting. All trustees qualify by taking the oath of office required of state officers, to be administered by one (1) of the present trustees or by a trustee retiring.

Following the initial establishment of a library district, the board of county commissioners of the home county within five (5) days shall appoint the members of the first board of trustees, who shall serve until the next annual election of trustees or until their successors are elected and qualified. Addition of new territory to an existing library district shall not be considered an initial establishment. ~~Said~~ The first board of trustees shall be sworn by a member of the board of county commissioners of the home county of the district.

At its first meeting, and after each trustee election, the board shall organize and elect from its membership a chairman and ~~such~~ other officers ~~as may be deemed~~ necessary to conduct the affairs of the district.

Members of the board shall serve without salary but shall receive their actual and necessary expenses while engaged in business of the district.

SECTION 16. That Section 33-2716, Idaho Code, be, and the same is hereby amended to read as follows:

33-2716. BOARD OF TRUSTEES -- NOMINATION AND ELECTION -- RECALL -- VACANCIES. (1) The procedure for nomination and election of trustees of a library district shall be as provided for in chapter 14, title 34, Idaho Code, and in the general election laws of Idaho. ~~The declaration and filing of vacancies of the library board of trustees shall be conducted under the provisions of chapter 5, title 33, Idaho Code.~~ If any two (2) or more candidates for the same trustee position have an equal number of votes, the board of trustees shall determine the winner by a toss of a coin.

(2) Notwithstanding the limitations of chapter 17, title 34, Idaho Code, each library district trustee shall be subject to recall following procedures as closely as possible to the procedures described for the recall of county commissioners pursuant to chapter 17, title 34, Idaho Code.

Individuals signing a petition to recall a library trustee or vot-

ing in an election to recall a library trustee shall meet the requirements of section 33-2702, Idaho Code.

If, pursuant to section 33-2717, Idaho Code, no election was held for the trustee being recalled:

(a) The number of district electors required to sign the petition seeking a recall election must be not less than fifty (50), or twenty per cent (20%) of the number of votes cast in the last trustee election held in the library district, whichever is the greater.

(b) To recall any trustee, a majority of the votes cast at the recall election must be in favor of ~~such~~ the recall, and additionally, the number of votes cast in the recall election must equal or exceed the number of votes cast in the last trustee election held in the library district.

(3) A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office. or within thirty (30) days of when any trustees shall (a) die; (b) resign from office; (c) no longer reside in his respective trustee zone of residence; (d) no longer be a resident or qualified elector of the public library district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend two (2) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in this chapter.

A declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above mentioned conditions is determined to exist.

The board of trustees shall appoint to fill the vacancy, a person qualified to serve as trustee of the public library district, provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the state library board of the appointment. This appointment shall be made within sixty (60) days of the declaration of vacancy. In the event that the board of trustees fails to exercise their authority, appointments shall be made by the board of county commissioners of the home county in which the district is located within thirty (30) days after the expiration of the sixty (60) days allowed for trustees for this action.

Any person appointed as provided in this chapter shall serve until the next annual election of public library district trustees following the appointment. At the annual election a trustee shall be elected to complete the unexpired term of the office which was declared vacant filled by appointment.

The elected trustee shall assume office at the first annual meeting of the public library district following the election.

SECTION 17. That Section 33-2717, Idaho Code, be, and the same is hereby amended to read as follows:

33-2717. BOARD OF TRUSTEES -- ONE NOMINATION -- NO ELECTION. In any election for the office of trustee it is not necessary to conduct an election if:

(1) ~~A~~after the expiration of the date for filing written nominations only one (1) candidate has been nominated for each position to be filled; and, there has been no declaration of intent to be a write-

in candidate filed as provided in section 33-2717A, Idaho Code; or

(2) ~~I~~if no candidate has filed a written nomination and only one (1) candidate for each position to be filled has filed a declaration of intent to be a write-in candidate as provided in section 33-2717A, Idaho Code. If either of these conditions are present, the board of trustees shall no later than seven (7) days before the scheduled date of the election declare ~~such~~ the candidate elected as trustee, and the ~~secretary~~ clerk of the library board shall immediately make and deliver to ~~such~~ this person a certificate of election. The clerk of the library board shall also notify the clerk of the county commissioners of the home county and the state library. The procedure set forth in this section shall not apply to any other library district election.

SECTION 18. That Section 33-2717A, Idaho Code, be, and the same is hereby amended to read as follows:

33-2717A. DECLARATION OF INTENT FOR WRITE-IN CANDIDATE. No write-in vote for library district trustee in a library district election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of library trustee if elected. The declaration of intent shall be filed with the ~~library district~~ clerk of the library board not later than ~~eleven (11)~~ twenty-five (25) days before the day of election.

SECTION 19. That Chapter 27, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2717B, Idaho Code, and to read as follows:

33-2717B. WITHDRAWAL OF CANDIDACY. Any person who filed a declaration of candidacy in accordance with the provisions of this chapter may withdraw from the election by filing a notarized statement of withdrawal with the clerk of the library board. The statement shall contain sufficient information necessary to identify the person and the office sought. A person may withdraw at any time prior to the day of election.

SECTION 20. That Chapter 27, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2717C, Idaho Code, and to read as follows:

33-2717C. PROCEDURE FOR CORRECTION OF BALLOTS. When any person withdraws his name from the election by filing a withdrawal of candidacy as provided in section 33-2717B, Idaho Code, the clerk of the library board shall cross the name of the person off the ballot and no votes cast shall be counted for that person. The clerk of the library board shall also inform the election board at each polling place that the person has withdrawn his candidacy from the election.

SECTION 21. That Section 33-2718, Idaho Code, be, and the same is

hereby amended to read as follows:

33-2718. CREATION OF TRUSTEE ZONES. Each library district may be divided into five (5) trustee zones with each zone having approximately the same population. In order for a library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and present a legal description of each trustee zone. The board of trustees shall transmit the motion along with the legal description of the trustee zones to the board or boards of county commissioners in the county or counties where the library district is contained. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and legal description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, they shall be deemed to be in full force and effect. If a library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the library board of trustees in writing if a proposal is rejected.

If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may be redefined and changed, but not more than once every two (2) years after a new set of trustee zones are formally established and in full force and effect.

At the next regular meeting of the board of trustees of the library district following the approval of a trustee zone proposal by the board(s) ~~or--boards~~ of county commissioners, the public library district board shall appoint from its membership or from ~~patrons~~ other qualified electors resident in each trustee zone, a person from that zone to serve as a trustee until the next regularly scheduled trustee election from that zone. All other matters relating to library district trustee zones shall be as provided in chapters 4 and 5, title 33, Idaho Code, relating to school district trustee zones.

SECTION 22. That Section 33-2719, Idaho Code, be, and the same is hereby amended to read as follows:

33-2719. BOARD OF TRUSTEES -- MEETINGS. The annual meeting of a library district board shall be on the date of its first regular meeting following each trustee election. The purposes of the annual meeting are to administer the oath of office to the newly elected or re-elected trustee or trustees, to elect the officers of the board, to establish a regular meeting date, and to review, amend, repeal or adopt bylaws, policies and procedures. The regular meetings of the board of trustees shall be held at least once in each quarter, at ~~such~~ a uniform day of ~~such-uniform~~ the month as the board of trustees shall determine at its annual meeting. Special or adjourned meetings may be held from time to time as the board may determine, but written notice

thereof shall be given to the members at least two (2) days prior to the day of the meeting. A quorum shall consist of three (3) members, but a smaller number may adjourn.

SECTION 23. That Section 33-2720, Idaho Code, be, and the same is hereby amended to read as follows:

33-2720. POWERS AND DUTIES OF THE BOARD OF TRUSTEES. It is the duty of each trustee to attend all meetings of the board of trustees. The board of trustees of each library district shall have the following powers and duties consistent with the laws of the state of Idaho:

1. To establish bylaws for its own government;
2. To establish policies for the government of the library or libraries under its control;
3. To establish and locate libraries, branch libraries or stations to serve the district and to provide suitable rooms, structures, facilities, furniture, apparatus and appliances necessary for the conduct thereof;
4. To acquire by purchase, devise, lease, or otherwise, and to own and hold real and personal property and to construct buildings for the use and purposes of the library district, and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the district, and to insure the real and personal property of the district;
5. To accept gifts of real or personal property <u>for the use and purposes of the library district</u> under ~~such~~ terms as may be a condition of the gift;
6. To purchase and distribute library materials;
7. To issue warrants, if used, in the manner specified for the issuance of warrants by school districts;
8. To invest any funds of the district in accordance with the public depository law;
9. To pay actual and necessary expenses of members of the library staff when on business of the district;
10. To see to the proper conduct of library district elections;
11. To exercise ~~such~~ other powers, not inconsistent with law, necessary for the effective use and management of the library.

SECTION 24. That Section 33-2721, Idaho Code, be, and the same is hereby amended to read as follows:

33-2721. LIBRARIAN -- EMPLOYEES. The board of trustees of each library district shall appoint the ~~chief librarian~~ <u>library director,</u> who shall serve as administrator of the library district and as the secretary for the board without voting rights. <u>The director shall attend all executive sessions of the board of trustees, except those called to consider the evaluation, dismissal, or disciplining, or to hear complaints or charges against the library director.</u> With the recommendation of the ~~chief librarian~~ <u>library director,</u> the board shall employ ~~such~~ other persons as may be necessary in the administration of the affairs of the library district. The board may fix and pay their salaries and compensation, classify employees and adopt schedules of salaries, and discharge any librarian or other employee for cause.

SECTION 25. That Section 33-2722, Idaho Code, be, and the same is hereby amended to read as follows:

33-2722. TREASURER -- CLERK. The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as treasurer of the library district. ~~Such~~ This person shall, on taking office, give bond to the library district, with sureties approved by the board of trustees, in the amount of at least five thousand dollars ($5,000), which bond shall be paid for by the district, and shall be conditioned upon faithful performance of the duties of his office and his accounting for all moneys of the library district received by him or under his control. The treasurer shall supervise all moneys raised for the library district by taxation or received by the district from any other sources and shall supervise all disbursements of funds of the district by order of the board of trustees.

Under the direction of the board of trustees, the treasurer shall have all moneys of the district deposited in accordance with the public depository law.

The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as clerk of the library board. The clerk shall conduct library district elections, other than for excision, annexation, consolidation, or division; shall prepare and distribute legal notices; and shall have ~~such~~ other duties as the board may prescribe.

SECTION 26. That Section 33-2724, Idaho Code, be, and the same is hereby amended to read as follows:

33-2724. TAXES FOR THE SUPPORT OF LIBRARY DISTRICT. Any tax levied for library district purposes shall be a lien upon the property against which the tax is levied. The board of trustees shall determine and levy a tax upon each dollar of assessed valuation of property within the district for the ensuing fiscal year as shall be required to satisfy all maturing bond, bond interest, and judgment obligations. For the maintenance and operation of the library district, the board of trustees may also levy upon the taxable property within the district a tax not to exceed six hundredths per cent (.06%) of market value for assessment purposes. ~~Said~~ These levies shall be certified to the board of county commissioners of each county in which the district may lie, not later than the second Monday in September of each year.

In the first year after establishment, the board of a district may, for the purpose of organization and to finance general preliminary expenses of the district and before making a tax levy, incur an indebtedness not exceeding in the aggregate a sum equal to six hundredths per cent (.06%) on each one dollar ($1.00) of market value for assessment purposes of all taxable property within the district. To repay ~~any such~~ the organization indebtedness incurred, the board shall have authority to levy and collect an additional tax not to exceed two hundredths per cent (.02%) per annum on each one dollar ($1.00) of market value for assessment purposes of all taxable property within the district. ~~Such~~ This additional levy shall not be used for any purpose other than repayment of the organizational indebtedness and

interest thereon. ~~Such~~ This additional levy may be imposed for three (3) years.

Library districts may accumulate fund balances at the end of a fiscal year and carry over ~~such~~ these fund balances into the ensuing fiscal year, sufficient to achieve or maintain library district operations on a cash basis. A fund balance is the excess of the assets of a fund over its liabilities and reserves.

SECTION 27. That Section 33-2725, Idaho Code, be, and the same is hereby amended to read as follows:

33-2725. LIBRARY DISTRICT BUDGET -- PUBLIC HEARING -- NOTICE -- ADJUSTMENTS. The board of trustees of each library district shall prepare for the ensuing fiscal year a budget and prior to its adoption shall have called and caused to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed, or having general circulation within the district or in the county in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of ~~such~~ this notice, a summary statement of the budget for the ensuing year prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison.

During the year the board of trustees may proceed to adjust the budget as adopted to reflect the receipt of unanticipated revenue, grants, or donations from federal, state or local government or private sources, provided that there shall be no increase in the ad valorem portion of the annual certified budget. Prior to the adoption of the budget adjustment, the library board shall have called and cause to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed or having general circulation within the district or in the county(ies) in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of this notice, a summary of the budget and the adjustments prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison.

SECTION 28. That Section 33-2726, Idaho Code, be, and the same is hereby amended to read as follows:

33-2726. FISCAL YEAR -- ANNUAL REPORTS -- AUDIT. The fiscal year of each library district shall commence on the first day of October of each year. The board of trustees of each library district shall annually, not later than the first day of January, file with the state library board a report of the operations of the district for the fiscal year just ended. The report shall be ~~of such~~ on the form and contain ~~such~~ the information ~~as~~ that the state library board ~~may~~ requires, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported.

The board of trustees of each library district shall cause to be

made a full and complete audit of the books and accounts of the district as required in section 67-450B, Idaho Code.

SECTION 29. That Section 33-2727, Idaho Code, be, and the same is hereby amended to read as follows:

33-2727. PURCHASE AND SALE OF LIBRARY SERVICES -- CONTRACTS. In lieu of, or in addition to, establishing an independent library, the board of trustees may purchase specified library services by contract from any taxing unit, or public or private agency maintaining a library, providing that ~~such~~ this unit or agency shall file an annual report with the board of trustees of the library district showing in detail the manner in which the funds of the library district have been spent.

The board of trustees of a library district may sell specified library services to any taxing unit, or public or private agency which agrees to make an acceptable annual appropriation for ~~such~~ these services.

Any ~~such~~ purchase or sale of library services shall be under contract for a term of three (3) years, which contract shall be automatically renewed at the end of ~~said~~ this three- (3) year period unless either party thereto gives notice not less than six (6) months before the termination of any existing contract, of intention not to renew ~~said~~ the contract.

SECTION 30. That Section 33-2737, Idaho Code, be, and the same is hereby amended to read as follows:

33-2737. SCHOOL-COMMUNITY LIBRARY DISTRICTS. (a) The board of trustees of any school district in which is situated no incorporated city having a population in excess of one thousand (1,000), and in which no public library is maintained under any other provision of law, shall, upon petition of twenty (20) or more school district electors, submit to the school district electors of the district the question whether there shall be a public library established by the district for the benefit of the citizens thereof.

(b) The election on the question shall be held at the same time as the election of school district trustees, next following the filing of ~~said~~ the petition, and notice shall be given, the election conducted, and the returns canvassed, as provided in chapter 4, title 33, Idaho Code.

(c) If a majority of the school district electors voting in ~~said~~ the election vote in favor of the question a school-community library district shall be established.

(d) No new school-community library shall be established after June 30, 1994.

SECTION 31. That Section 33-2738, Idaho Code, be, and the same is hereby amended to read as follows:

33-2738. SCHOOL-COMMUNITY LIBRARY DISTRICTS -- BOARD OF TRUSTEES -- TRUSTEE ZONES. Each school-community library district shall be governed by a board of trustees of five (5) members, who at the time of

their selection and during their terms of office shall be qualified electors of the district.

(1) Four (4) of the trustees shall be elected. The procedure for nomination and election of trustees shall be as provided for the nomination and election of trustees of a library district pursuant to this chapter. Each school-community public library district may be divided into four (4) trustee zones with each zone having approximately the same population. In order for a school-community public library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and present a description of boundaries of each trustee zone. The board of trustees shall transmit the motion along with the boundaries of the trustee zones to the board or boards of county commissioners in the county or counties where the school-community public library district is contained. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the school-community public library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, the zones shall be deemed to be in full force and effect upon the next annual trustee election. If a school-community public library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the board of trustees in writing if a proposal is rejected.

If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may be redefined and changed, but not more than once every two (2) years, after a new set of trustee zones are formally established and in full force and effect.

All other matters relating to school-community library public district trustee zones shall be as provided in chapters 4 and 5, title 33, Idaho Code, relating to school district trustee zones.

(2) The fifth trustee of the school-community library district board shall be a member of the school district board and shall be appointed by the school district board from its members at the annual meeting of the school district board. In the case of division of the district into four (4) elected school-community public library trustee zones, this fifth trustee shall serve as a trustee member-at-large.

(3) The initial board, except for the fifth trustee who shall be appointed by the school board, shall be appointed by the board of county commissioners, and shall serve until the next annual election of trustees or until their successors are appointed and qualified.

SECTION 32. That Section 33-2740, Idaho Code, be, and the same is hereby amended to read as follows:

33-2740. SCHOOL-COMMUNITY LIBRARY DISTRICTS -- CONSOLIDATION -- REORGANIZATION INTO LIBRARY DISTRICTS. School-community library districts may join existing library districts according to the procedures

set forth in section 33-2711, Idaho Code.

School-community library districts may reorganize into a library district as follows. The board of trustees of the school-community library district shall present a resolution calling for reorganization to the board of county commissioners who shall follow the procedures in subsections (2) through (5) of section 33-2704, Idaho Code, except that no precedent petition shall be necessary. After the required hearing, the board of county commissioners shall appoint the first board of library district trustees and thereafter such trustees shall be elected as provided in section 33-2715, Idaho Code. The school-community library district's dollar amount of the budget from ad valorem taxes shall be transferred without interruption to the new library district and shall be the base of the ad valorem portion of the new district's budget.

The dispersement of the assets and liabilities of the school-community library district shall be the responsibility of the school-community library district board of trustees should the library consolidate with a library district, organize into a library district, or dissolve.

Approved March 5, 1996.

CHAPTER 72
(S.B. No. 1505)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 151, LAWS OF 1995; AUTHORIZING AN INCREASE IN THE LIMIT ON THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 2, Chapter 151, Laws of 1995, there is hereby appropriated to the Department of Administration, the following amount, to be expended for the Information Technology Program according to the designated expense classes from the listed fund for the period July 1, 1995, through June 30, 1996:

FOR:	
Personnel Costs	$46,100
Operating Expenditures	8,700
Capital Outlay	9,800
TOTAL	$64,600
FROM:	
General Fund	$64,600

SECTION 2. In addition to the full-time equivalent positions authorized in Section 4, Chapter 151, Laws of 1995, the Department of Administration is authorized an additional two (2) full-time equivalent positions and no more than one hundred sixty-three and ten one-

hundredths (163.10) full-time equivalent positions at any point during the period July 1, 1995, through June 30, 1996.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 5, 1996.

CHAPTER 73
(H.B. No. 437)

AN ACT

RELATING TO WATER AND SEWER DISTRICTS; AMENDING SECTION 42-3218A, IDAHO CODE, TO EXTEND THE AUTHORITY TO CREATE SUBDISTRICTS WITHIN A WATER AND/OR SEWER DISTRICT; AND AMENDING SECTION 42-4103, IDAHO CODE, TO FURTHER DEFINE DISTRICT TO INCLUDE SUBDISTRICTS.

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

SECTION 1. That Section 42-3218A, Idaho Code, be, and the same is hereby amended to read as follows:

42-3218A. SUBDISTRICTS -- AUTHORITY TO ESTABLISH -- ELECTION. The board of directors of any water or sewer district organized under the provisions of chapter 32, title 42, Idaho Code, may at any time, on their own motion, call an election to submit to the qualified electors of a proposed water or sewer subdistrict the question of the creation of a water or sewer subdistrict. The election shall be called, held, and conducted pursuant to the provisions of chapter 32, title 42, Idaho Code. The proceedings calling the election shall set forth the boundaries of the proposed water or sewer subdistrict and shall provide for the submission of the question of the creation of the water or sewer subdistrict to the qualified electors residing within the proposed boundaries of the water or sewer subdistrict. No proposition for the creation of a water or sewer subdistrict shall be determined to have carried unless the proposition shall receive a majority of the votes cast. Whenever the creation of more than one (1) water or sewer subdistrict is submitted at the same election, separate ballots and separate propositions shall be used in voting on the question of creating each water or sewer subdistrict. ~~A district's authority to establish a water or sewer subdistrict pursuant to the provisions of this act shall only be operative where the property to be included within the water or sewer subdistrict is the same property that is the subject of annexation or inclusion proceedings before the district, pursuant to section 42-3218, Idaho Code.~~

SECTION 2. That Section 42-4103, Idaho Code, be, and the same is hereby amended to read as follows:

42-4103. DEFINITIONS. For the purpose of this act, unless a dif-

ferent meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term "works" shall include water systems and sewerage systems;

(b) The term "water system" shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes;

(c) The term "sewerage system" shall include intercepting sewers, outfall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any district;

(d) The term "district" shall mean water and/or sewer districts and/or water or sewer subdistricts.

Approved March 6, 1996.

CHAPTER 74
(H.B. No. 675)

AN ACT

RELATING TO ABSENTEE VOTING; AMENDING SECTION 34-1003, IDAHO CODE, TO PROVIDE FOR DELIVERY OF AN ABSENTEE BALLOT USING A FACSIMILE MACHINE; AMENDING SECTION 50-443, IDAHO CODE, TO PROVIDE FOR APPLICATION FOR AN ABSENTEE BALLOT USING A FACSIMILE MACHINE; AMENDING SECTION 50-445, IDAHO CODE, TO PROVIDE FOR DELIVERY OF AN ABSENTEE BALLOT USING A FACSIMILE MACHINE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-1003, Idaho Code, be, and the same is hereby amended to read as follows:

34-1003. ISSUANCE OF ABSENTEE BALLOT. Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of his office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, he shall arrange for the applicant to vote by absent elector's ballot. The absentee ballot may be delivered to the absent elector in the office of the county clerk, by postage prepaid mail or by other appropriate means, including use of a facsimile machine. A political party may supply a witness to accompany the clerk in the personal delivery of an absentee ballot. If the political party desires to supply a witness it shall be the duty of the political party to supply the names of such witnesses to the clerk no later than forty-five (45) days prior to the election. The

clerk shall notify such witnesses of the date and approximate hour the clerk or deputy clerk intends to deliver the ballot.

A candidate for public office or a spouse of a candidate for public office shall not be a witness in the personal delivery of absentee ballots.

An elector physically unable to mark his own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of his own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

SECTION 2. That Section 50-443, Idaho Code, be, and the same is hereby amended to read as follows:

50-443. APPLICATION FOR ABSENTEE BALLOT. Any registered elector may make written application to the city clerk for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address and address to which such ballot shall be forwarded. The application for an absent elector's ballot shall be signed personally by the applicant. The application shall be filed with the city clerk not later than 5:00 P.M. on the day before the election nor earlier than sixty (60) days before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated polling place on the day of election because of an emergency situation which rendered him physically unable, he may nevertheless apply for an absent elector's ballot on the day of election by notifying the city clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the closing of the polls.

A person in the United States service may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as "Federal Voting Assistance Act of 1955." The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

SECTION 3. That Section 50-445, Idaho Code, be, and the same is hereby amended to read as follows:

50-445. ISSUANCE OF ABSENTEE BALLOT. Upon receipt of an application for an absent elector's ballot within the proper time, the city clerk receiving it shall examine the records of his office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested, and, if found to be so, he shall arrange for the

applicant to vote by absent elector's ballot in the following manner:

(1) If the applicant is classed under section 50-444(1), Idaho Code, the clerk shall deliver to the applicant by mail to the mailing address given in the application, or if by facsimile machine to the facsimile address given in the application, an official absent elector's ballot, a return envelope with the affidavit thereon properly filled in as to precinct and residence address as shown by the records in his office, and an instruction card. In cases of facsimile transmission, special instructions regarding return envelope, affidavits and other instructions shall also be included with transmission of the ballot.

(2) If the applicant is classed under section 50-444(5), Idaho Code, and if the applicant in the United States service submits a properly executed federal postcard application and the city clerk receiving it shall determine that such applicant is not properly registered, the city clerk shall cause the applicant to be registered and shall then deliver to the applicant the official elector's ballot and other materials as above set forth.

(3) If the applicant is classed under section 50-444(3), Idaho Code, the city clerk shall forthwith notify the applicant that he shall appear personally and vote at the "absent elector's voting place" in the city hall during the time prescribed.

(4) In the case of applicants classified under section 50-444(1) or (2), Idaho Code, the absent elector's ballot and other materials shall be delivered or mailed or sent by facsimile machine to the absent elector within forty-eight (48) hours after the receipt of the application, if the official ballots are then printed, or, if not then printed, within forty-eight (48) hours after such printed ballots shall be delivered to the city clerk.

(5) If the applicant is classed under section 50-444(4), Idaho Code, the city clerk shall forthwith notify the applicant by setting forth the time and place at which the city clerk shall deliver the absentee ballot.

(6) An elector physically unable to mark his own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of his own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No city clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 75
(H.B. No. 506)

AN ACT

RELATING TO THE IDAHO STATE RACING COMMISSION; AMENDING SECTION 54-2509, IDAHO CODE, TO EXEMPT AT-THE-TRACK SUMMARY PROCEEDINGS FROM THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE, TO LIMIT APPLICATION OF SECTION 67-5254, IDAHO CODE, IN HEARINGS AND APPEALS BEFORE THE COMMISSION, TO DELETE OBSOLETE LANGUAGE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-2509, Idaho Code, be, and the same is hereby amended to read as follows:

54-2509. PENALTY FOR VIOLATIONS OF LAW -- POWER OF COMMISSION. (1) Any person holding a race meet, and any other person required by this act or the rules ~~and--regulations~~ of the commission to be licensed, participating, directly or indirectly, in a race meet, without first being licensed by the commission, and any person violating any of the terms or provisions of this act is guilty of a misdemeanor.

(a) There shall be an absolute prohibition of the use of live lures in the state of Idaho for the training of or racing of racing dogs. Any violation of the provisions of this section shall be a felony punishable by a fine not exceeding twenty-five thousand dollars ($25,000), or by a prison term not to exceed seven (7) years, or by both such fine and imprisonment. In addition the state racing commission shall not license any breeder, trainer or kennel whose dogs have been trained or raced with the use of live lures. The racing commission shall adopt rules ~~and--regulations~~ that will provide for the humane treatment of the dogs involved in any aspect of training for or engaging in dog racing.

(2) The commission shall have the power to exclude from any and all race courses in this state any person who the commission deems detrimental to the best interests of racing, or any person who violates any of the provisions of this act or any rule~~,--regulation,~~ or order of the commission.

(3) It shall be lawful to conduct race meets on or at a race track, or otherwise, at any time during the week.

(4) Any person maintaining a license issued by the commission, who violates the provisions of this act or the rules ~~and-regulations~~ of the commission, may have such license suspended or revoked. In addition to such suspension or revocation the commission may levy a monetary penalty commensurate with the gravity of the offense, not to exceed two thousand five hundred dollars ($2,500). The commission, by rule ~~and-regulation~~ shall provide a summary procedure for such determination at the track, the penalty amount for specified violations, and shall provide for an appeal of any summary decision to the commission. ~~All~~ At-the-track summary proceedings shall not be subject to the provisions of chapter 52, title 67, Idaho Code. ~~H~~hearings and appeals before the commission as allowed by this act or the rules ~~and-regula-~~

~~tions~~ of the commission shall be subject to chapter 52, title 67, Idaho Code, except the provisions of section 67-5254(2), Idaho Code, which is inconsistent with the unique requirements of racing.

(5) All law enforcement officers in this state shall assist in the enforcement of this act and the rules ~~and regulations~~ of the commission.

Approved March 6, 1996.

CHAPTER 76
(H.B. No. 484)

AN ACT

RELATING TO CITY ELECTIONS; AMENDING SECTION 50-453, IDAHO CODE, TO PROVIDE THAT THE POLLS FOR CITY ELECTIONS SHALL EITHER OPEN AT EIGHT A.M. OR NOON AS PROVIDED BY ORDINANCE.

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

SECTION 1. That Section 50-453, Idaho Code, be, and the same is hereby amended to read as follows:

50-453. OPENING AND CLOSING POLLS. (1) ~~At~~ As provided by ordinance at all general and special city elections the polls shall be opened at either 8:00 a.m. or 12:00 noon and remain open until all registered electors of that precinct have voted or until 8:00 p.m. of the same day, whichever comes first.

(2) Upon opening the polls the precinct judge will make the proclamation of the same and thirty (30) minutes before closing the polls a proclamation shall be made in the same manner. Any elector who is in line at 8:00 p.m. shall be allowed to vote, notwithstanding the pronouncement that the polls are closed.

Approved March 6, 1996.

CHAPTER 77
(H.B. No. 811)

AN ACT

RELATING TO THE APPROPRIATION FOR PUBLIC SCHOOL SUPPORT FOR FISCAL YEAR 1997; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO EXPENDITURES FROM STATE SOURCES; APPROPRIATING GENERAL FUND MONEYS FOR TRANSFER TO THE PUBLIC SCHOOL INCOME FUND; APPROPRIATING A TOTAL AMOUNT FROM THE PUBLIC SCHOOL INCOME FUND; APPROPRIATING MONEYS FOR THE UNEMPLOYMENT INSURANCE PROGRAM; EXPRESSING LEGISLATIVE INTENT THAT $1,000,000 IS TO BE DISTRIBUTED FOR ACADEMIC TESTING AND READING IMPROVEMENT; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE EXPENDITURE OF $10,400,000 FOR THE PUBLIC SCHOOL TECHNOLOGY

GRANT PROGRAM; EXPRESSING LEGISLATIVE INTENT THAT $128,000 IS TO BE EXPENDED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; EXPRESSING LEGISLATIVE INTENT THAT $1,500,000 IS TO BE DISTRIBUTED FOR SUPPORT OF PROGRAMS FOR STUDENTS WITH LIMITED ENGLISH PROFICIENCY; EXPRESSING LEGISLATIVE INTENT THAT $375,000 IS FOR THE PURPOSE OF IMPLEMENTING A TEACHER MENTOR PROGRAM; PROVIDING THAT THE LOCAL SCHOOL DISTRICTS SHALL REPORT ON THE TEACHER MENTOR PROGRAM; AMENDING SECTION 33-1004E, IDAHO CODE, TO INCREASE THE INSTRUCTIONAL BASE SALARY FOR CALCULATION OF SALARY-BASED APPORTIONMENT; EXPRESSING LEGISLATIVE INTENT THAT $7,000,000 SHALL BE FOR THE IDAHO SUBSTANCE ABUSE PROGRAM; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE DISTRIBUTION OF SUBSTANCE ABUSE FUNDS; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO FEATURES OF THE SUBSTANCE ABUSE PROGRAM; DECLARING THAT FOR THE 1995-96 SCHOOL YEAR THE STATE DISTRIBUTION FACTOR PER SUPPORT UNIT SHALL BE $1,681.24 AND PROVIDING HOW CERTAIN FUNDS ARE TO BE EXPENDED; AND DECLARING AN EMERGENCY FOR SECTION 15 OF THIS ACT.

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

SECTION 1. It is legislative intent that the following amount shall be expended from state sources for public schools for the period July 1, 1996, through June 30, 1997:

FROM:		
General Fund		$689,470,000
Dedicated Funds:		
Endowment Fund Income	$26,425,000	
Department of Lands	7,100,000	
Cigarette Tax	7,000,000	
Liquor Fund	1,200,000	
Miscellaneous Receipts	775,000	
Total Dedicated Funds		42,500,000
TOTAL		$731,970,000

SECTION 2. There is hereby appropriated from the General Fund for public schools, the following amount to be transferred to the Public School Income Fund for the period July 1, 1996, through June 30, 1997:

FROM:	
General Fund	$689,470,000

SECTION 3. There is hereby appropriated from the Public School Income Fund to be expended for the Educational Support Program pursuant to law and the provisions of this act, not to exceed $731,970,000 for the period July 1, 1996, through June 30, 1997.

SECTION 4. There is hereby appropriated from the Public School Income Fund the amount necessary for the Unemployment Insurance Program to be expended according to Section 72-1349C, Idaho Code, for the period July 1, 1996, through June 30, 1997.

SECTION 5. It is legislative intent that $1,000,000 of the moneys appropriated in this act shall be distributed as follows: $500,000 for academic testing and $500,000 for reading improvement. The moneys for

reading improvement shall provide supplemental training to teachers at grade levels K-3 to help them develop new skills, including use of phonics, to improve student reading skills. The moneys for reading improvement shall be distributed to the local districts which have adopted a reading recovery program for the 1996-97 school year. A participating district's share of the reading improvement moneys shall be its proportionate share of the $500,000 based upon the district's proportion of the total K-3 students of the district compared to the total K-3 students of the participating districts.

SECTION 6. It is legislative intent that $10,400,000 of the moneys appropriated in Section 3 of this act shall be expended by the Superintendent of Public Instruction as follows: $3,400,000 for ongoing expenditures and $7,000,000 for one-time expenditures for the Public School Technology Grant Program upon direction of the State Council for Technology in Learning, in accordance with Section 33-4806, Idaho Code.

SECTION 7. It is legislative intent that an amount not to exceed $128,000 of the $10,400,000 referenced in Section 6 of this act shall be expended by the Superintendent of Public Instruction as follows: $48,000 for a telecommunications consultant and $80,000 for various expenses related to the State Council for Technology in Learning as approved by the State Board of Education.

SECTION 8. It is legislative intent that $1,500,000 of the moneys appropriated in Section 3 of this act be distributed for support of programs for students with non-English or limited English proficiency. The funding for limited English proficiency programs shall be allocated to school districts based upon the population of limited English proficient students under criteria established by the State Department of Education.

SECTION 9. It is legislative intent that $375,000 of the moneys appropriated in Section 3 of this act shall be distributed by the State Superintendent of Public Instruction for the purpose of implementing a teacher mentor program. The Superintendent shall provide to the school districts not more than $1,000, or however much may be available from the amount designated, for each first-year teacher. The use of the educator mentor program funds shall be limited to payments to mentor teachers to assist the first-year personnel.

SECTION 10. The local school districts shall, at a time established and in a format approved by the Superintendent of Public Instruction, report the planned, estimated or actual expenditures of the moneys designated in Section 9 of this act and the results achieved.

SECTION 11. That Section 33-1004E, Idaho Code, be, and the same is hereby amended to read as follows:

33-1004E. DISTRICT'S SALARY-BASED APPORTIONMENT. Each district shall be entitled to a salary-based apportionment calculated as pro-

vided in this section.

1. To determine the apportionment for instructional staff, first determine the district average experience and education index by placing all eligible district certificated instructional employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus .03 for the 1994-95 school year, and shall receive their actual index but not more than the state average plus .06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district instructional staff index shall be multiplied by the instructional base salary of ~~$19,328~~19,715. The amount so determined shall be multiplied by the district staff allowance for instructional staff determined as provided in section 33-1004 2., Idaho Code. The resulting amount is the district's salary-based apportionment for instructional staff.

2. To determine the apportionment for district administrative staff, first determine the district average experience and education index by placing all eligible certificated administrative employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus .03 for the school year 1994-95, and shall receive their actual index but not more than the state average index plus .06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district administrative staff index shall be multiplied by the base salary of ~~$28,700~~28,843. The amount so determined shall be multiplied by the district staff allowance for administrative staff determined as provided in section 33-1004 3., Idaho Code. The resulting amount is the district's salary-based apportionment for administrative staff.

3. To determine the apportionment for classified staff, multiply ~~$15,000~~15,300 by the district classified staff allowance determined as provided in section 33-1004 4., Idaho Code. The amount so determined is the district's apportionment for classified staff.

4. The district's salary-based apportionment shall be the sum of the apportionments calculated in subsections 1., 2. and 3., of this section, plus the benefit apportionment as provided in section 33-1004F, Idaho Code.

SECTION 12. It is legislative intent that of the amount appropriated in Section 3 of this act, $7,000,000 of the moneys accruing pursuant to Section 63-2506, Idaho Code, for the Idaho Substance Abuse Program shall be spent by the Superintendent of Public Instruction for the period July 1, 1996, through June 30, 1997.

SECTION 13. It is legislative intent that the funds appropriated in Section 12 of this act shall be distributed as follows: $100,000 may be utilized by the Superintendent of Public Instruction for program administration, technical assistance and evaluation; $3,105,000 shall be distributed to the districts on the basis of fall student enrollment, and $3,105,000 shall be distributed on the same basis as the Chapter I federal funding formula; and with regard to the remain-

der, $690,000 shall be distributed as follows: $100,000 shall be distributed on a one-time basis to the Commission on Hispanic Affairs and used to discourage Hispanic youth from the habitual use of tobacco, alcohol and other drugs by developing programs for schools, families and communities; and $590,000 shall be used to make discretionary grants as determined by the Drug-Free Schools and Communities Advisory Board.

SECTION 14. It is legislative intent that the Idaho Substance Abuse Program shall include the following:

(1) Districts will develop a policy and plan which will provide a guide for their substance abuse program.

(2) Districts will have an advisory board to assist each district in making decisions relating to the program.

(3) The districts' substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

(4) Districts will submit an annual evaluation of their program to the State Department of Education as to the effectiveness of their programs.

(5) The Drug-Free Schools and Communities Advisory Board will explore the feasibility of expanding the Idaho Substance Abuse Program to include the development of programs for families and communities for fiscal year 1998.

SECTION 15. For the 1995-96 school year only, the state distribution factor per support unit as provided in subsection 7. of Section 33-1002, Idaho Code, shall be $1,681.24. The provisions of subsection 3. of Section 33-1009, Idaho Code, notwithstanding, the State Department of Education shall calculate the final payments to be made on July fifteenth in two parts: (1) an amount calculated using a state distribution factor of $1,681.24; and (2) an amount calculated using the actual data from the public school districts. Any funds distributed to the public school districts in excess of calculation (1), shall be considered one-time funds. Such one-time funds shall be expended at the discretion of the districts for any of the following: books, supplies, computers and related equipment, or any of the purposes authorized in Section 33-1102, Idaho Code.

SECTION 16. An emergency existing therefor, which emergency is hereby declared to exist, Section 15 of this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 78
(H.B. No. 694)

AN ACT

RELATING TO THE PROVISION OF ADULT PROTECTION SERVICES IN IDAHO; AMENDING SECTION 39-5302, IDAHO CODE, TO TRANSFER TO THE IDAHO

COMMISSION ON AGING THE POWERS AND DUTIES FORMERLY CONFERRED UPON THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE ADULT PROTECTION SERVICES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 39-5303 AND 39-5304, IDAHO CODE, TO TRANSFER TO THE IDAHO COMMISSION ON AGING THE POWERS AND DUTIES FORMERLY CONFERRED UPON THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE ADULT PROTECTION SERVICES; AMENDING SECTION 39-5305, IDAHO CODE, TO TRANSFER TO THE IDAHO COMMISSION ON AGING THE POWERS AND DUTIES FORMERLY CONFERRED UPON THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE ADULT PROTECTION SERVICES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5306, IDAHO CODE, TO TRANSFER TO THE IDAHO COMMISSION ON AGING THE POWERS AND DUTIES FORMERLY CONFERRED UPON THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE ADULT PROTECTION SERVICES; AMENDING SECTION 39-5308, IDAHO CODE, TO TRANSFER TO THE IDAHO COMMISSION ON AGING THE POWERS AND DUTIES FORMERLY CONFERRED UPON THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE ADULT PROTECTION SERVICES AND TO PROVIDE REPORTS TO THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING SECTIONS 39-5309 AND 39-5310, IDAHO CODE, TO TRANSFER TO THE IDAHO COMMISSION ON AGING THE POWERS AND DUTIES FORMERLY CONFERRED UPON THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE ADULT PROTECTION SERVICES; AMENDING SECTION 39-5312, IDAHO CODE, TO TRANSFER TO THE IDAHO COMMISSION ON AGING THE POWERS AND DUTIES FORMERLY CONFERRED UPON THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE ADULT PROTECTION SERVICES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 50, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5011, IDAHO CODE, TO CONFER UPON THE COMMISSION ON AGING THE POWER AND DUTY TO PROVIDE AND ADMINISTER ADULT PROTECTION SERVICES IN THE STATE OF IDAHO.

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

SECTION 1. That Section 39-5302, Idaho Code, be, and the same is hereby amended to read as follows:

39-5302. DEFINITIONS. For the purposes of this chapter:

(1) "Abuse" means the nonaccidental infliction of physical pain, injury or mental injury.

(2) "Caretaker" means any individual or institution that is responsible by relationship, contract, or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.

(3) "~~Department~~ Commission" means the Idaho ~~department of health and welfare~~ commission on aging, established pursuant to chapter 50, title 67, Idaho Code.

(4) "Emergency" means a situation in which a vulnerable adult's health and safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention.

(5) "Exploitation" means an action which may include, but is not limited to, the misuse of a vulnerable adult's funds, property, or resources by another person for profit or advantage.

(6) "Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care reasonably necessary to sustain the

life and health of a vulnerable adult, or the failure of a vulnerable adult to provide those services for himself.

(7) "Supportive services" means noninvestigatory remedial, social, legal, health, educational, mental health and referral services provided to a vulnerable adult.

(8) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.

Nothing in this chapter shall be construed to mean a person is abused, neglected, or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this chapter be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

SECTION 2. That Section 39-5303, Idaho Code, be, and the same is hereby amended to read as follows:

39-5303. DUTY TO REPORT CASES OF ABUSE, NEGLECT OR EXPLOITATION OF VULNERABLE ADULTS. (1) Any physician, nurse, employee of a public or private health facility, or a state licensed or certified residential facility serving vulnerable adults, medical examiner, dentist, ombudsman for the elderly, osteopath, optometrist, chiropractor, podiatrist, social worker, police officer, pharmacist, physical therapist, or home care worker who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected or exploited shall immediately report such information to the ~~department~~ commission. Provided however, that skilled nursing facilities defined in section 39-1301(b), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department of health and welfare. Failure to report as provided under this section is a misdemeanor subject to punishment as provided in section 18-113, Idaho Code.

(2) Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or provision of services, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances.

SECTION 3. That Section 39-5304, Idaho Code, be, and the same is hereby amended to read as follows:

39-5304. REPORTING REQUIREMENTS, INVESTIGATION, EMERGENCY ACCESS. (1) When a report is required pursuant to this chapter, such report shall be made immediately to the ~~department~~ commission. Provided how-

ever, that skilled nursing facilities defined in section 39-1301(b), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department of health and welfare. If known, the report shall contain the name and address of the vulnerable adult; the caretaker; the alleged perpetrator; the nature and extent of suspected abuse, neglect or exploitation; and any other information that will be of assistance in the investigation.

(2) If the allegations in the report indicate that an emergency exists, the ~~department~~ commission must initiate an investigation immediately, and initiate contact with the alleged vulnerable adult within twenty-four (24) hours. All other investigations must be initiated within seventy-two (72) hours.

(3) The ~~department's~~ commission's investigation shall include a determination of the nature, extent and cause of the abuse, neglect, or exploitation, examination of evidence and consultation with persons thought to have knowledge of the circumstances and identification, if possible, of the person alleged to be responsible for the abuse, neglect or exploitation of the vulnerable adult.

(4) The investigation shall include an interview with the vulnerable adult, if possible. The ~~department~~ commission shall conduct the interview, preferably, by means of a personal visit with the vulnerable adult in the adult's dwelling. If that is not possible, the interview may occur in the local office of the ~~department~~ commission, or by telephone conversation, or by any other means available to the ~~department~~ commission.

(5) Upon completion of an investigation, the ~~department~~ commission shall prepare a written report of the investigation. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to a request to law enforcement for emergency access, a court order or hearing.

If the abuse, neglect, or exploitation is substantiated to have occurred in a state certified or licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department of health and welfare.

If the ~~department~~ commission determines that a report is unsubstantiated and that no other law has been violated, all records related to the report shall be expunged no later than three (3) years following the completion of the investigation.

SECTION 4. That Section 39-5305, Idaho Code, be, and the same is hereby amended to read as follows:

39-5305. INSPECTIONS -- RIGHT OF ENTRY. (1) Upon receiving information that a vulnerable adult is alleged to be abused, neglected, or exploited, the ~~department~~ commission shall cause such investigation to be made in accordance with the provisions of this chapter as is appropriate. In making the investigation, the ~~department~~ commission shall use its own resources and may enlist the cooperation of peace officers. In an emergency any authorized ~~department~~ commission employee or contract employee shall enlist the cooperation of a peace officer to ensure the safety of the vulnerable adult, and they shall receive the

peace officer's assistance.

(2) For the purposes of implementing or enforcing any provision of this chapter or any rule ~~or regulation~~ authorized under the provisions of this chapter, any duly authorized state employee or representative may, upon presentation of appropriate credentials at any reasonable time, with consent or in an emergency, enter upon any private or public property where a vulnerable adult allegedly is subject to abuse, neglect, or exploitation.

(3) All inspections and searches conducted under the provisions of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and article I, section 17, of the constitution of the state of Idaho. The state shall not, under the authority granted in this chapter, conduct warrantless administrative searches of private property except with consent, or in an emergency.

(4) If consent to entry is not given, a ~~department~~ commission representative with the assistance of the county prosecutor may obtain, and any magistrate or district judge is authorized to ~~isue~~ issue a search warrant upon showing that probable cause exists to believe a vulnerable adult is subject to abuse, neglect or exploitation. Upon request of a ~~department~~ commission representative, a peace officer shall serve the search warrant.

SECTION 5. That Section 39-5306, Idaho Code, be, and the same is hereby amended to read as follows:

39-5306. SUPPORTIVE SERVICES AND DISCLOSURE. (1) If there is substantiated abuse, neglect, or exploitation of a vulnerable adult, the ~~department~~ commission has the responsibility to assist the adult in obtaining available services.

(2) If the ~~department~~ commission develops a plan of supportive services for the vulnerable adult, the plan shall provide for appropriate supportive services available to the vulnerable adult that are least restrictive for the personal freedom and shall provide encouragement for client self-determination and continuity of care.

(3) If the vulnerable adult does not consent to the receipt of reasonable and necessary supportive services, or if the vulnerable adult withdraws consent, services shall not be provided or continued.

(4) If the ~~department~~ commission determines that a vulnerable adult is an incapacitated person, as defined in section 15-5-101(a), Idaho Code, mentally ill as defined in section 66-317, Idaho Code, or developmentally disabled as defined in section 66-402, Idaho Code, the ~~department~~ commission may petition the court for protective proceedings, appointment of a guardian or conservator and such other relief as may be provided by chapter 5, title 15, Idaho Code, and chapters 3 and 4, title 66, Idaho Code.

(5) An employee or contract employee of the ~~department~~ commission shall not be appointed the guardian or conservator of a vulnerable adult unless the ~~department~~ commission employee or contract employee has a spousal or familial relationship with the vulnerable adult.

SECTION 6. That Section 39-5308, Idaho Code, be, and the same is

hereby amended to read as follows:

39-5308. INTERAGENCY COOPERATION. (1) In performing the duties set forth in this chapter, the ~~department~~ commission may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available.

(2) The commission shall provide to the department of health and welfare a periodic current listing of all alleged perpetrators against whom an allegation of adult abuse, neglect or exploitation has been substantiated to be used pursuant to statutory authority and rule to conduct a criminal background check or other required investigations.

(3) The department shall provide to the commission any report received under this chapter from a skilled nursing facility defined in section 39-1301(b), Idaho Code, or an employee of such facility.

SECTION 7. That Section 39-5309, Idaho Code, be, and the same is hereby amended to read as follows:

39-5309. COORDINATION OF SERVICES. Subsequent to the authorization for the provision of reasonable and necessary emergency and support services, the ~~department~~ commission shall initiate a review of each case at reasonable intervals over a reasonable period of time as the ~~department~~ commission deems necessary based upon the circumstances in each individual case to determine whether continuation or modification of the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from state agencies, departments, service providers and others, and shall comply with the consent provisions of this chapter.

SECTION 8. That Section 39-5310, Idaho Code, be, and the same is hereby amended to read as follows:

39-5310. REPORT TO LAW ENFORCEMENT -- PROSECUTION. If, as the result of any investigation initiated under the provisions of this chapter, it appears that the abuse, neglect, or exploitation has caused injury or a serious imposition on the rights of the vulnerable adult, the ~~department~~ commission shall immediately notify the appropriate law enforcement agency which shall initiate an investigation and shall determine whether criminal proceedings should be initiated against the caretaker or other persons in accordance with applicable state law.

SECTION 9. That Section 39-5312, Idaho Code, be, and the same is hereby amended to read as follows:

39-5312. RULES ~~AND REGULATIONS~~. The director of the ~~department~~ commission shall have the authority to adopt, promulgate and enforce such rules ~~and regulations~~ as he deems necessary in carrying out the provisions of this chapter, subject to the provisions of chapter 52, title 67, Idaho Code.

SECTION 10. That Chapter 50, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5011, Idaho Code, and to read as follows:

67-5011. ADULT PROTECTION SERVICES. Adult protection services for vulnerable adults shall be administered through the commission. Adult protection services are specialized social services directed toward assisting vulnerable adults who are unable to manage their own affairs, carry out the activities of daily living or protect themselves from abuse, neglect or exploitation. Provision of services may be accomplished by contracting with each of the commission's local area agencies on aging. For the purposes of implementing the provisions of this section, the commission shall assume all responsibilities cited in chapter 53, title 39, Idaho Code, entitled "Adult Abuse, Neglect and Exploitation Act."

Approved March 6, 1996.

CHAPTER 79
(H.B. No. 428)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO CLARIFY THE DEFINITION OF EMPLOYEE; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1310, IDAHO CODE, TO PROVIDE THAT PHOTOREPRODUCTIONS OF MEMBER'S RECORDS ARE THE SAME AS THE ORIGINAL FOR EVIDENTIARY PURPOSES; AMENDING SECTION 59-1311, IDAHO CODE, TO PROVIDE THAT THE BOARD SHALL TRANSFER FUNDS FROM THE FUNDING AGENT TO PAY CURRENT OBLIGATIONS AS NEEDED; AMENDING SECTION 59-1355, IDAHO CODE, TO CORRECT CODE CITATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 59-1604, IDAHO CODE, TO CLARIFY AND MAKE CONSISTENT WITH OTHER LAWS THAT MEMBERS OF THE LEGISLATURE, THE LIEUTENANT GOVERNOR AND BOARDS ONLY RECEIVE MONTHS OF CREDITED SERVICE IF THEY RECEIVE SALARY DURING THE FISCAL YEAR; AND AMENDING SECTION 33-107A, IDAHO CODE, TO CORRECT A CODE CITATION AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho stat-

utes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5B) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Workers' compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment

becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and nonmedical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer; or

(b) Elected officials or appointed officials of an employer who receive a salary; or

(c) A person who is separated from service with less than five (5) <u>consecutive</u> months of employment and who is reemployed or reinstated by the same employer within thirty (30) days.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or vocational-technical program at and employed by a state college, university, community college or vocational-technical center when such employment is predicated on student status; or

(f) A person making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board, or;

(g) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city when the city has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather and the growing season, including parks and golf course positions.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but

for whom a separation benefit has not become payable.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, and military service which occurs after the commencement of such contributions.

(23) "Military service" means active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code. Provided, however, for the purposes of this chapter, military service SHALL NOT include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted;

(b) Any period which commences more than ninety (90) days after the person ceases to be an employee or ends more than ninety (90) days before the person again becomes an employee unless such ninety (90) day requirements are waived by the board due to circumstances beyond the employee's control; or

(c) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) "Salary" means the total salary or wages paid to a person who meets the definition of employee by an employer for personal services currently performed, including the cash value of all remuneration in any medium other than cash in the amount reported by the employer for

income tax purposes and also including the amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. Service of fifteen (15) days or more during any calendar month shall be credited as one (1) month of service. Service of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested retirement allowance" means the periodic payment becoming payable upon an inactive member's becoming eligible for vested retirement.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 2. That Chapter 13, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 59-1310, Idaho Code, and to read as follows:

59-1310. ADMISSIBILITY IN EVIDENCE OF PHOTOREPRODUCED COPIES OF RECORDS OR DOCUMENTS MAINTAINED BY THE SYSTEM -- DESTROYING THE ORIGINAL. Copies of records or documents maintained on microfilm, microfiche or other photoreproductive material of archival quality by the retirement system shall be as admissible in evidence as the original itself in any legal, judicial or administrative proceeding, or action, provided the custodian of records of the retirement system certifies on such copies offered into evidence that the retirement system is not in possession of the original and that the copy is a true and correct representation of the original. The original may be destroyed by the retirement system once the original is microfilmed, microfiched or copied by other photoreproduction of archival quality.

SECTION 3. That Section 59-1311, Idaho Code, be, and the same is hereby amended to read as follows:

59-1311. PUBLIC EMPLOYEE RETIREMENT FUND CREATED -- ADMINISTRATION -- PAYMENT OF BENEFITS -- PERPETUAL APPROPRIATION. (1) There is hereby established in the state treasury a special fund, the "Public Employee Retirement Fund," which shall be separate and apart from all public moneys or funds of this state, and shall be administered under the direction of the board exclusively for the purposes of this chapter. The state treasurer shall maintain within the fund a clearing account, a portfolio investment expense account and an administration account.

(2) All contributions received from employers by the board on

their account and on account of members shall be deposited with a funding agent designated by the board. All such funds are hereby perpetually appropriated to the board, and shall not be included in the department's administration account budget and shall be invested or used to pay for investment related expenses.

(3) ~~On or before the fifteenth of each month~~ As needed to pay current obligations, the board shall ~~require that not more than one-twelfth (1/12) of the amount appropriated by the legislature to the board for that fiscal year shall be transferred by~~ transfer funds from the funding agent to the state treasurer's office for deposit into the administration account. All funds deposited in the administration account shall be available to the board for the payment of administrative expenses only to the extent so appropriated by the legislature.

(4) As required by the board, the funding agent shall transfer funds to the state treasurer's office for deposit into the portfolio investment expense account for payment of investment expenses. The funds deposited in the portfolio investment expense account shall be used for payment of investments and investment related expenses. Such expenses shall include but not be limited to:

(a) Reporting services;

(b) Investment advisory services;

(c) Funding agent fees and money management fees; and

(d) Investment staff expenses including hiring of investment management personnel.

Investment management personnel shall be exempt from the provisions of chapter 53, title 67 and section 67-3519, Idaho Code, and shall be hired by and serve at the pleasure of the board. All expenses of the portfolio investment expense account shall be reported on a quarterly basis to the legislature and to the division of financial management in the office of the governor.

(5) As required by the board, the funding agent shall transfer funds to the state treasurer's office for deposit into the clearing account. All benefits for members shall be payable directly from the clearing account or by the funding agent as they come due. If the amount of such benefits payable at any time exceeds the amount in the clearing account, the payment of all or part of such benefits may be postponed until the clearing account becomes adequate to meet all such payments, or the board may require a refund from the funding agent sufficient to meet all such payments.

(6) Moneys representing member entitlements which remain unclaimed after reasonable attempts to effect payment shall remain in the retirement fund available for payment to the member or other established rightful payee.

SECTION 4. That Section 59-1355, Idaho Code, be, and the same is hereby amended to read as follows:

59-1355. POST RETIREMENT ALLOWANCE ADJUSTMENTS. (1) Each retirement allowance payment shall, subject to the provisions of this section, equal the inflation factor for the adjustment year of payment multiplied by the amount of the retirement allowance payment for March of the previous year. During any adjustment year for which the ratio of the consumer price index for the index month of the previous year

to the consumer price index for the index month of the second previous year is not more than one hundred one per cent (101%), the inflation factor shall be such ratio or ninety-four per cent (94%), whichever is greater, which inflation factor shall not be subject to legislative approval. Otherwise the inflation factor during such adjustment year shall be one hundred one per cent (101%), except that the board, with legislative approval, may put into effect a greater factor which is no more than such ratio or one hundred six per cent (106%), whichever is smaller, if it finds the value of the actuarial assets of the system to be no less than its actuarial liabilities, including those created by the increased factor. The actuarial assets comprise the sum of the actuarial present value of the amortization payments determined in accordance with the requirements of section 59-1322(~~4~~5), Idaho Code, ~~and~~ plus the amounts determined in paragraphs ~~(b), (c), (d) and~~ (e)(ii), (e)(iii), (e)(iv) and (g) of section 59-13~~3~~022(4), Idaho Code. The actuarial liabilities are as defined in paragraph ~~(a)~~ (e)(i) of section 59-13~~3~~022(4), Idaho Code. The board's proposed inflation factor for any adjustment year shall be communicated by letter to the legislature by not later than January 15 prior to that year.

(2) During an adjustment year following one in which there was at least one (1) retirement allowance payment but none in March, each retirement allowance payment shall equal the partial factor multiplied by the amount of the monthly retirement allowance payment in the earlier year. The partial factor shall equal 1.000 plus one-twelfth (1/12) of the product of the number of months in the earlier adjustment year in which member contributions were not made and the excess, if any, of the inflation factor for the later year over 1.000.

(3) During an adjustment year following one in which there was no retirement allowance payment, each retirement allowance payment shall equal the initial retirement allowance multiplied by the bridging factor between the first day of the month following the member's final contribution and the date of the first retirement allowance payment.

(a) Except as provided in paragraph (b) of this subsection, the bridging factor between any two (2) dates shall be the ratio of the amounts of retirement allowance payable on the two (2) dates for any member~~,~~ who retired on the earlier date immediately following his final contribution.

(b) For any member not making a final contribution subsequent to 1974 whose initial retirement allowance is a minimum allowance provided in section 59-134~~3~~2(1)(b) or 59-134~~3~~2(2)(b), Idaho Code, the bridging factor shall be computed as if the member had made his final contribution in 1974.

(4) The consumer price index shall be that for all urban consumers published by the bureau of labor statistics, United States department of labor.

(5) The adjustments provided under this section shall in no event reduce a benefit payment below its initial amount.

(6) An adjustment year shall extend from March through the following February. The index month is October for adjustment years commencing before March, 1990, and is August for subsequent adjustment years.

(7) If, by the forty-fifth day of any regular legislative session, the legislature has not adopted a concurrent resolution reject-

ing or amending the proposed adjustments of the board allowed in subsections (1) and (8) of this section, such action on the part of the legislature shall constitute legislative approval of the board's adjustments.

(8) Notwithstanding other provisions of this section, the board may grant a post-retirement allowance adjustment for any previous year or years up to the full amount of the increase in the consumer price index for that year or those years, as provided in subsection (7) above.

SECTION 5. That Section 59-1604, Idaho Code, be, and the same is hereby amended to read as follows:

59-1604. CREDITED STATE SERVICE. (1) For the purposes of payroll, vacation or annual leave, sick leave and other applicable purposes, credited state service shall be earned by:

(a) The elective officers of the executive department, except the lieutenant governor;

(b) Nonclassified officers and employees of any department, commission, division, agency or board of the executive department, except for part-time members of boards, commissions and committees;

(c) Officers and employees of the legislative department, except members of the house of representatives and the senate.

(2) One (1) hour of credited state service shall be earned by each eligible state officer or employee specified in subsection (1) above for each hour, or major fraction thereof, that the officer or employee receives pay, whether for hours worked or on approved leave. The state board of examiners shall adopt comparative tables and charts to compute credited state service on daily, weekly, bi-weekly, calendar month and annual periods.

(3) Members of the legislature, the lieutenant governor, and members of part-time boards, commissions and committees, shall not be eligible for annual leave or sick leave. ~~Members of the legislature, the lieutenant governor, and members of part-time boards, commissions and committees shall, for retirement purposes only, be credited for each calendar month of service actually served, whether in session or not.~~

(4) Credited state service for those officers and employees identified by section 67-5303(i), Idaho Code, shall be as determined by the state board of education, except no such officer or employee shall be credited with more than two thousand eighty (2080) hours during any twelve (12) month period.

Any policy and procedures determined by the state board of education must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy and procedures.

(5) Service for retirement purposes shall be as provided in chapter 13, title 59, Idaho Code, or in chapter 20, title 1, Idaho Code.

SECTION 6. That Section 33-107A, Idaho Code, be, and the same is hereby amended to read as follows:

33-107A. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM. (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of the university of Idaho, Idaho state university, Boise state university, Lewis Clark state college and the state board of education who are hired on or after July 1, 1993; provided, however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employees retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

(a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;

(b) The relation of such rights and benefits to the amount of contributions to be made;

(c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and

(d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are:

(i) Those faculty and nonclassified staff initially appointed or hired between July 1, 1990 and June 30, 1993; and

(ii) Those teaching staff and officers initially appointed or hired on or after July 1, 1993.

All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to remain a member of that retirement system. The election shall be made in writing, within sixty (60) days of the date of initial hire or appointment or the effective date of this act, whichever occurs later. It shall be filed with the administrative officer of the employing institution.

(c) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to the employer's "normal cost" under the public employees retirement system as defined in section 59-1322, Idaho Code, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, but in no event less than five per cent (5%) of each participant's salary; and

(ii) To the public employees retirement system, an amount equal to three and three one-hundredths per cent (3.03%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2015, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) Each participant shall contribute an amount equal to the member contribution under the public employees retirement system as required in section 59-130433, Idaho Code. Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(c) Payment of contributions authorized or required under this subsection shall be made by the financial officer of the employing institution to the designated company or companies for the benefits of each participant.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

Approved March 6, 1996.

CHAPTER 80
(H.B. No. 634)

AN ACT

RELATING TO PLANS AND SPECIFICATIONS FOR WASTE SYSTEMS; AMENDING SECTION 39-118, IDAHO CODE, TO PROVIDE AN EXCEPTION FOR DAIRY SYSTEMS AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-118, Idaho Code, be, and the same is hereby amended to read as follows:

39-118. REVIEW OF PLANS. 1. Except as provided for dairy systems pursuant to section 37-401, Idaho Code, all plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems or for modification or expansion to existing sewage treatment plants or systems, waste treatment or disposal facilities, public water supply systems or public water treatment systems, shall be submitted to and approved by the department of health and welfare before construction may begin, and all construction shall be in compliance therewith. No deviation shall be made from the approved plans and specifications without the prior approval of the department. Within thirty (30) days of the completion of construction, alteration, or modification of any new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted to the department of health and welfare. If construction does not deviate from the original plans previously submitted for approval, a statement to that effect shall be filed with the department.

2. All plans and specifications submitted to satisfy the requirements of this section shall conform in style and quality to regularly accepted engineering standards. Except with respect to plans and specifications for facilities addressed in subsection 3. of this section, and confined animal feeding operations, the board may require that certain types of plans and specifications must be certified by registered professional engineers. If the department determines that any particular facility or category of facilities will produce no significant impact on the environment or on the public health, the department shall be authorized to waive the submittal or approval requirement for that facility or category of facilities.

3. All plans and specifications for the construction, modification, expansion, or alteration of waste treatment or disposal facilities for aquaculture facilities licensed by the department of agriculture for both commercial fish propagation facilities as defined in section 22-4601, Idaho Code, and sport fish propagation facilities whether private or operated or licensed by the department of fish and game and other aquaculture facilities as defined in the Idaho waste management guidelines for aquaculture operations, shall be submitted and approved by the department of health and welfare before construction may begin and all construction shall be in compliance therewith. The department shall review plans and specifications within forty-five (45) days of submittal and notify the owner or responsible party of approval or disapproval. In the event of disapproval the department shall provide reasons for disapproval in writing to the owner or responsible party. Plans and specifications shall conform in style and quality to standard industry practices and guidelines developed pursuant to this subsection. The director shall establish industry guidelines or best management practices subcommittees composed of members of the department, specific regulatory agencies for the industry, general public, and persons involved in the industry to develop and update guidelines or best management practices as needed. Within

thirty (30) days of the completion of the construction, modification, expansion or alteration of facilities subject to this subsection, the owner or responsible party shall submit a statement to the department that the construction has been completed and is in substantial compliance with the plans and specifications as submitted and approved. The department shall conduct an inspection within sixty (60) days of the date of submission of the statement and shall inform the owner or responsible party of its approval of the construction or in the event of nonapproval, the reasons for nonapproval.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 81
(H.B. No. 635)

AN ACT

RELATING TO THE INSPECTION OF DAIRY FARMS AND DAIRY PRODUCTS; AMENDING SECTION 37-401, IDAHO CODE, TO PROVIDE FOR EXAMINATION AND TESTS, TO PROVIDE FOR AGENTS, TO PROVIDE MANDATORY DUTIES, TO PROVIDE FOR THE ISSUANCE OF PERMITS AUTHORIZING THE SALE OF MILK AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-403, IDAHO CODE, TO PROVIDE FOR PERMITS, TO PROVIDE FOR AGENTS, TO PROVIDE FOR INSPECTIONS OF DAIRY FARMS AND DAIRY WASTE SYSTEMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-405, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-408, IDAHO CODE, TO PROVIDE FOR RULES AND ORDERS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 37-401, Idaho Code, be, and the same is hereby amended to read as follows:

37-401. INSPECTIONS, EXAMINATIONS AND TESTS BY DEPARTMENT ~~AND DIRECTOR~~ OF AGRICULTURE. The director of the department of agriculture is hereby authorized and directed to designate any ~~competent--employee or~~ agent ~~of--the--department-of-agriculture-of-the-state-of-Idaho~~ to inspect, examine and test any or all dairy products in accordance with ~~such-regulations~~ rules as ~~it~~ the department may prescribe; and to ascertain and certify the grade, classification, quality or sanitary condition thereof and ~~such~~ other pertinent facts as the department may require. The director or ~~any-other-officer-or-employee~~ agent of the department of agriculture of the state of Idaho shall make sanitary inspection of milk, cream, butter and dairy products of any kind whatsoever, intended for human consumption, and of containers, utensils, equipment, buildings, premises or anything whatsoever employed in the production, handling, storing, processing or manufacturing of dairy

products or that would affect the purity of the products.~~;~~ ~~such~~ ~~i~~Inspections, ~~shall be made by such qualified person or persons as may be designated by the director for such purpose;~~ examinations and tests ~~necessary~~ shall be made to meet the requirements of the laws of the state and of the United States for the sale of ~~such~~ the products or their transportation ~~thereof,~~ in both intrastate and interstate commerce. ~~shall be made by the department of agriculture. Every person~~ Any agent designated by the director to make ~~such~~ inspections shall have the right for that purpose to enter any premises and buildings where milk, cream, butter or dairy products shall be produced, stored, processed or manufactured. Acting in accord with rules of the department, the director or agent of the department shall review plans and specifications for construction of new, modified or expanded waste systems and inspect any dairy farm to ascertain and certify sanitary conditions, waste systems and milk quality. The director or agent shall issue a permit authorizing the sale of milk for human consumption to all dairy farms that meet the requirements of this chapter, and rules promulgated pursuant to this chapter.

SECTION 2. That Section 37-403, Idaho Code, be, and the same is hereby amended to read as follows:

37-403. ~~REPORT OF INSPECTOR~~ BASIS FOR ISSUANCE OR REVOCATION OF LICENSES OR PERMITS. Whenever, under any law of this state, the director of the department of agriculture~~,~~ or any ~~other officer or employee of the department of agriculture,~~ agent is required to ~~examine~~ inspect dairy farms and dairy waste systems for compliance with rules prescribed by the department, or determine the sanitary condition of anything referred to in section 37-401, Idaho Code, or the purity of milk, cream, butter, or other dairy products intended for human consumption, the director shall make or cause to be made~~, such~~ an examination and inspection and shall report his findings and conclusions. When the issuance ~~of any license~~ or the revoking of any license or permit by the department of agriculture is required to be made after an inspection involving ~~the~~ waste systems, milk quality, and sanitary conditions and purity for human consumption of any milk, cream, butter, or other dairy products, ~~such~~ the issuance or revocation of license or permit shall be based upon the report or reports so made by the director.

SECTION 3. That Section 37-405, Idaho Code, be, and the same is hereby amended to read as follows:

37-405. DEPARTMENT MAY MAKE RULES~~, REGULATIONS~~ AND ORDERS. The department of agriculture is hereby invested with authority to make rules ~~and regulations~~ and ~~such~~ orders as may be necessary or desirable for carrying out its various functions and the intent and purpose of this act.

SECTION 4. That Section 37-408, Idaho Code, be, and the same is hereby amended to read as follows:

37-408. PENALTY FOR VIOLATIONS. Anyone failing to comply with any

of the provisions of this chapter ~~of the Idaho Code~~ or any standards, rules or ~~regulations~~ orders promulgated hereunder shall be guilty of a misdemeanor and upon conviction ~~thereof~~ shall be subject to a fine ~~of~~ not exceeding two hundred dollars ($200) or imprisonment in the county jail not to exceed three (3) months, or by both ~~such~~ a fine and imprisonment. The director of the department of agriculture may bring civil actions to enjoin violation of this chapter ~~4, title 37, Idaho Code,~~ or the standards, rules or ~~regulations~~ orders promulgated thereunder.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 82
(H.B. No. 774)

AN ACT
APPROPRIATING MONEYS TO THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 194, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 194, Laws of 1995, there is hereby appropriated to the Commission for the Blind and Visually Impaired the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1995, through June 30, 1996:

FOR:	
Operating Expenditures	$12,000
FROM:	
Adaptive Aids and Appliances	$12,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 83
(H.B. No. 773)

AN ACT
APPROPRIATING MONEYS TO THE LOTTERY COMMISSION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 148, LAWS OF 1995; AND

DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 148, Laws of 1995, there is hereby appropriated to the Lottery Commission in the Department of Self-Governing Agencies the following amount to be expended according to the designated standard classification from the listed fund for the period July 1, 1995, through June 30, 1996:

FOR:	
Operating Expenditures	$1,238,200
FROM:	
State Lottery Fund	$1,238,200

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 84
(H.B. No. 570)

AN ACT
RELATING TO DAIRY PRODUCTS; REPEALING SECTIONS 37-328, 37-329, 37-331, 37-336 AND 37-337, IDAHO CODE.

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

SECTION 1. That Sections 37-328, 37-329, 37-331, 37-336 and 37-337, Idaho Code, be, and the same are hereby repealed.

Approved March 6, 1996.

CHAPTER 85
(H.B. No. 568)

AN ACT
RELATING TO FILLED MILK; REPEALING CHAPTER 11, TITLE 37, IDAHO CODE.

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

SECTION 1. That Chapter 11, Title 37, Idaho Code, be, and the same is hereby repealed.

Approved March 6, 1996.

CHAPTER 86
(H.B. No. 569)

AN ACT

RELATING TO DAIRY PRODUCTS; REPEALING SECTIONS 37-334b, 37-334c AND 37-334f, IDAHO CODE.

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

SECTION 1. That Sections 37-334b, 37-334c and 37-334f, Idaho Code, be, and the same are hereby repealed.

Approved March 6, 1996.

CHAPTER 87
(H.B. No. 776)

AN ACT

APPROPRIATING MONEYS TO THE STATE TREASURER IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 263, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 263, Laws of 1995, there is hereby appropriated to the State Treasurer the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1995, through June 30, 1996:

FOR:	
Operating Expenditures	$50,000
FROM:	
Professional Services Fund	$50,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 88
(H.B. No. 544)

AN ACT

RELATING TO LIVESTOCK DEALER LICENSING; AMENDING SECTION 25-3306, IDAHO CODE, TO PROHIBIT LICENSING AS A LIVESTOCK DEALER, PERSONS WHO HAVE BEEN SUSPENDED FROM ACTING AS A LIVESTOCK DEALER UNDER FEDERAL LAW; AMENDING SECTION 25-3310, IDAHO CODE, TO SPECIFY

BONDING REQUIREMENTS WHERE LICENSEES APPROVE THE APPLICATION OF A DEALER REPRESENTATIVE.

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

SECTION 1. That Section 25-3306, Idaho Code, be, and the same is hereby amended to read as follows:

25-3306. PROHIBITED ACTS. The following actions are prohibited:

(1) Acting as a livestock dealer without an adequate surety bond or bond equivalent and a valid license issued by the board;

(2) Failure to maintain records as required by the board, especially the names and addresses of sellers and buyers of livestock;

(3) Failure to provide access to all records required of such licensee by the board;

(4) Buying or selling livestock under an assumed name or address. All livestock sales shall be evidenced by a written bona fide name and address of buyer and seller; ~~and~~

(5) Violation of any valid rule, regulation or statute governing livestock disease control; and

(6) Operating as a livestock dealer in the state of Idaho while suspended or revoked from acting as a livestock dealer by the United States pursuant to the packers and stockyards act of 1921, as amended.

SECTION 2. That Section 25-3310, Idaho Code, be, and the same is hereby amended to read as follows:

25-3310. BOND REQUIRED OF A LICENSE HOLDER. (1) Each applicant to whom a license to act as a livestock dealer is issued shall:

(a) File a bond of a surety company authorized to do business in this state; or

(b) File a copy of the bond or bond equivalent required by the United States under the provisions of the packers and stockyards act of 1921, as amended, and regulations promulgated thereunder; or

(c) Approve the application by a person declaring to be a representative of the licensee by signature and include such representative under the bond or bond equivalent required pursuant to this section. The bond shall include the provisions required by the regulations promulgated pursuant to the packers and stockyards act of 1921, as amended, 9 C.F.R., part 201, section 201.31(c), known as condition clause 3.

(2) The amount of the bond must be based on the applicant's annual volume of purchases, including purchases made by a representative of the licensee, according to a schedule adopted by the board; provided, however, that the bond shall be not less than ten thousand dollars ($10,000) nor more than one hundred thousand dollars ($100,000).

(3) All bonds must be renewed or continued in force to cover dealer transactions during the period that the license is valid.

Approved March 6, 1996.

CHAPTER 89
(H.B. No. 565)

AN ACT

RELATING TO CLAIMS FOR WAGES; AMENDING CHAPTER 6, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-612, IDAHO CODE, TO PROVIDE THAT AN EMPLOYEE FILING A FALSE CLAIM FOR WAGES OR OTHER COMPENSATION KNOWING THE SAME TO BE FALSE SHALL BE GUILTY OF A MISDEMEANOR AND PROVIDING PENALTIES, AND TO PROVIDE THAT AN EMPLOYEE INITIATING A PROCEEDING ON HIS OWN BEHALF OR THROUGH THE DIRECTOR TO COLLECT UNPAID WAGES OR OTHER COMPENSATION BASED IN WHOLE OR IN PART UPON A FALSE CLAIM WHICH THE EMPLOYEE KNEW TO BE FALSE SHALL BE LIABLE FOR ATTORNEY'S FEES AND COSTS OF THE EMPLOYER TO DEFEND THE ACTION AS WELL AS ATTORNEY'S FEES AND COSTS AND OTHER ADMINISTRATIVE COSTS INCURRED BY THE DIRECTOR IN INVESTIGATING OR PROCEEDING TO COLLECT THE WAGES OR OTHER COMPENSATION FALSELY CLAIMED.

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

SECTION 1. That Chapter 6, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-612, Idaho Code, and to read as follows:

45-612. FILING FALSE CLAIM -- PENALTY. (1) Any person making a false claim for wages or other compensation under this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punishable by confinement in the county jail for a period not to exceed six (6) months, or by a fine, not to exceed one thousand dollars ($1,000), or both.

(2) Any employee initiating a civil proceeding to collect unpaid wages or other compensation, either on his own behalf or through the director, which is based in whole or in part on a false claim which the employee knew to be false at the time the employee brought the action or filed a claim with the director, shall be liable for attorney's fees and costs incurred by the employer in defending against the false claim, as well as any attorney's fees and costs, or other administrative costs incurred by the director in any investigation of or proceeding to collect the wages or other compensation falsely claimed by the employee. Proof of a criminal conviction under subsection (1) of this section shall not be required for recovery of the fees and costs provided for in this subsection.

Approved March 6, 1996.

CHAPTER 90
(H.B. No. 543)

AN ACT

RELATING TO THE INSPECTION OF BRANDS; AMENDING SECTION 25-1120, IDAHO CODE, TO MAKE THE TRANSFEROR OF LIVESTOCK PRIMARILY RESPONSIBLE FOR OBTAINING A BRAND INSPECTION AND TO MAKE THE TRANSFEREE OF LIVESTOCK RESPONSIBLE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 25-1126, IDAHO CODE, TO CLARIFY A CITIZEN'S RIGHT TO REQUIRE AN INSPECTION OF LIVESTOCK IN TRANSIT; AMENDING SECTION 25-1150, IDAHO CODE, TO MAKE BRAND RECORDINGS ON RECORD WITH THE IDAHO STATE BRAND INSPECTOR OPEN TO PUBLIC INSPECTION AND TO BE PRIMA FACIE EVIDENCE OF SUCH BRANDS; AND AMENDING SECTION 25-1181, IDAHO CODE, TO IMPOSE PENALTIES FOR BRANDING LIVESTOCK WITH A BRAND NOT THE BRAND OF THE OWNER.

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

SECTION 1. That Section 25-1120, Idaho Code, be, and the same is hereby amended to read as follows:

25-1120. BRAND INSPECTION. (1) The state brand board shall have the authority to require brand inspection of all livestock transferred in any manner, or which shall be placed for sale with or delivered into the custody of the owners or operators of any auction, auction house, sales, ring, or commission house, or to establish proof of ownership at that point in time a living animal becomes carcass meat, it shall require brand inspection not more than ninety-six (96) hours prior to slaughtering whether for commercial purposes or for the owner's immediate family needs, and whether said slaughtering is done by any permanently located firm, association, partnership, company, business or corporation, or if done by a mobile slaughtering service of any nature or type and shall have access to inspect animals utilized by rendering establishments, and to adopt such rules ~~and regulations~~ as it may prescribe to accomplish such brand inspection.

A brand inspection certificate signed by the seller is documentary evidence of a transfer of ownership.

(2) The transferor of livestock shall be primarily responsible to obtain a required brand inspection. However, if the seller shall fail, after ten (10) days, to obtain a required brand inspection, the transferee of the livestock shall also be responsible to obtain a brand inspection.

SECTION 2. That Section 25-1126, Idaho Code, be, and the same is hereby amended to read as follows:

25-1126. OWNER OF RECORDED BRAND -- RIGHT TO CAUSE INSPECTION OF LIVESTOCK IN TRANSIT. Every citizen of Idaho who is the owner of any duly recorded brand is hereby authorized to ~~make inspection of~~ require livestock in transit, or which is about to be shipped, transported or otherwise removed, to be inspected as required by law, for the purpose of determining whether or not such livestock has been duly inspected

by an official brand inspector or peace officer~~, and if such inspection has not been made, he may exercise all the rights and powers of brand inspectors and peace officers to stop such transportation and require such livestock to be duly inspected as provided by law~~. No fee shall be allowed to any such citizen for performing the rights and privileges herein above granted.

SECTION 3. That Section 25-1150, Idaho Code, be, and the same is hereby amended to read as follows:

25-1150. BRAND ~~BOOK~~ RECORDINGS OPEN TO PUBLIC -- EVIDENCE. The brand ~~book~~ recordings kept by ~~said~~ the state brand inspector ~~or deputy inspector~~ shall be open to the inspection of the public and shall be prima facie evidence of the facts recited therein in any of the courts of this state.

SECTION 4. That Section 25-1181, Idaho Code, be, and the same is hereby amended to read as follows:

25-1181. PENALTIES. (1) Any person who shall present false or fraudulent information to obtain a brand inspection certificate shall be guilty of a felony.

(2) Any person who wilfully forges any brand inspection certificate or written permit, or alters the same in any manner, with the intent to defraud another, or with the intent to deceive any state brand inspector or any other law enforcement officer in the state of Idaho, shall be guilty of forgery.

(3) Any person who shall knowingly transport livestock without proper certificate or permit, or knowingly offers for shipment any livestock not his own or without the authority of the owner of said livestock shall be deemed guilty of a misdemeanor.

(4) Any person who shall, without proper brand inspection certificate or written permit, transport livestock in violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed three hundred dollars ($300) or by imprisonment in the county jail not to exceed six (6) months or be punished by both fine and imprisonment.

(5) Any person who shall refuse to permit inspection of any livestock as required by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed three hundred dollars ($300) or by imprisonment in the county jail not to exceed six (6) months or be punished by both fine and imprisonment; and provided further, such person may be liable for civil damages to any owner of such livestock injured thereby, plus treble damages and for costs of suit and attorney's fees.

(6) It shall be unlawful for any common carrier to transport livestock within or without the state of Idaho without having had the required brand inspections required by this chapter, and any common carrier who knowingly violates the requirements of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined a sum not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000); and provided further, that said common carriers may be liable for civil damages to any owner of such

livestock who is injured thereby plus treble damages and for costs of suit and attorney's fees.

(7) Any person who shall violate any of the rules adopted by the state brand board for the implementation of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed three hundred dollars ($300) or by imprisonment in the county jail not to exceed six (6) months or be punished by both fine and imprisonment.

(8) It shall be a misdemeanor to brand any livestock with a recorded brand, when such livestock is not owned by the owner or owners of the recorded brand used.

(9) It shall be a felony to brand any livestock with a recorded brand, when such livestock is not owned by the owner or owners of the recorded brand used, for the purpose of committing or facilitating the theft of said livestock.

Approved March 6, 1996.

CHAPTER 91
(H.B. No. 567)

AN ACT

RELATING TO THE MINT GROWERS' COMMISSION; AMENDING SECTION 22-3803, IDAHO CODE, TO CHANGE THE NAME OF THE MINT GROWERS' COMMISSION TO THE MINT COMMISSION; AMENDING SECTION 22-3804, IDAHO CODE, TO CHANGE THE NAME OF THE MINT GROWERS' COMMISSION AND ADD A MEMBER TO THE COMMISSION; AMENDING SECTION 22-3808, IDAHO CODE, TO STRIKE THE WORD REGULATION; AMENDING SECTION 22-3813, IDAHO CODE, TO INCREASE THE LICENSE FEE; AMENDING SECTION 22-3814, IDAHO CODE, TO STRIKE THE WORD REGULATIONS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 22-3815, IDAHO CODE, CHANGING THE NAME OF THE MINT GROWERS' COMMISSION.

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

SECTION 1. That Section 22-3803, Idaho Code, be, and the same is hereby amended to read as follows:

22-3803. DEFINITIONS. Wherever used or referred to in this act:

(1) The term "commission" means the Idaho mint ~~grower's~~ commission.

(2) The term "person" means individual, partnership, corporation, association, growers or any other business unit.

(3) The term "mint" means all the essential oils that are distilled from any variety of mint plant grown or extracted in the state of Idaho.

(4) The term "grower" means the actual producer of mint and essential oils.

(5) The term "handled in the primary channels of trade" means the time when any mint or essential oils are delivered under a sales contract or delivered for shipment or delivered for processing or con-

sumption.

(6) The term "dealer" means and includes any person engaged in the business of buying, receiving, handling or selling mint or essential oils for profit or remuneration.

SECTION 2. That Section 22-3804, Idaho Code, be, and the same is hereby amended to read as follows:

22-3804. IDAHO MINT ~~GROWERS'~~ COMMISSION -- ELECTION OF MEMBERS -- COMPENSATION AND TERMS. There is hereby created and established within the department of agriculture an Idaho mint ~~growers'~~ commission to be known and designated as such which shall be composed of ~~five~~ six (~~5~~6) practical growers, elected as provided in section 22-3812, Idaho Code. The six (6) elected commissioner members shall select one (1) industry representative to sit on the commission, with full voting privileges and benefits of the other commissioner members. Each member of the commission shall be a resident citizen of the state of Idaho for a period of four (4) years prior to his election or selection, shall have active experience and be now actually engaged in growing mint in Idaho and shall derive a substantial portion of his income from growing mint or be the directing or managing head of a corporation, firm, partnership or other business unit which derives a substantial portion of its income from growing mint. To continue holding office, each member must remain qualified. The governor may remove a member if he becomes disqualified during his term of office or for inability to carry out his duties. Upon the establishment of the commission, one (1) member shall serve for a term of one (1) year, two (2) members shall serve for a term of two (2) years, two (2) members shall serve for a term of three (3) years and thereafter all terms of office shall be for a term of three (3) years. The term of office of each member of the commission shall terminate on the third Monday of January of the year in which the term for which the member was elected ends, but each member of the commission shall serve until his respective successor is elected and has qualified. Before entering on the discharge of their duties as members of the commission, each member shall take and subscribe to the oath of office prescribed by law. A majority of the members of the commission shall constitute a quorum for the transaction of all business and the carrying out of all duties of the commission. The commission shall annually elect a chairman from among its members. Members of the commission shall receive no salary except upon the unanimous vote of the commission; however, members, officers and employees of the commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The commission shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

SECTION 3. That Section 22-3808, Idaho Code, be, and the same is hereby amended to read as follows:

22-3808. FILING -- REQUIREMENTS. Every grower and dealer shall at such times as the commission may by rule ~~or regulation~~ prescribe, file with the commission a return under oath on forms to be prescribed by and furnished by the commission, stating the number of pounds of

essential oils handled in the primary channels of trade during the period or periods of time prescribed by the commission and such other information as the commission may require.

SECTION 4. That Section 22-3813, Idaho Code, be, and the same is hereby amended to read as follows:

22-3813. LICENSE APPLICATION -- FEE -- BOND -- REVOCATION -- FORFEITURE. No person shall act as dealer in the essential oils without having obtained a license as provided in this act. Every person acting as a dealer shall file a written application with the commission for a license as such which application shall state the applicant's name, principal business addresses within and without the state of Idaho, the name of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant within the state of Idaho and such other information as the commission may require. Each application shall be accompanied with a license fee of ~~fifty~~ two hundred dollars ($5200~~.00~~) and by good and sufficient surety bond in the penal sum of two thousand dollars ($2,000) executed by the applicant and as principal and by a surety company authorized to do business in the state of Idaho as surety and conditioned upon the applicant's full and complete compliance with the provisions of this act and all of the rules and orders of the commission. The commission shall investigate each applicant thoroughly and if the commission is satisfied that the applicant is of good character and reputation and is financially responsible, a license shall be issued for the period ending on the next succeeding first Monday of January, otherwise the application shall be denied. The commission may revoke a license after thirty (30) days' written notice of its intention so to do, and after providing the licensee with an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, if the licensee shall willfully fail to fully and completely comply with the provisions of this act and all of the rules and orders of the commission. Upon the revocation of such licenses the full amount of the bond shall be forfeited and damages in that sum shall be conclusively presumed to have been incurred by the commission. All license fees and all bond forfeitures shall be deposited as provided in section 22-3811, Idaho Code. Any person aggrieved by the final action of the commission is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 5. That Section 22-3814, Idaho Code, be, and the same is hereby amended to read as follows:

22-3814. PENALTY. Every person who shall violate or aid in the violation of any of the provisions of this act or any of the rules~~,~~ ~~regulations~~ or orders of the commission adopted pursuant to the authority conferred by this act, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment, not exceeding ninety (90) days, or by both such fine and imprisonment and all fines collected for violation of this act shall be deposited as provided in section 22-3811, ~~of this act~~ Idaho Code.

SECTION 6. That Section 22-3815, Idaho Code, be, and the same is hereby amended to read as follows:

22-3815. REFERENDUM FOR CONTINUANCE OF THE IDAHO MINT ~~GROWERS'~~ COMMISSION. After five (5) years from the date the commission was created, a referendum may be held at the petition of the growers or at the request of the commission. The question shall be submitted by secret mail ballots upon which the words "for continuance of the Idaho Mint ~~Growers'~~ Commission" and "against continuance of the Idaho Mint ~~Growers'~~ Commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before the proposition which the voter favors. In the event a referendum is held as provided in this section, no further referendum on the question of discontinuance of such commission shall be held within five (5) years from the date the results of the previous referendum was declared.

The referendum must be held and supervised by the department of agriculture upon its receiving either of the following:

1. A petition signed by thirty percent (30%) of the growers, or two hundred (200) growers, whichever is less. The petitioners shall pay the cost of such referendum if the commission continues but the commission must bear the cost if the majority vote is in favor of discontinuance.

2. A written request from the commission. The commission shall pay the cost of such referendum.

The referendum shall be held, notice thereof given, expenses thereof paid and the result determined, declared and recorded in the office of the secretary of state. No hearing or district meetings of the grower members shall be set prior to the referendum upon the question of determining whether such referendum should be held.

Notice of such referendum must be given by the commission in a manner determined by them. The ballots must also be prepared by the commission and forwarded to the grower members, who shall return them within twenty (20) days after mailing by the commission.

Approved March 6, 1996.

CHAPTER 92
(H.B. No. 578)

AN ACT

RELATING TO COMPETITIVE BIDDING REQUIREMENTS FOR COUNTIES; AMENDING SECTION 31-4002, IDAHO CODE, TO CLARIFY THE DEFINITION OF EXPENDITURE; AMENDING SECTION 31-4003, IDAHO CODE, TO SPECIFY CONDITIONS WHEN BIDS ARE REQUIRED; AMENDING SECTION 31-4005, IDAHO CODE, TO PROVIDE FOR PRESENTATION OF BIDS AND TO AUTHORIZE THE COUNTY TO REQUIRE BIDDER'S SECURITY; AND AMENDING SECTION 31-4006, IDAHO CODE, TO CLARIFY REQUIREMENTS OF BIDS.

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

SECTION 1. That Section 31-4002, Idaho Code, be, and the same is

hereby amended to read as follows:

31-4002. EXPENDITURE DEFINED. As used in this act, "expenditure" means the granting of a contract, exclusive franchise or authority to another by the county, and every manner and means whereby the county disburses county funds or obligates itself to disburse county funds; provided, however, that "expenditure" does not include disbursement of county funds to any county employee, official, agent, or to any person performing personal services for the county, or for the acquisition of personal property through a contract that has been competitively bid by the state of Idaho, one of its subdivisions, an agency of the federal government or a joint purchasing program as provided in this chapter.

SECTION 2. That Section 31-4003, Idaho Code, be, and the same is hereby amended to read as follows:

31-4003. EXPENDITURES FOR WHICH BIDS REQUIRED. Unless otherwise provided in this chapter, when the expenditure contemplated exceeds five thousand dollars ($5,000), ~~or ten thousand dollars ($10,000) if for equipment,~~ but not twenty-five thousand dollars ($25,000), the county shall obtain price or cost quotations from at least three (3) responsible vendors in the business of supplying such goods or services. To enhance small business bidding opportunities, the county shall seek a minimum of three (3) price quotations from registered vendors having a significant Idaho economic presence as defined in section 67-2349, Idaho Code. If the county finds that it is impractical or impossible to obtain three (3) quotations for the proposed transaction, the county may acquire the property in any manner the county deems best. The county shall then procure the goods or services from the responsible vendor quoting the lowest price. When the expenditure contemplated exceeds twenty-five thousand dollars ($25,000), it shall be contracted for and let to the lowest responsible bidder. Where both the bids and quality of property offered are the same, preference shall be given to the property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in section 67-2349, Idaho Code.

SECTION 3. That Section 31-4005, Idaho Code, be, and the same is hereby amended to read as follows:

31-4005. BIDS -- PRESENTATION -- BIDDER'S SECURITY. All bids shall be presented or otherwise delivered, under sealed cover, to the county clerk ~~of the board of county commissioners of the appropriate county~~, or other bonded agent of the county designated by the county to receive specific bids, with a concise statement marked on the outside thereof generally identifying the expenditure to which said bid pertains. ~~All bids shall contain~~ If the county deems it is in the county's best interest, it may require the vendor to provide bid security in one (1) of the following forms ~~of bidder's security~~:

(a) Cash,
(b) Cashier's check made payable to the county,
(c) A certified check made payable to the county,

(d) A bidder's bond executed by a qualified surety company, made payable to the county.

SECTION 4. That Section 31-4006, Idaho Code, be, and the same is hereby amended to read as follows:

31-4006. BIDDER'S SECURITY -- AMOUNT -- REQUIREMENT OF BIDS. The security, if required by the county, shall be in an amount equal to at least five per cent (5%) of the amount bid. ~~A~~ If required, a bid shall not be considered unless one (1) of the forms of bidder's security is inclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the county.

Approved March 6, 1996.

CHAPTER 93
(H.B. No. 548)

AN ACT

RELATING TO PROPERTY TAXES; AMENDING SECTION 63-221, IDAHO CODE, RELATING TO COUNTY VALUATION PROGRAMS TO PROVIDE THAT A FIVE YEAR REAPPRAISAL PLAN MUST PROVIDE FOR REAPPRAISING TWENTY PERCENT OF ALL TAXABLE PROPERTY IN A COUNTY EACH YEAR, BUT NEED NOT REQUIRE A TWENTY PERCENT REVALUATION OF ALL TAXABLE PROPERTY IN EACH CATEGORY EACH YEAR, TO DIRECT THE STATE TAX COMMISSION TO DISAPPROVE PLANS THAT DO NOT PROVIDE FOR ADEQUATE APPRAISAL AND VALUATION OF ALL TAXABLE PROPERTY IN THE COUNTY, TO MODIFY THE PROVISION RELATING TO THE USE OF REAPPRAISALS TO INDEX PROPERTY NOT APPRAISED AND TO DEFINE A TERM.

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

SECTION 1. That Section 63-221, Idaho Code, be, and the same is hereby amended to read as follows:

63-221. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR. (1) It shall be the duty of the county assessor of each county in the state to conduct and carry out a continuing program of valuation of all properties under his jurisdiction pursuant to such rules as the state tax commission may prescribe, to the end that all parcels of property under the assessor's jurisdiction are appraised at current market value for assessment purposes. ~~It is legislative intent that~~ ~~i~~In order to promote uniform assessment of property in the state of Idaho, taxable property shall be appraised or indexed annually to reflect current market value. In order to achieve this goal, at least twenty percent (20%) of the ~~property~~ taxable properties in ~~each of~~ the ~~categories--of--property established by rules of the state tax commission~~ county shall be included in each year's appraisal, resulting in a complete appraisal of all taxable property every five (5) years. ~~The results--of--the--annual--appraisal of twenty percent (20%) of taxable property shall be used to index~~ Annually, all taxable property, not

actually appraised each year, ~~so as~~ shall be indexed to reflect current market values using market value property transactions and results of the annual appraisal of twenty percent (20%) of the taxable property. The county assessor shall maintain in the respective offices sufficient records to show when each parcel or item of property was last appraised. The appraisal required by this section shall include a plan outlining the continuing valuation program. Said plan shall be submitted to the state tax commission for approval on or before the first Monday in February, 1997, and no less frequently than every fifth year thereafter. The state tax commission shall not approve any plan that fails to provide for adequate appraisal and valuation of all taxable properties in any county.

(2) The state tax commission is hereby authorized, empowered, and directed to promulgate rules for the implementation of this program, and to provide any such county assessor with such supervision and technical assistance as may be necessary.

(3) The board of county commissioners of each county shall furnish the assessor with such additional funds and personnel as may be required to carry out the program hereby provided, and for this purpose may levy annually an ad valorem tax of not to exceed four hundredths percent (.04%) of the market value for assessment purposes on all taxable property in the county to be collected and paid into the county treasury and appropriated to the ad valorem valuation fund which is hereby created.

(~~2~~4) If compliance with the requirements of subsection (1) of this section are not obtained, or if any county fails to meet the goals set in subsection (1) of this section, the tax commission shall proceed as required by section 63-2219, Idaho Code.

(5) As used in this section the term "adequate appraisal and valuation of all taxable properties in any county" means a process which includes a field inspection of at least twenty percent (20%) of the taxable properties each year. Appraisal also includes collection, verification and analysis of market value sales, applicable income and expense data and building cost information, and application of this information to predict market value.

Approved March 6, 1996.

CHAPTER 94
(H.B. No. 591)

AN ACT

RELATING TO THE INTEREST RATE ON JUDGMENTS; AMENDING SECTION 28-22-104, IDAHO CODE, TO PROVIDE THAT THE INTEREST RATE ON JUDGMENTS SHALL BE AT THE LEGAL RATE IN EFFECT AT THE TIME OF ENTRY OF JUDGMENT AND SHALL APPLY TO ALL JUDGMENTS DECLARED DURING THE SUCCEEDING TWELVE MONTH PERIOD.

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

SECTION 1. That Section 28-22-104, Idaho Code, be, and the same

is hereby amended to read as follows:

28-22-104. LEGAL RATE OF INTEREST. (1) When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of twelve cents (12¢) on the hundred by the year on:

1. Money due by express contract.
2. Money after the same becomes due.
3. Money lent.
4. Money received to the use of another and retained beyond a reasonable time without the owner's consent, express or implied.
5. Money due on the settlement of mutual accounts from the date the balance is ascertained.
6. Money due upon open accounts after three (3) months from the date of the last item.

(2) The legal rate of interest on money due on the judgment of any competent court or tribunal shall be the rate of five percent (5%) plus the base rate in effect at the time of entry of the judgment. The base rate shall be determined on July 1 of each year by the Idaho state treasurer and shall be the weekly average yield on United States treasury securities as adjusted to a constant maturity of one (1) year and rounded up to the nearest one-eighth percent (1/8%). The base rate shall be determined by the Idaho state treasurer utilizing the published interest rates during the second week in June of the year in which such interest is being calculated. The legal rate of interest as announced by the treasurer on July 1 of each year shall operate as the rate applying for the succeeding twelve (12) months to all judgments declared ~~or remaining unpaid~~ during such succeeding twelve (12) month period. The payment of interest and principal on each judgment shall be calculated according to a three hundred sixty-five (365) day year.

Approved March 6, 1996.

CHAPTER 95
(H.B. No. 435)

AN ACT

RELATING TO REGULATION OF INSURANCE; AMENDING SECTION 41-227, IDAHO CODE, TO PROVIDE THAT, UNDER CONDITIONS SPECIFIED, AN EXAMINATION REPORT SHALL BE A PUBLIC RECORD.

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

SECTION 1. That Section 41-227, Idaho Code, be, and the same is hereby amended to read as follows:

41-227. EXAMINATION REPORT. (1) The director or his examiner shall make a full and true written report of every examination made by him under this chapter, and shall verify the report by his oath.

(2) The report shall comprise only facts appearing upon the books, papers, records or documents of the person being examined, or

ascertained from testimony of individuals under oath concerning the affairs of such person, together with such conclusions and recommendations as may reasonably be warranted from such facts.

(3) Prior to a hearing and prior to any modifications the report shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(4) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(5) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers, and enter an order:

(a) Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the director, the director may order the company to take any action the director considers necessary and appropriate to cure such violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection (2) of this section; or

(c) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(6) (a) All orders entered pursuant to subsection (5)(a) of this section shall be accompanied by findings and conclusions resulting from the director's consideration and review of the examination report, relevant examiner work papers and any written submissions or rebuttals. Any such order shall be considered a final order and may be appealed pursuant to sections 67-5270 through 67-5279, Idaho Code, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) Any hearing conducted under subsection (5)(c) of this section by the director or authorized representative, shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by, or as a result of, the director's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such

hearing, the director shall enter an order pursuant to the provisions of subsection (5)(a) of this section.

(c) The director shall not appoint a contract examiner or an employee of the department as an authorized representative to conduct the hearing.

Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the content of any investigation or activity of a criminal justice agency, except to the extent that the director relied upon information furnished to the director by such criminal justice agency in making his decision.

(7) The report when so verified and filed shall be admissible in evidence in any action or proceeding brought by the director against the person examined, or against its officers, employees or agents, and shall be presumptive evidence of the material facts stated therein. The director or his examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished or filed in the department.

(8) After an order is entered under the provisions of subsection (5)(a) of this section, the director may publish the report or the results of the examination as contained therein which report or results are a public record and shall be exempt from the provisions of section 9-340, Idaho Code.

(9) Nothing contained in this chapter shall prevent or be construed as prohibiting the director from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(10) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the director or any other person in the course of an examination made under the provisions of this chapter shall be made available to the person or company which was the subject of the examination in proceedings pursuant to chapter 52, title 67, Idaho Code, but shall otherwise be held by the director as a record not required to be made public pursuant to section 9-340, Idaho Code.

Approved March 6, 1996.

CHAPTER 96
(H.B. No. 449)

AN ACT

RELATING TO INSURANCE; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 54, TITLE 41, IDAHO CODE, TO ADOPT THE RISK-BASED

CAPITAL (RBC) FOR INSURERS ACT, TO PROVIDE DEFINITIONS, TO PROVIDE FOR THE FILING OF A REPORT OF AN INSURER'S RISK-BASED CAPITAL LEVELS, TO PROVIDE FOR A DETERMINATION OF A COMPANY ACTION LEVEL EVENT, TO PROVIDE FOR A DETERMINATION OF A REGULATORY ACTION LEVEL EVENT, TO PROVIDE FOR A DETERMINATION OF AN AUTHORIZED CONTROL LEVEL EVENT, TO PROVIDE FOR A DETERMINATION OF A MANDATORY CONTROL LEVEL EVENT, TO PROVIDE GROUNDS AND PROCEDURES FOR HEARINGS, TO PROVIDE FOR THE CONFIDENTIALITY OF RISK-BASED CAPITAL REPORTS AND PLANS AND PROHIBITION ON USE IN RATEMAKING PROCEEDINGS, TO PROVIDE THAT THE PROVISIONS OF CHAPTER 54, TITLE 41, IDAHO CODE, ARE SUPPLEMENTAL TO OTHER PROVISIONS OF THE INSURANCE CODE, TO PROVIDE FOR THE SUBMISSION OF RISK-BASED CAPITAL REPORTS BY FOREIGN INSURERS, TO PROVIDE IMMUNITY, TO PROVIDE FOR NOTICES TO AN INSURER OF REGULATORY ACTION AND TO PROVIDE SEVERABILITY.

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

SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 54, Title 41, Idaho Code, and to read as follows:

CHAPTER 54
RISK-BASED CAPITAL (RBC) FOR INSURERS ACT

41-5401. DEFINITIONS. As used in this chapter, these terms shall have the following meanings:

(1) "Adjusted RBC report" means an RBC report which has been adjusted by the director in accordance with section 41-5402(5), Idaho Code.

(2) "Corrective order" means an order issued by the director specifying corrective actions which the director has determined are required.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign insurer" means any insurance company which is licensed to do business in this state under section 41-322, Idaho Code, but is not domiciled in this state.

(5) "Life and/or health insurer" means any insurance company licensed under chapter 3, title 41, Idaho Code, to transact life, accident and/or health insurance, or a licensed property and casualty insurer writing only accident and health insurance, but shall not include fraternal benefit societies, health service organizations, dental service organizations, health maintenance organizations, dental plan organizations or mutual benefit associations.

(6) "NAIC" means the national association of insurance commissioners.

(7) "Negative trend" means, with respect to a life and/or health insurer, a negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC instructions.

(8) "Property and casualty insurer" means any insurance company licensed under chapter 3, title 41, Idaho Code, to transact property and casualty insurance, but shall not include monoline mortgage guar-

anty insurers, financial guaranty insurers, title insurers, farm and county mutuals, health service organizations, dental service organizations, health maintenance organizations or dental plan organizations.

(9) "RBC" means risk-based capital.

(10) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(11) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(c) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC;

(d) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

(12) "RBC plan" means a comprehensive financial plan containing the elements specified in section 41-5403(2), Idaho Code. If the director rejects the RBC plan, and it is revised by the insurer, with or without the director's recommendation, the plan shall be called the "revised RBC plan."

(13) "RBC report" means the report required in section 41-5402, Idaho Code.

(14) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under section 41-335, Idaho Code; and

(b) Such other items, if any, as the RBC instructions may provide.

41-5402. RBC REPORTS. (1) Every domestic insurer shall, on or prior to each March 1 (the "filing date"), prepare and submit to the director a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance director in any state in which the insurer is authorized to do business, if the insurance director has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account, and may adjust for the covariance between, the following factors determined in each case by applying the factors

in the manner set forth in the RBC instructions.

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account, and may adjust for the covariance between, determined in each case by applying the factors in the manner set forth in the RBC instructions.

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in this chapter and the formulas, schedules and instructions referenced in this chapter is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this chapter. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this chapter.

(5) If a domestic insurer files an RBC report which in the judgment of the director is inaccurate, then the director shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report."

41-5403. COMPANY ACTION LEVEL EVENT. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer which indicates that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and has a negative trend;

(b) The notification by the director to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 41-5407, Idaho Code; or

(c) If, pursuant to section 41-5407, Idaho Code, an insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the director to the insurer that the director has, after a hearing, rejected the

insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the director an RBC plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. (The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's business, including but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report pursuant to section 41-5407, Idaho Code, within forty-five (45) days after notification to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(4) Within sixty (60) days after the submission by an insurer of an RBC plan to the director, the director shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the director determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the director. Upon notification from the director, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the director, and shall submit the revised RBC plan to the director:

(a) Within forty-five (45) days after the notification from the director; or

(b) If the insurer challenges the notification from the director under section 41-5407, Idaho Code, within forty-five (45) days after a notification to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the director to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the director may, at the director's discretion, subject to the insurer's right to a hearing under section 41-5407, Idaho Code, specify in the notification that the notification constitutes a regulatory action

level event.

(6) Every domestic insurer that files an RBC plan or revised RBC plan with the director shall file a copy of the RBC plan or revised RBC plan with the insurance director in any state in which the insurer is authorized to do business if:

(a) Such state has an RBC provision substantially similar to section 41-5408(1), Idaho Code; and

(b) The insurance director of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

41-5404. REGULATORY ACTION LEVEL EVENT. (1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the director to an insurer of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 41-5407, Idaho Code;

(c) If, pursuant to section 41-5407, Idaho Code, the insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the director and has cured the failure within ten (10) days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the director within the time period set forth in section 41-5403(3), Idaho Code;

(f) Notification by the director to the insurer that:

(i) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the director, unsatisfactory; and

(ii) Such notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under section 41-5407, Idaho Code;

(g) If, pursuant to section 41-5407, Idaho Code, the insurer challenges a determination by the director under paragraph (f) of this subsection, the notification by the director to the insurer that the director has, after a hearing, rejected such challenge;

(h) Notification by the director to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only

if such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the director has so stated in the notification, provided the insurer has not challenged the determination under section 41-5407, Idaho Code; or

(i) If, pursuant to section 41-5407, Idaho Code, the insurer challenges a determination by the director under paragraph (h) of this subsection, the notification by the director to the insurer that the director has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the director shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform such examination or analysis as the director deems necessary of the assets, liabilities and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the director shall determine are required (a "corrective order").

(3) In determining corrective actions, the director may take into account such factors as are deemed relevant with respect to the insurer based upon the director's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted RBC report pursuant to section 41-5407, Idaho Code, and the challenge is not frivolous in the judgment of the director, within forty-five (45) days after the notification to the insurer that the director has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan pursuant to section 41-5407, Idaho Code, and the challenge is not frivolous in the judgment of the director, within forty-five (45) days after the notification to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(4) The director may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the director to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the director.

41-5405. AUTHORIZED CONTROL LEVEL EVENT. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the director to the insurer of an

adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 41-5407, Idaho Code;

(c) If, pursuant to section 41-5407, Idaho Code, the insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the director, to a corrective order, provided the insurer has not challenged the corrective order under section 41-5407, Idaho Code; or

(e) If the insurer has challenged a corrective order under section 41-5407, Idaho Code, and the director has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the director, to the corrective order subsequent to rejection or modification by the director.

(2) In the event of an authorized control level event with respect to an insurer, the director shall:

(a) Take such actions as are required under section 41-5404, Idaho Code, regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) If the director deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control pursuant to chapter 33, title 41, Idaho Code. In the event the director takes such actions, the authorized control level event shall be deemed sufficient grounds for the director to take action pursuant to chapter 33, title 41, Idaho Code, and the director shall have the rights, powers and duties with respect to the insurer as are set forth in chapter 33, title 41, Idaho Code. In the event the director takes actions under this paragraph pursuant to an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of section 41-3309, Idaho Code, pertaining to summary proceedings.

41-5406. MANDATORY CONTROL LEVEL EVENT. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report which indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the director to the insurer of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 41-5407, Idaho Code; or

(c) If, pursuant to section 41-5407, Idaho Code, the insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) With respect to a life insurer, the director shall take such actions as are necessary to place the insurer under regulatory control pursuant to chapter 33, title 41, Idaho Code. In that event, the mandatory control level event shall be deemed sufficient grounds for the director to take action pursuant to chapter 33, title 41, Idaho Code, and the director shall have the rights, powers and duties with respect to the insurer as are set forth in chapter 33, title 41, Idaho Code. If the director takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of section 41-3309, Idaho Code, pertaining to summary proceedings. Notwithstanding any of the foregoing, the director may forego action for up to ninety (90) days after the mandatory control level event if the director finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

(b) With respect to a property and casualty insurer, the director shall take such actions as are necessary to place the insurer under regulatory control pursuant to chapter 33, title 41, Idaho Code, or, in the case of an insurer which is writing no business and which is running off its existing business, may allow the insurer to continue its run off under the supervision of the director. In either event, the mandatory control level event shall be deemed sufficient grounds for the director to take action pursuant to chapter 33, title 41, Idaho Code, and the director shall have the rights, powers and duties with respect to the insurer as are set forth in chapter 33, title 41, Idaho Code. If the director takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of section 41-3309, Idaho Code, pertaining to summary proceedings. Notwithstanding any of the foregoing, the director may forego action for up to ninety (90) days after the mandatory control level event if the director finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

41-5407. HEARINGS. Upon any of the following the insurer shall have the right to a confidential departmental hearing, on a record, at which the insurer may challenge any determination or action by the director. The insurer shall notify the director of its request for a hearing within five (5) days after the notification by the director under subsection (1), (2), (3) or (4) of this section. Upon receipt of the insurer's request for a hearing, the director shall set a date for the hearing, which date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request.

(1) Notification to an insurer by the director of an adjusted RBC report; or

(2) Notification to an insurer by the director that:

(a) The insurer's RBC plan or revised RBC plan is unsatisfactory; and

(b) Such notification constitutes a regulatory action level event with respect to such insurer; or

(3) Notification to any insurer by the director that the insurer has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the insurer

to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(4) Notification to an insurer by the director of a corrective order with respect to the insurer.

41-5408. CONFIDENTIALITY -- PROHIBITION ON ANNOUNCEMENTS, PROHIBITION ON USE IN RATEMAKING. (1) All RBC reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the director pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer which are filed with the director constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the director. Notwithstanding the provisions of chapter 3, title 9, Idaho Code, this information shall not be made public or be subject to subpoena, other than by the director and then only for the purpose of enforcement actions taken by the director pursuant to this chapter or any other provision of the insurance laws of this state.

(2) It is the judgment of the legislature that the comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the insurers' RBC levels is published in any written publication and the insurer is able to demonstrate to the director with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) It is the further judgment of the legislature that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the director in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the director for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the director to calculate or derive any elements of an appropriate premium level or rate of return for any line of

insurance which an insurer or any affiliate is authorized to write.

41-5409. SUPPLEMENTAL PROVISIONS -- RULES -- EXEMPTION. (1) The provisions of this chapter are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the director under such laws, including, but not limited to, chapter 33, title 41, Idaho Code, and rules adopted by the department of insurance relating to the director's authority for companies deemed to be in hazardous financial condition.

(2) The director may adopt reasonable rules necessary for the implementation of this chapter in accordance with the provisions of chapter 52, title 67, Idaho Code.

(3) Upon written application, the director may exempt from compliance with this chapter, for a specified period or periods, any domestic property and casualty insurer which:

(a) Writes direct business only in this state; and

(b) Writes direct annual premiums of two million dollars ($2,000,000) or less; and

(c) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

41-5410. FOREIGN INSURERS. (1) Any foreign insurer shall, upon the written request of the director, submit to the director an RBC report as of the end of the calendar year just ended the later of:

(a) The date an RBC report would be required to be filed by a domestic insurer under this chapter; or

(b) Fifteen (15) days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the director, promptly submit to the director a copy of any RBC plan that is filed with the insurance director of any other state.

(2) In the event of a company action level event, regulatory action level event or authorized control level event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state, under the provisions of this chapter), if the insurance director of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under section 41-5403, Idaho Code), the director may require the foreign insurer to file an RBC plan with the director. In such event, the failure of the foreign insurer to file an RBC plan with the director shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the director may make application to the district court for Ada county, state of Idaho, as permitted under chapter 33, title 41, Idaho Code, with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the applica-

tion.

41-5411. IMMUNITY. There shall be no liability on the part of, and no cause of action shall arise against, the director or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under this chapter.

41-5412. NOTICES. All notices by the director to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice.

41-5413. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Approved March 6, 1996.

CHAPTER 97
(H.B. No. 436)

AN ACT

RELATING TO REGULATION OF INSURANCE; AMENDING SECTION 41-612, IDAHO CODE, TO PROVIDE THAT AN ANNUAL STATEMENT OF AN ACTUARIAL OPINION RELATING TO INSURER RESERVES SHALL BE SUBMITTED, TO PROVIDE CONTENTS OF THE OPINION, AND TO PROVIDE CONFIDENTIALITY FOR THE OPINIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-612, Idaho Code, be, and the same is hereby amended to read as follows:

41-612. STANDARD VALUATION LAW -- LIFE INSURANCE. (1) This section shall be known as the standard valuation law.

(2) Annual valuation. The director shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or others) used in the calculation of such reserves. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States. In calculating such reserves, the director may use group methods and approximate averages for fractions of a year or otherwise. He may accept in his discretion the insurer's calculation of such reserves. In lieu of the valuation of the reserves herein required of any foreign or alien

insurer, he may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided, and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the director when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. Where any such valuation is made by the director, he may use the actuary of the department or employ an actuary for the purpose, and the reasonable compensation and expenses of the actuary, at a rate approved by the director, upon demand by the director supported by an itemized statement of such compensation and expenses, shall be paid by the insurer. When a domestic insurer furnishes the director with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for the purpose by the director, the valuation shall be verified by the actuary of the department without costs to the insurer.

(3) Except as otherwise provided in subsections (4) and (4a) of this section, the minimum standard for the valuation of all such policies and contracts issued on and after January 1, 1914, and prior to the operative date of section 41-1927, Idaho Code, (standard nonforfeiture law) shall be the American experience table of mortality and interest at three and one-half per cent (3 1/2%) per annum. Not more than one year shall be used as a preliminary term. Extra charges may be made in particular cases of invalid lives and other extra hazards, policies may be valued in groups, and approximate averages may be used for fractions of a year. Policies other than ordinary and twenty (20) payment life may be valued according to the modified preliminary term, with twenty (20) payment life policies as a basis for such valuation. This subsection applies only as to policies and contracts issued prior to the operative date of section 41-1927, Idaho Code.

(4) Except as otherwise provided in subsections (4a) and (4b) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of section 41-1927, Idaho Code, (standard nonforfeiture law) shall be the commissioners reserve valuation methods defined in subsections (5), (6) and (10) of this section, three and one-half per cent (3 1/2%) interest for all other such policies and contracts, except that the rate shall be four and one-half per cent (4 1/2%) for individual annuity contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, four per cent (4%) interest for such policies issued prior to July 1, 1977, five and one-half per cent (5 1/2%) interest for single premium life insurance policies and four and one-half per cent (4 1/2%) interest for all other such policies issued on or after July 1, 1977, but prior to the operative date of section (9)(d) of the standard nonforfeiture law for life insurance as amended, seven per cent (7%) interest for such policies issued on and after the operative date of section (9)(d) of the standard nonforfeiture law for life insurance as amended, and the following tables:

(a) For all ordinary policies of life insurance issued on the

standard basis, excluding any disability and accidental death benefits in such policies, the commissioners 1941 standard ordinary mortality table for such policies issued prior to the operative date of subsection (9)(b) of section 41-1927, Idaho Code; the commissioners 1958 standard ordinary mortality table for such policies issued on or after the operative date of subsection (9)(b) of the standard nonforfeiture law for life insurance as amended and prior to the operative date of subsection (9)(d) of the standard nonforfeiture law for life insurance as amended; except, that for any category of such policies issued on female risks, all modified net premiums and present values, referred to in subsections (5) and (10) of this section, may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for such policies issued on or after the operative date of subsection (9)(d) of the standard nonforfeiture law for life insurance as amended,

(i) the commissioners 1980 standard ordinary mortality table, or

(ii) at the election of the company for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors, or

(iii) any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (9)(c) of section 41-1927, Idaho Code, and for such policies issued on or after such operative date the commissioners 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the insurer's option, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the director.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, any modification of such table approved by the director, or, at the insurer's option, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952

disability study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by regulation promulgated by the director for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after the operative date of section 41-1927, Idaho Code, (standard nonforfeiture law) and prior to January 1, 1966, either such tables or, at the insurer's option, the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for such policies; for policies issued on or after the operative date of section 41-1927, Idaho Code, (standard nonforfeiture law) and prior to January 1, 1966, either such table or, at the insurer's option, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the director as being sufficient with relation to the benefits provided by such policies.

(4a) Except as provided in subsection (4b), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection (4a), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation methods defined in subsections (5) and (6) of this section and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to July 1, 1977, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the director, and six per cent (6%) interest for single premium immediate annuity contracts, and four and one-half per cent (4 1/2%) interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after July 1, 1977, but prior to January 1, 1982, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the director, and seven and one-half per cent (7 1/2%) interest.

(c) For individual single premium immediate annuity contracts issued on or after January 1, 1982, excluding any disability and accidental death benefits in such contracts, the 1971 individual

annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the director, and eleven per cent (11%) interest.

(d) For individual annuity and pure endowment contracts issued on or after July 1, 1977, but prior to January 1, 1982, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the director, and five and one-half per cent (5 1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent (4 1/2%) interest for all other such individual annuity and pure endowment contracts.

(e) For individual annuity and pure endowment contracts issued on or after January 1, 1982, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the director, and eight per cent (8%) interest.

(f) For all annuities and pure endowments purchased prior to July 1, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of this table approved by the director, and six per cent (6%) interest.

(g) For all annuities and pure endowments purchased on or after July 1, 1977, but prior to January 1, 1982, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of this table approved by the director, and seven and one-half per cent (7 1/2%) interest.

(h) For all annuities and pure endowments purchased on or after January 1, 1982, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any group annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the director, and eleven per cent (11%) interest.

After July 1, 1973, any insurer may file with the director a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for such insurer, provided that an

insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January 1, 1979.

(4b) For any calendar year on or after the effective date of subsection (9)(d) of the standard nonforfeiture law for life insurance in the case of life insurance policies issued on or after such effective date, and for any calendar year on or after January 1, 1982, in the case of:

(a) Individual annuity and pure endowment contracts issued on or after January 1, 1982;

(b) Annuities and pure endowments purchased on or after January 1, 1982, under group annuity and pure endowment contracts; and

(c) The net increase, if any, in any particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts, the company may elect, for the purpose of determining the minimum standard for valuation, for any category of policy or contract, the calendar year statutory valuation interest rate as defined in this subsection in lieu of the interest rate specified in subsection (4) or (4a).

The provisions of this subsection shall be applicable to:

A. The interest rates used in determining the minimum standard for the valuation of:

a. All life insurance policies issued in a particular calendar year, on or after the operative date of subsection (9)(d) of the standard nonforfeiture law for life insurance~~.~~;

b. All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982~~.~~;

c. All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

d. The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts

shall be the calendar year statutory valuation interest rates as defined in this subsection.

B. Calendar year statutory valuation interest rates:

a. The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one per cent (1/4 of 1%).

1. For ~~l~~life insurance,

$$I = .03 + W (R_1 - .03) + \frac{W}{2}(R_2 - .09);$$

2. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and .09;

R_2 is the greater of R and .09;

R is the reference interest rate defined in this

subsection and W is the weighting factor defined in this subsection,

3. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in 2. above, the formula for life insurance stated in 1. above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in 2. above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less,

4. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in 2. above shall apply,

5. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in 2. above shall apply.

b. However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent (1/2 of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when subsection (9)(d) of the standard nonforfeiture law for life insurance becomes operative.

C. Weighting factors

a. The weighting factors referred to in the formulas stated above are given in the following tables:

1. Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy;

2. Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

3. Weighting factors for other annuities and for guaranteed interest contracts, except as stated in 2. above, shall be as specified in tables (i), (ii) and (iii) below, according to the rules and definitions in (iv), (v) and (vi) below:

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type A	B	C
5 or less	.80	.60	.50
More than 5, but not more than 10	.75	.60	.50
More than 10, but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

	Plan Type A	B	C
(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by:	.15	.25	.05
(iii) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by:	.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year stat-

utory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only:

(1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or

(2) without such adjustment but in installments over five (5) years or more; or

(3) as an immediate life annuity; or

(4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only:

(1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or

(2) without such adjustment but in installments over five (5) years or more; or

(3) no withdrawal permitted.

At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five (5) years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years, either:

(1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or

(2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) An insurer may elect to value guaranteed interest contracts with ~~cast~~ cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this subsection, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is

the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

D. Reference interest rate

a. The reference interest rate referred to in paragraph B. of this subsection shall be defined as follows:

1. For all life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar ~~next~~ year next preceding the year of issue, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's Investors Service, Inc.

b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's Investors Service, Inc.

c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year of issue basis, except as stated in b. above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's Investors Service, Inc.

d. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in b. above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's Investors Service, Inc.

e. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's Investors Service, Inc.

f. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options,

valued on a change in fund basis, except as stated in b. above, the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's Investors Service, Inc.

~~C~~E. Alternative method for determining reference interest rates

a. In the event that Moody's corporate bond yield average -- monthly average corporates is no longer published by Moody's Investors Service, Inc., or in the event that the national association of insurance commissioners determines that Moody's corporate bond yield average -- monthly average corporates, as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, ~~than~~ then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the director, may be substituted.

(5) Commissioners reserve valuation method.

(a) Except as otherwise provided in subsections (6) and (10) of this section reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of ~~the~~ issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (i) over (ii) as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan for insurance of the same amount at an age one (1) year higher than the age ~~of~~ at issue of such policy.

(ii) A net one (1) year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve

valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (10), be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with (a) the value defined in subparagraph (i) of that paragraph being reduced by fifteen per cent (15%) of the amount of such excess first year premium, (b) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (c) the policy being assumed to mature on such date as an endowment, and (d) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest basis stated in subsection (4) and (4b) shall be used.

(b) Reserves according to the commissioners reserve valuation method for:

(i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,

(ii) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended,

(iii) Disability and accidental death benefits in all policies and contracts, and

(iv) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts,

shall be calculated by a method consistent with the principles of subsection (5)(a) of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(6) Individual annuity and pure endowment reserves.

(a) This subsection (6) shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

(b) Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be equal to the accumulation up to the date of valuation at the accumulation interest rate specified in the con-

tract of the actual percentages of the actual net considerations credited to the contract prior to the date of valuation for benefits, other than disability and accidental death benefits, decreased by the amount appropriate according to the terms of the contract to reflect any prior withdrawals from or partial surrenders of the contract and increased by any existing additional amounts credited by the insurer to the contract. Additional amounts credited by the insurer to the contract shall include any dividends declared on the contract.

(7) Minimum aggregate reserves. In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of section 41-1927, Idaho Code, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (5), (6), (10) and (11) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(8) Optional reserve basis.

(a) Reserves for all policies and contracts issued prior to the operative date of section 41-1927, Idaho Code, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(b) For any category of policies, contracts or benefits specified in subsections (4), (4a) and (4b) of this section, issued on or after the operative date of section 41-1927, Idaho Code, (the standard nonforfeiture law), reserves may be calculated, at the option of the insurer, according to any standard or standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(9) Lower valuations. An insurer which at any time had adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the director, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(10) Minimum reserve. If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net pre-

mium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections (4) and (4b).

Provided that for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection (10) shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (5), ignoring the second paragraph of subsection (5). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (5), including the second paragraph of that subsection, and the minimum reserve calculated in accordance with this subsection (10).

(11) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on the then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (5), (6) and (10), the reserves which are held under any such plan must:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan, and

(b) Be computed by a method which is consistent with the principles of this standard valuation law,

as determined by ~~regulations~~ rules promulgated by the director.

(12) Actuarial opinion of reserves.

(a) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the director by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The director by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(b) Actuarial analysis of reserves and assets supporting such reserves.

(i) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by paragraph (a) of this subsection, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the director by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts

including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(ii) The director may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required in this section.

(c) Requirements for opinion in paragraph (b) of this subsection. Each opinion required in paragraph (b) of this subsection shall be governed by the following provisions:

(i) A memorandum, in form and substance acceptable to the director as specified by rule, shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the director within a period specified by rule or the director determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and prepare such supporting memorandum as is required by the director.

(d) Requirements for all opinions. Every opinion shall be governed by the following provisions:

(i) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(ii) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the director as specified by rule.

(iii) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the director may by rule prescribe.

(iv) In the case of an opinion required to be submitted by a foreign or alien company, the director may accept the opinion filed by that company with the insurance supervisory official of another state if the director determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(v) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations.

(vi) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person (other than the insurance company and the director) for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(vii) Disciplinary action by the director against the company or the qualified actuary shall be defined by rule by the director.

(viii) Any memorandum in support of the opinion, and any other material provided by the company to the director in

connection therewith, shall be kept confidential by the director and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required in this section or by rule promulgated hereunder; provided however, that the memorandum or other material may otherwise be released by the director (A) with the written consent of the company or (B) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall no longer be confidential.

Approved March 6, 1996.

CHAPTER 98
(H.B. No. 783)

AN ACT

RELATING TO THE DEPARTMENT OF REVENUE AND TAXATION AND PROPERTY TAXES; REPEALING CHAPTERS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22 AND 39, TITLE 63, IDAHO CODE; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 1, TITLE 63, IDAHO CODE, TO ESTABLISH THE DEPARTMENT OF REVENUE AND TAXATION; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 2, TITLE 63, IDAHO CODE, TO PROVIDE FOR DEFINITIONS AND GENERAL PROVISIONS; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 3, TITLE 63, IDAHO CODE, TO PROVIDE FOR ASSESSMENT OF REAL AND PERSONAL PROPERTY; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 63, IDAHO CODE, TO PROVIDE FOR APPRAISAL, ASSESSMENT AND TAXATION OF OPERATING PROPERTY; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 5, TITLE 63, IDAHO CODE, TO PROVIDE FOR EQUALIZATION OF ASSESSMENTS; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 6, TITLE 63, IDAHO CODE, TO PROVIDE FOR EXEMPTIONS FROM TAXATION; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 7, TITLE 63, IDAHO CODE, TO PROVIDE FOR PAYMENTS FOR PROPERTY TAX RELIEF; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 8, TITLE 63, IDAHO CODE, TO PROVIDE FOR LEVY AND APPORTIONMENT OF PROPERTY TAXES; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 9, TITLE 63, IDAHO CODE, TO PROVIDE FOR PAYMENT AND COLLECTION OF PROPERTY TAXES; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 10, TITLE 63, IDAHO CODE, TO PROVIDE FOR THE COLLECTION OF DELINQUENCIES ON REAL, PERSONAL AND OPERATING PROPERTY; AMENDING TITLE 63, IDAHO CODE, BY THE

ADDITION OF A NEW CHAPTER 11, TITLE 63, IDAHO CODE, TO PROVIDE FOR SEIZURE AND SALE OF PERSONAL PROPERTY FOR TAXES; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 12, TITLE 63, IDAHO CODE, TO PROVIDE FOR THE SETTLEMENT OF REVENUE OFFICERS; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 13, TITLE 63, IDAHO CODE, TO PROVIDE FOR THE MISCELLANEOUS PROVISIONS OF PROPERTY TAX LAW; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 14, TITLE 63, IDAHO CODE, TO PROVIDE FOR ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 8, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-806, IDAHO CODE, TO PROVIDE FOR THE ACQUISITION OF PROPERTY FOR PARK OR RECREATIONAL PURPOSES; AMENDING SECTION 63-1706, IDAHO CODE, TO PROVIDE TECHNICAL CORRECTIONS, TO PROVIDE FOR LATE CHARGES AND TO ESTABLISH THE DATES THAT SUCH PROPERTY TAXES AND CHARGES MAY BE RECEIPTED; AMENDING CHAPTER 23, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2321, IDAHO CODE, TO PROVIDE A PROCEDURE FOR RENAMING A TAXING DISTRICT; AMENDING CHAPTER 26, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2602A, IDAHO CODE, TO PROVIDE FOR A MILITARY EXEMPTION FOR LICENSE FEES; TO PROVIDE THAT THE RULES OF THE IDAHO STATE TAX COMMISSION SHALL REMAIN IN EFFECT; AND TO PROVIDE AN EFFECTIVE DATE.

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

SECTION 1. That Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22 and 39, Title 63, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 1, Title 63, Idaho Code, and to read as follows:

CHAPTER 1
DEPARTMENT OF REVENUE AND TAXATION

63-101. DEPARTMENT OF REVENUE AND TAXATION -- STATE TAX COMMISSION -- BOARD OF TAX APPEALS. (1) There is hereby created the department of revenue and taxation, which shall consist of a state tax commission and a board of tax appeals. The department of revenue and taxation shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of state government.

(2) The state tax commission shall be the constitutional tax commission prescribed in section 12, article VII, of the constitution of the state of Idaho.

(3) The board of tax appeals shall be as provided in chapter 38, title 63, Idaho Code.

(4) The state tax commission may organize itself, or may organize such administrative units under the direction and control of the state tax commission, as deemed necessary for proper and efficient operation in order to exercise the constitutional and statutory authority and functions assigned to the state tax commission by the provisions of this title, or by other laws.

(5) The state tax commission shall consist of four (4) members, not more than two (2) of whom shall belong to the same political party. The members of the state tax commission shall be appointed by the governor, by and with the consent of the senate; and shall be subject to removal by impeachment as provided in chapter 40, title 19, Idaho Code.

(6) Appointments, except appointments to fill vacancies, shall be for a term of six (6) years. Appointments to fill a vacancy shall be made by the governor, and the name of the appointee shall be submitted to the senate for confirmation at the next regular or extraordinary session, and upon confirmation of the appointment, the appointee shall hold office for the unexpired term.

(7) Each member of the state tax commission shall take, subscribe and file with the secretary of state an oath of office in the form, time and manner prescribed in chapter 4, title 59, Idaho Code. Each state tax commissioner shall be bonded to the state of Idaho in the form, time and manner prescribed in chapter 8, title 59, Idaho Code.

(8) The state tax commission shall have an office in the city of Boise and may establish temporary offices at any place within the state whenever necessary for the discharge of the state tax commission's duties.

(9) The state tax commission shall have an official seal, of which an impression and description shall be filed with the secretary of state. Judicial notice shall be taken of the seal of the state tax commission. Copies of papers, records, proceedings and documents in the possession of the state tax commission may be authenticated by affixation of the seal of the commission and the attestation of the chairman of the commission, and when so sealed and attested shall be received in evidence in all courts with the same effect as the originals.

63-102. ORGANIZATION -- CHAIRMAN -- COMPENSATION -- QUORUM -- HEARINGS. (1) The state tax commission shall meet within thirty (30) days after the appointment and confirmation of its members, at which time it shall elect one (1) of its members chairman. Each member of the state tax commission shall devote full time to the performance of duties and shall receive an annual salary of fifty-five thousand dollars ($55,000) notwithstanding the provisions of section 59-510, Idaho Code.

(2) A majority of the state tax commission shall constitute a quorum for the transaction of business. The state tax commission may delegate to any member of the commission or to its employees, the power to make investigations and hold hearings at any place it may deem proper, and to report findings to it; and may delegate to its employees the performance of ministerial functions.

(3) The state tax commission shall delegate to each member of the commission responsibility for administration and control of one (1) or more taxes and responsibility for that tax. The state tax commission, as a body, shall perform the duties imposed upon it by law and shall adopt all rules, in each case acting only on a majority decision of the commission.

In any case in which the state tax commission sits as an appellate body upon an appeal from a tax decision from one (1) of the various

administrative units subject to its supervision, the state tax commissioner charged with responsibility for administration of that unit shall not vote upon the appeal but instead shall, during that hearing, advise the remaining members of the commission on the technical aspects of the problems before them.

(4) The chairman shall be the chief executive officer and administrative head of the state tax commission. The chairman shall be responsible for, or may assign responsibility for, all personnel and budgetary and/or fiscal matters of the state tax commission. The chairman shall represent the state tax commission in communications to the governor and the legislature. The chairman shall sign all orders necessary to carry out the will of the state tax commission. The chairman shall preside over all meetings of the state tax commission, unless the commission has provided otherwise. The chairman shall be responsible for maintaining the official minutes or record of meetings of the state tax commission.

63-103. EMPLOYEES -- COMPENSATION -- EXPENSES. (1) The state tax commission may employ an officer who shall serve as secretary of the commission and shall also employ such other persons as may be necessary for the performance of its duties. Certain of its employees may be designated as deputies who shall perform such duties as prescribed by the state tax commission. The state tax commission may delegate to any of its employees the duty of assisting in the collection, audit, inspection and enforcement of any tax or license and may authorize any of its employees to act in its place and stead. The state tax commission may delegate any other function, responsibility or duty imposed upon the commission to one or more commissioners or deputy commissioners. The state tax commission may employ counsel, or may retain counsel.

(2) The compensation of all state tax commission employees shall be paid upon the same basis and in the same manner as the compensation of other state employees is paid.

(3) The traveling expenses of the members of the state tax commission and its employees when traveling in performance of official duty, and other necessary expenses incurred in performance of its duties, shall be paid upon the same basis and in the same manner as the expenses of other state employees are paid.

63-104. HOLDING OTHER OFFICES. The members and employees of the state tax commission shall hold no other office under the laws of this state, the United States, or any other state, except as provided in this section, so long as they shall remain members or employees of the commission. Any member or employee of the tax commission may serve in the national guard or armed forces of the United States. Further, any member or employee of the tax commission may be appointed or elected to other office, when that office is without compensation beyond reimbursement for actual expenses, so long as service in the office does not conflict with the duties of the tax commission.

63-105. POWERS AND DUTIES -- GENERAL. In addition to all other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the state tax commission.

(2) To make, adopt and publish such rules as it may deem necessary and desirable to carry out the powers and duties imposed upon it by law, provided however, that all rules adopted by the state tax commission prior to the effective date of this 1996 amendatory act shall remain in full force and effect until such time as they may be rescinded or revised by the commission.

(3) To maintain a tax research section to observe and investigate the effectiveness and adequacy of the revenue laws of this state and to assist the executive and legislative departments in estimation of revenue, analysis of tax measures and determination of the administrative feasibility of proposed tax legislation.

(4) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section 63-219, Idaho Code.

(5) To ensure that statutory penalties are enforced, and proper complaint is made against persons derelict in duty under any law relating to assessment or equalization of taxes.

(6) To sue and be sued in the name of the state tax commission.

(7) To summon witnesses to appear before it or its agents to testify and/or produce for examination such books, papers, records or other data relating to any matter within its jurisdiction. However, no person shall be required to testify outside the county wherein he resides or the principal place of his business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witnesses issued from the district court and shall be served without fee or mileage charge by the sheriff of the county, and return of service shall be made by the sheriff to the commission. Persons appearing before the commission or its agents in obedience to such a summons, shall, in the discretion of the commission, receive the same compensation as witnesses in the district court, to be paid upon claims presented against the state from any appropriation made for the administration of the provisions of this title, in the same manner as other claims against the state are presented and paid.

(8) To administer oaths and take affirmations of witnesses appearing before it. The power to administer oaths and take affirmations is vested in each member of the state tax commission, and its duly constituted agents. In case any witness shall fail or refuse to appear and testify before the state tax commission or its agents upon being summoned to appear as herein provided, the clerk of the district court of the county shall, upon demand of the state tax commission, any member thereof, or agent, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed; and violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court.

(9) To report to the governor from time to time, and to furnish to the governor such assistance and information as may be required.

(10) To recommend to the governor in a report at least sixty (60) days before and to the legislature ten (10) days prior to the meeting of any regular session of the legislature such amendments, changes and

modifications of the various tax laws necessary to remedy injustice and irregularities in taxation and to facilitate assessment and collection of taxes in the most economical and efficient manner.

63-105A. POWERS AND DUTIES -- PROPERTY TAX. The state tax commission shall be the state board of equalization. In addition to other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To supervise and coordinate the work of the several county boards of equalization.

(2) To secure, tabulate and keep records of valuations of all classes of property throughout the state, and for that purpose, to have access to all records and files of state offices and departments and county and municipal offices, and to require all public officers and employees whose duties make it possible to ascertain valuations, including valuations of public utilities for rate-making purposes, to file reports with the state tax commission, giving such information as to valuation and the source thereof. The nature and kind of the tabulations, records of valuations and requirements from public officers as stated herein, shall be in such form and cover such valuations as the state tax commission may prescribe.

(3) To coordinate and direct a system of property taxation throughout the state.

(4) To require all assessments of property in this state to be made according to law; and for that purpose to correct, when it finds the same to be erroneous, any assessments made in any county, and require correction of the county assessment records accordingly.

(5) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section 63-219, Idaho Code.

(6) To instruct, guide, direct and assist the county assessors and county boards of equalization as to the methods best calculated to secure uniformity in the assessment and equalization of property taxes, to the end that all property shall be assessed and taxed as required by law.

(7) To reconvene, whenever the state tax commission may deem necessary, any county board of equalization, notwithstanding the limitations of chapter 5, title 63, Idaho Code, for equalization purposes and for correction of errors. The county board of equalization, when so reconvened shall have no power to transact any business except that for which it is specially reconvened, or such as may be brought before it by the state tax commission.

(8) To require prosecuting attorneys to institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals and punishments for violations of law in connection with the assessment and taxation of property. It shall be the duty of such officers to comply promptly with the requirements of the state tax commission in that relation.

(9) To require individuals, partnerships, companies, associations and corporations to furnish such information as the state tax commission may require concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needed to

enable the state tax commission to ascertain the value and the relative tax burden borne by all kinds of property in the state, and to require from all state and local officers such information as may be necessary to the proper discharge of the duties of the state tax commission.

(10) To visit, as a state tax commission or by individual members or agents thereof, whenever the state tax commission shall deem it necessary, each county of the state, for the investigation and direction of the work and methods of assessment and equalization, and to ascertain whether or not the provisions of law requiring the assessment of all property, not exempt from taxation, and just equalization of the same have been or are being properly administered and enforced.

(11) To carefully examine all cases where evasion or violation of the laws of assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

(12) To correct its own errors in property assessment at any time before the first Monday in November, and report such correction to the county auditor and county tax collector, who shall thereupon enter the correction upon the operating property roll.

(13) To apportion annually to the state and the respective counties any moneys received by the state from the United States or any agency thereof, as payments in lieu of property taxes; provided, that said moneys shall be apportioned in the same amounts, and to the same governmental divisions as the property taxes, in lieu of which payments are made, would be apportioned, if they were levied. The state treasurer and the state controller shall be bound, in making distribution of moneys so received, by the apportionment ordered by the state tax commission.

(14) To make administrative construction of property tax law whenever necessary or requested by any officer acting under such laws and until judicially overruled, such administrative construction shall be binding upon the inquiring officer and all others acting under such laws.

(15) To require the attendance of any assessor in the state at such time and place as may be designated by the commission, and the actual and necessary expenses of any assessor in attending any such meeting shall be a legal claim against his county.

(16) To analyze the work of county assessors at any time and to have and possess all rights and powers of such assessors for the examination of persons and property, and for the discovery of property subject to taxation; and if it shall ascertain that any taxable property is omitted from the property rolls or is not assessed or valued according to law, it shall bring the same to the attention of the assessor of the proper county in writing, and if such assessor shall neglect or refuse to comply with the request of the state tax commission to place such property on the property rolls, or correct such incorrect assessment or valuation, the tax commission shall have the power to prepare a supplemental roll, which supplemental roll shall include all property required by the tax commission to be placed on the property roll and all corrections to be made. Such supplement shall be filed with the assessor's property roll, and shall thereafter constitute an integral part thereof to the exclusion of all portions

of the original property rolls inconsistent therewith, and shall be submitted therewith to the county board of equalization.

(17) To provide a program of education and an annual appraisal school for its employees and for the assessors of the various counties of this state. Additionally, the state tax commission shall provide for the establishment of a property tax appraiser certification program. Such program shall include, as a minimum, a written examination prepared, administered and graded under the supervision and control of an examination committee; such committee is to be composed as the state tax commission may provide by rule. The state tax commission's rules shall include, but need not be limited to, the following:

(a) The composition of the examination committee, provided however, that the committee shall include a representative of the counties, an agent of the state tax commission and a representative of a professional appraisal association within this state. The representative of the counties together with the representatives of such professional appraisal association shall constitute a majority of the committee.

(b) The frequency with which the examination shall be given.

(c) A reasonable review procedure by which examinees having complaints may seek review of the examination committee.

(d) The establishment of a reasonable period of time within which a county appraiser must meet the certification requirements as a condition to continued employment by the county as a certified property tax appraiser.

(18) To report at least quarterly to the revenue and taxation committee of the house of representatives and to the joint senate finance-house appropriations committee on its program to assist the counties with the property tax assessments.

(19) To transmit to the governor and to the legislature, an annual report, with the state tax commission's recommendations as to such legislation as will correct or eliminate defects in the operations of the property tax laws and will equalize taxation within the state. Said annual report shall include a comprehensive study of the property tax laws and detailed statistical information concerning the operation of the property tax laws of this state. Said report shall be submitted prior to the meeting of any regular session of the legislature.

(20) To maintain a forest land and forest product tax section to perform the functions and duties of the state tax commission under the provisions of chapter 17, title 63, Idaho Code.

63-106. FEDERAL AID. The state tax commission is authorized to accept, receipt, disburse and expend federal moneys, made available to accomplish in whole or in part any of the purposes of the laws enforced by the state tax commission. All moneys accepted under the provisions of this section shall be accepted and expended by the state tax commission upon such terms and conditions as prescribed by the United States. All moneys received by the state tax commission pursuant to this section shall be deposited in the state treasury and, unless otherwise prescribed by the authority in which said moneys were received, shall be kept in separate funds designated according to the purpose for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropri-

ated for the purpose for which the same were made available, and the state tax commission is empowered to disburse or expend said moneys in accordance with the terms and conditions upon which they were made available.

63-107. PROCESS AND PROCEDURE BEFORE STATE TAX COMMISSION. Process and procedure before the state tax commission shall be as summary and simple as reasonably may be, and, as far as possible, in accordance with the rules of equity. Process and procedures before the state tax commission as the state board of equalization under title 63, Idaho Code, and before the state tax commission for redetermination of taxes under section 63-3045 or 63-3631, Idaho Code, are not contested cases within the meaning of chapter 52, title 67, Idaho Code.

63-108. MEETING OF STATE TAX COMMISSION. (1) The state tax commission shall meet on the second Monday in August in each year, and, if all the abstracts of assessments in the several counties in the state have then been received, such abstracts shall be laid before the commission, which shall proceed to equalize the assessments throughout the state.

(2) In case all the abstracts of assessments in the several counties of the state have not been received by the state tax commission on or before the second Monday of August, then the commission shall adjourn from day to day until all of the abstracts have been received. The state tax commission may issue subpoenas for any county auditor who has failed to transmit his abstract of assessments, or whose abstract of assessments has not been received, requiring such county auditor to forthwith appear before the commission and produce said abstract. The sheriff of the county where the officer to be served resides is hereby designated as the officer by whom such subpoena shall be served and all actual and necessary expenses incurred by the sheriff in making such service shall be a legal claim against his county, and the officer served shall be liable on his official bond for said expenses in addition to any other liability imposed upon him for failure to transmit his abstract of assessments within the time prescribed in this chapter.

63-109. EOUALIZATION BY CATEGORIES -- IDENTIFICATION AND REASSESSMENT. The state tax commission shall publish rules establishing and defining categories in which various properties will be placed for assessment purposes. The state tax commission shall equalize the assessments of property throughout the state, by categories, as shown by the abstracts transmitted by the several county auditors, county by county. In such equalization, the state tax commission shall have power to increase or decrease the total value of any category of property in any county as shown by the abstract from that county when, in the opinion of the commission, the value of that category appearing in such abstract is not just and equal as compared with the value of other categories of property in that county, or the value of similar categories of property in other counties, because of its being greater than or less than the market value. Upon receiving information from any source that any property in any county of the state has been omit-

ted from the property roll, or has been improperly assessed, the state tax commission shall have the power to compel the assessor of such county to assess such property and place it upon the property roll forthwith, and to compel the reassessment of all property improperly assessed. The state tax commission is also empowered to identify or order and compel a proper identification of property by categories for assessment purposes in any county, and to create new categories for any taxable property, and to order and compel reassessment by the county assessor of any category or categories of property within the county.

63-110. PROPERTY AND SPECIAL TAXES. The state tax commission must complete the equalization of assessments throughout the state on the fourth Monday of August in the year in which such assessments are made, and, if there is to be a state property tax, shall on that day determine the amount of state property tax which each county must collect and remit to the state, by apportioning the total state property tax among the several counties in the state in the exact proportion that the total equalized valuation of each county, as shown by the property roll for the current year, and the subsequent and missed property rolls for the preceding year, bears to the total equalized valuation of the state from such rolls of all the counties in the state. The state tax commission shall also determine the amount of special state taxes, if any, which each county must collect and remit to the state, and the total amount of such state property and special state taxes found to be due from each county shall be certified to the county auditor of such county by the chairman of the state tax commission, and the county auditor shall, upon receipt of such certificate, file the same in his office; provided, that the total amount of all special state taxes levied for the current year upon property entered upon the subsequent and missed property rolls of each county for such year shall be certified to the county auditor of such county by the chairman of the state tax commission upon receipt of the county auditor's abstract of the subsequent and missed property rolls.

63-111. CERTIFICATE BY CHAIRMAN -- CHANGES IN ASSESSMENT. (1) On or before the first Monday of September in each year, the chairman of the state tax commission must transmit by certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost-efficient, to the county auditor of each county in the state, a certified statement showing all the changes in the assessment of any class or all classes of property, or in the aggregate value of all property in said county, and the total increase or decrease as a result of all changes made by the state tax commission in the assessment of property in said county, and the county auditor shall, upon receipt of such certified statement, file the same in his office.

(2) In transmitting the certified statement, as prescribed in subsection (1) of this section, the chairman shall also transmit therewith the certificate showing the total amount of state property and special state taxes, if any, found to be due from the county, and shall also transmit therewith a certified statement showing the assessment of any railroad, telegraph, telephone or electric current

transmission or distribution line and all other operating property under the jurisdiction of the state tax commission situated wholly or partly within the county, specifying the number of miles, the equalized value per mile, and the total equalized value of each line in the county, and in any taxing district into or through which such line extends, and the name of such line, if any, and the name and post office address of the taxpayer or owner of such line, and the county auditor shall, upon receipt of such certified statement, file the same in his office.

63-112. PAYMENTS FOR ASSISTANCE WITH PROPERTY TAX ASSESSMENT. The state tax commission is hereby authorized to charge counties for assistance provided for property tax assessment if requested in writing by the county assessor. Any payments received by the state tax commission for such assistance shall be deposited in the property tax assistance account.

SECTION 3. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 2, Title 63, Idaho Code, and to read as follows:

CHAPTER 2
DEFINITIONS -- GENERAL PROVISIONS

63-201. DEFINITIONS. As used for property tax purposes in title 63, chapters 1 through 23, Idaho Code, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Appraisal" means an estimate of property value for property tax purposes.

(a) For the purpose of estimated property value to place the value on any assessment roll, the value estimation must be made by the assessor or a certified property tax appraiser.

(b) For the purpose of estimating property value to present for an appeal filed pursuant to sections 63-501A, 63-407 and 63-409, Idaho Code, the value estimation may be made by the assessor, a certified property tax appraiser, a licensed appraiser, or a certified appraiser or any party as specified by law.

(2) "Bargeline" means those water transportation tugs, boats, barges, lighters and other equipment and property used in conjunction with waterways for bulk transportation of freight or ship assist.

(3) "Collection costs" are amounts authorized by law to be added after the date of delinquency and collected in the same manner as property tax.

(4) "Delinquency" means any property tax, special assessment, fee, collection cost, or charge collected in the same manner as property tax, that has not been paid in the manner and within the time limits provided by law.

(5) "Improvements" means all buildings, structures, fixtures and fences erected upon or affixed to the land, and all fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock.

(6) "Late charge" means a charge of two percent (2%) of the

delinquency.

(7) "Lawful money of the United States" means currency and coin of the United States at par value and checks and drafts which are payable in dollars of the United States at par value, payable upon demand or presentment.

(8) "Manufactured home" means a structure defined as a manufactured home in section 39-4105, Idaho Code.

(9) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

(10) "Operating property" means all franchises; rights-of-way; roadbed; tracks; pipelines; bargelines; equipment and docks; terminals; rolling stock; equipment; power stations; power sites; lands; reservoirs, generating plants, transmission lines, distribution lines and substations; and all immovable or movable property operated in connection with any public utility, railroad or private railcar fleet, wholly or partly within this state, and necessary to the maintenance and operation of such road or line, or in conducting its business, and shall include all title and interest in such property, as owner, lessee or otherwise.

(11) "Party in interest" means a person who holds a properly recorded mortgage, deed of trust or security interest.

(12) "Person" means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entities as recognized by the state of Idaho.

(13) "Personal property" includes all goods, chattels, stocks and bonds, equities in state lands, easements, reservations, manufactured homes not declared as real property pursuant to section 63-304, Idaho Code, leasehold real properties and all other property which the law defines, or the courts may interpret, declare and hold to be personal property under the letter, spirit, intent and meaning of the law, for the purposes of property taxation.

(14) "Private railcar fleet" means railroad cars or locomotives owned by, leased to, occupied by or franchised to any person other than a railroad company operating a line of railroad in Idaho or any company classified as a railroad by the interstate commerce commission and entitled to possess such railroad cars and locomotives except those possessed solely for the purpose of repair, rehabilitation or remanufacturing of such locomotives or railroad cars.

(15) "Public utility" means electrical companies, telephone companies, pipeline companies, natural gas distribution companies, cogenerators or other power producers included within federal law, telecommunications companies providing intercounty or interstate service or charging their users a separately stated fee for the use of its services, bargelines, and water companies which are under the jurisdiction of the Idaho public utilities commission.

This term does not include mobile telephone service or companies, nor does it include pager service or companies, except when such services are an integral part of services provided by a certificated utility company nor does the term "public utility" include companies

or persons engaged in the business of providing solely on a resale basis, any telephone or telecommunication service which is purchased from a telephone corporation or company.

(16) "Railroad" means every kind of railway, whether its line of rails or tracks be at, above or below the surface of the earth, and without regard to the kind of power used in moving its rolling stock, and shall be considered to include every kind of street railway, suburban railway or interurban railway excepting facilities established solely for maintenance and rebuilding of railroad cars or locomotives.

(17) "Real property" means land, and all standing timber thereon, including standing timber owned separately from the ownership of the land upon which the same may stand, except as modified in chapter 17, title 63, Idaho Code, and all buildings, structures and improvements, or other fixtures of whatsoever kind on land, including water ditches constructed for mining, manufacturing or irrigation purposes, water and gas mains, wagon and turnpike toll roads, and toll bridges, and all rights and privileges thereto belonging, or any way appertaining, all quarries and fossils in and under the land, and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, for the purposes of property taxation. Manufactured homes constitute real property when located on taxable land, and after a statement of intent to declare as real property has been recorded, provided said statement has not been revoked. Timber, forest, forest land, and forest products shall be defined as provided in chapter 17, title 63, Idaho Code.

(18) "Record owner" means the person or persons in whose name or names the property stands upon the records of the county recorder's office. Where the record owners are husband and wife at the time of notice of pending issue of tax deed, notice to one (1) shall be deemed and imputed as notice to the other spouse.

(19) "Special assessment" means a charge imposed upon property for a specific purpose, collected and enforced in the same manner as property taxes.

(20) "System value" means the market value for assessment purposes of the operating property when considered as a unit.

(21) "Tax code area" means a geographical area made up of one (1) or more taxing districts with one (1) total levy within the geographic area, except as otherwise provided by law.

(22) "Taxing district" means any entity or unit with the statutory authority to levy a property tax.

(23) "Taxable value" means market value for assessment purposes, less applicable exemptions or other statutory provisions.

(24) "Transient personal property" is personal property, specifically such construction, logging or mining machinery and equipment which is kept, moved, transported, shipped, hauled into or remaining for periods of not less than thirty (30) days, in more than one (1) county in the state during the same year.

(25) "Warrant of distraint" means a warrant ordering the seizure of personal property to enforce payment of property tax, special assessment, expense, fee, collection cost or charge collected in the same manner as personal property tax.

63-202. OFFICIAL RECORDS. Official records of the various county offices may be replicated in any storage media which allows archiving and retrieval to meet the requirements provided by law.

63-203. ALL PROPERTY SUBJECT TO PROPERTY TAXATION. All property within the jurisdiction of this state, not expressly exempted, is subject to appraisal, assessment and property taxation.

63-204. CLASSES OF PROPERTY. For the purpose of assessment and property taxation, all property within the jurisdiction of this state is hereby classified as follows:

Class 1. Real Property,
Class 2. Personal Property, and
Class 3. Operating Property.

63-205. ASSESSMENT -- MARKET VALUE FOR ASSESSMENT PURPOSES. (1) All real, personal and operating property subject to property taxation must be assessed annually at market value for assessment purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission.

(2) Personal property coming into the state after January 1 shall be assessed as of the date of entry into the state in accordance with sections 63-311(3) and 63-602Y, Idaho Code.

63-206. LIEN OF PROPERTY TAXES. (1) All property taxes levied upon real property shall be a first and prior lien upon the real property assessed therefor, and shall only be discharged by the payment or cancellation of the property taxes as provided in this title.

(2) In addition, all property taxes levied upon personal property or operating property shall be a first and prior lien upon that property and the personal, operating or real property of the same owner thereof, whether the property is exempt from execution or not, and no personal property or operating property of any kind shall be exempt from such lien, except as otherwise provided by law. Such lien shall attach as of the first day of January in that year, or as of the date of entry into the state, or as of the date the property became subject to property taxation, and shall be discharged only by the payment or cancellation of the property taxes as provided in this title.

(3) Property tax liens shall be perpetual and continuous on all personal, operating and real property.

(4) It shall be unlawful for any person, corporation or other owner of real property to destroy the lien of taxes provided for in this section by removing any improvements therefrom or cutting and removing the standing timber thereon without first securing the payment of all delinquencies upon such real property, and property taxes for the year in which such improvements or timber are removed. The lien upon any such improvements or timber shall continue after such improvements have been removed or the timber cut from such real property. Such taxes shall be due and collectible immediately upon the commencement of the severance and unless paid upon the demand of the

tax collector it shall be the duty of the county attorney to commence an action for the collection of such taxes in the district court of the county in which the property is situated. Such improvements or timber may be levied upon and sold in the same manner as is now provided by law for the sale of real property upon execution, and the county or any taxing unit affected may maintain an action in the proper court for injunction to restrain the removal of any improvements or the cutting or removal of standing timber from any real property against which there are any unpaid property taxes.

63-207. ASSESSMENT OF PROPERTY. (1) All real and personal property, except as otherwise provided in title 63, Idaho Code, shall be assessed by the assessor of the county in which it is situated.

(2) All operating property shall be assessed by the state tax commission.

63-208. RULES PERTAINING TO MARKET VALUE -- DUTY OF ASSESSORS. (1) It shall be the duty of the state tax commission to prepare and distribute to each county assessor and the county commissioners within the state of Idaho, rules prescribing and directing the manner in which market value for assessment purposes is to be determined for the purpose of taxation. The rules promulgated by the state tax commission shall require each assessor to find market value for assessment purposes of all property, except that expressly exempt under chapter 6, title 63, Idaho Code, within his county according to recognized appraisal methods and techniques as set forth by the state tax commission; provided, that the actual and functional use shall be a major consideration when determining market value for assessment purposes.

(2) To maximize uniformity and equity in assessment of different categories of property, such rules shall, to the extent practical, require the use of reproduction or replacement cost less depreciation as opposed to historic cost less depreciation whenever cost is considered as a single or one (1) of several factors in establishing the market value of depreciable property. The state tax commission shall also prepare and distribute amendments and changes to the rules as shall be necessary in order to carry out the intent and purposes of this title. The rules shall be in the form as the commission shall direct, and shall be made available upon request to other public officers and the general public in reasonable quantities without charge. In ascertaining the market value for assessment purposes of any item of property, the assessor of each county shall, and is required to, abide by, adhere to and conform with rules promulgated by the state tax commission.

63-209. ASSESSOR'S PLAT RECORD. The assessor must have prepared a full, accurate and complete plat record of all parcels of real property within his county. Township, range and section lands shall be platted thereon in such manner as to correspond with the technical description of such lands as described by the government survey thereof. Subdivision, townsite, and metes and bounds lands shall be platted thereon according to the official record thereof. The plats shall be prepared pursuant to rules promulgated by the state tax commission which shall establish scales and other criteria. All parcels

of real property shall be numbered pursuant to a uniform numbering system to be established by the state tax commission and such parcel numbers shall be used as one (1) means of identifying such parcels. Such numbers shall be used on all records in county offices and shall appear on valuation assessment and tax notices. All necessary and reasonable expense incurred by the assessor in complying with the provisions of this section shall be a legal claim against the county.

63-210. TAX NUMBERS FOR METES AND BOUNDS DESCRIPTIONS. (1) The assessor shall give to each tract of land described by metes and bounds a tax number which shall be recorded with the county recorder without fee. This number shall be placed on the property roll to indicate the certain piece of land bearing such number, and entered on the plat record to indicate what tract is designated by such tax number, and no further description of such land shall be necessary upon the property roll. Whenever a tract of land which has been given a tax number is subdivided, the assessor shall give each subdivision a new tax number, which number, with an accurate description of the tract of land designated by such new number, shall be included in his list of tax numbers.

(2) In all cases where the description of any tract of land, or any lot or subdivision of land, or where the description of one (1) or more of the different parts or parcels thereof, cannot, in the judgment of the assessor, be made sufficiently certain and accurate for the purposes of assessment, the assessor shall notify the county recorder thereof, and the county recorder shall thereupon proceed to have such land platted in the same manner as provided for in section 50-1314, Idaho Code.

63-211. ABSTRACT OF STATE LANDS. (1) It shall be the duty of the director of the state department of lands to furnish to each assessor of each county in the state without fee a copy of each land sale certificate whenever a sale has been held and a certificate has been issued showing the land description, date of sale, purchase price, amount paid in cash, and schedule of annual payments, and a copy of each timber sale contract whenever a sale of timber has been made and contract issued showing date of sale, description of land involved, purchase price, and estimated volume of timber.

(2) It shall also be the duty of the director of the state department of lands to notify the assessor of each county when a cancellation, assignment or reinstatement of a state land sale certificate or a cancellation or assignment of a state timber sale contract has been made.

(3) It shall be the duty of the county tax collector to notify the director of the state department of lands of any property tax delinquency on a state land sale certificate or on a state timber sale contract within thirty (30) days of the date of such delinquency.

63-212. ESTATES -- CLAIMANTS -- AGENTS -- UNDIVIDED INTEREST. (1) When the property assessed is the unpartitioned property of a deceased person, the name of the heirs, guardian, executor or administrator may be inserted on the property roll, and the payment of property taxes on such property by any such person binds the estate for the repayment of

the amount of such property taxes to such person, and binds all parties in interest for the repayment of their just proportions of the amount of such property taxes to such person.

(2) Whenever a person claiming property and desiring to pay the property taxes thereon is not named as the owner he may have his name inserted on the property roll with that of the person named, if so documented with a recordable document.

(3) Whenever a person has an agent for the payment of property taxes, the name of such agent may be inserted upon request, and in the taxpayers index.

(4) An undivided interest in real property may be appraised, assessed and taxed as such. The payment of all property taxes on an undivided interest in any real property assessed as such discharges all liens attached to such undivided interest on account of such property taxes.

63-213. DOUBLE ASSESSING PROHIBITED. (1) Property which has been assessed for taxation in any county in this state shall not be assessed again for taxation for the same purposes or period of time in any other county in this state for the same year.

(2) In all questions which may arise as to the proper place to assess property for taxation purposes, if between two (2) or more places in the same county, the place for assessing the same shall be determined and fixed by the county commissioners, and if between two (2) or more counties, or different places in two (2) or more counties, the place for assessing the same shall be determined and fixed by the state tax commission, and when fixed shall be binding.

63-214. DESCRIPTION OF PROPERTY. In all proceedings relating to the assessment of property for taxation, or the levy and collection of property taxes, it shall be sufficient to designate the amount of property taxes and the amount, value and description of property by tax number, initial letters, abbreviations, figures, fractions and exponents. Such designations must be sufficiently plain to clearly set forth the amount of property taxes and the amount, value and description of the property. All property which has been sold for property taxes and all foreclosure proceedings on property under this title must be fully and accurately described.

63-215. LEGAL DESCRIPTION AND MAP OF BOUNDARIES TO BE RECORDED. (1) Any, taxing district or urban renewal district which shall be formed or organized hereafter, or which shall change any existing boundaries hereafter, shall cause one (1) copy of the legal description and map prepared in a draftsmanlike manner which shall plainly and clearly designate the boundaries of such district or municipality as formed or organized, or as altered, to be recorded with the county recorder and filed with the county assessor in the counties within which the unit is located, and with the state tax commission within ten (10) days following the effective date of such formation, organization or alteration.

(2) The county assessor, county auditor and state tax commission shall retain on file in their respective offices all copies of legal descriptions of taxing district boundaries and maps filed by the vari-

ous taxing jurisdictions authorized to impose a levy on property.

(3) The state tax commission shall be responsible for providing copies of uniform tax code area numbers and maps to the county assessor, county auditor and county treasurer and various companies having operating property subject to assessment in the state of Idaho and under the jurisdiction of the state tax commission for assessment and taxation purposes.

(4) Unless otherwise specifically authorized to form with noncontiguous boundaries, or to annex or de-annex properties so as to make noncontiguous boundaries, all taxing districts shall form with and maintain contiguous boundaries.

63-216. NO STATE PROPERTY TAX WHEN SALES TAX IS IN FORCE. In any period during which a sales tax is in force in this state, there shall be no levy of the general state property tax permitted in section 9, article VII, of the constitution of the state of Idaho.

63-217. FILING OF MATERIAL BY MAIL. (1) Any report, claim, return, statement or other document or payment dealing in any way or in any manner whatsoever with taxation which is required or authorized to be filed or made to the state of Idaho, or to any political subdivision thereof, which is:

(a) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. For purposes of this title, a postage meter cancellation shall not be deemed a post office cancellation mark.

(b) Mailed but not received by the state or political subdivision or where received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, claim, tax return, statement or other document or payment required by law to be filed or made, the sender files with the state or political subdivision a duplicate within fifteen (15) days after written notification is given to the sender by the state or political subdivision of its nonreceipt of such report, claim, tax return, statement, or other document or payment.

(2) If any such report, claim, tax return, statement or other document or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office of such registration or certification shall be considered competent evidence that the report, claim, tax return, statement or other document or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

(3) If the date for filing any such report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, Sunday or legal holiday, such acts shall be considered

timely if performed on the next business day.

63-218. REPRODUCTION OF RECORDS -- DESTRUCTION OF ORIGINALS AUTHORIZED -- ADMISSIBILITY IN EVIDENCE -- PREVALENCE OVER PREVIOUS LAW. (1) The state tax commission or any political subdivision of the state of Idaho is hereby authorized to photograph, microphotograph, film or reproduce by other technological means any document or record kept by it, or any tax return or report filed with it by any taxpayer or other person, under any tax law administered or enforced by the state tax commission. Upon reproducing such return, report or record, the state tax commission or any political subdivision of the state of Idaho in its discretion may cause the original records from which reproductions have been made, or any part thereof, to be disposed of or destroyed; provided however, that original tax returns shall be retained for not less than one (1) year.

(2) Photographs, microphotographs, films or other reproductions by technological means of any record as herein provided, shall have the same force and effect as the originals thereof would have had, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions shall be admitted in evidence equally with the original documents.

63-219. UNIFORM PROPERTY ROLLS AND RELATED DOCUMENTS. (1) The state tax commission shall develop, maintain and enforce statewide systems for the preparation of property rolls and related documents and procedures and for uniform parcel numbering. Said systems shall provide related information specified by the state tax commission.

(2) The state tax commission shall prescribe forms and documents to be used to comply with the requirements of subsection (1) of this section when the information contained in said forms and documents is needed by the tax commission. The appropriate county official may request that the state tax commission consider an alternate, but equivalent, system for the preparation of property rolls and related documents. If the county official demonstrates equivalence to the satisfaction of the state tax commission, the state tax commission may, at its discretion, permit the alternate system to be used. Alternate forms or documents to be provided at county expense may be used if submitted to the state tax commission prior to use and if, in the opinion of the state tax commission, the alternate forms or documents are equivalent to the forms or documents provided by the state tax commission.

(3) Forms or documents required to comply with the provisions of subsection (1) of this section may be prescribed by the appropriate county official, provided that the information on said forms or documents is not needed by the state tax commission. Said forms or documents must be provided at county expense and a copy of each separate form or document must be filed with the state tax commission prior to use.

(4) The state tax commission shall, at its expense, provide aid to the counties on numbering, mapping and software for implementation of this program, and shall, at its expense, provide uniform valuation assessment notices to the county assessor and property tax notices to the county tax collector.

SECTION 4. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 3, Title 63, Idaho Code, and to read as follows:

CHAPTER 3
ASSESSMENT OF REAL AND PERSONAL PROPERTY

63-301. TIME OF ASSESSMENT -- PROPERTY ROLL, SUBSEQUENT PROPERTY ROLL AND MISSED PROPERTY ROLL. (1) The assessor shall complete an assessment of all real and personal property in his county which is subject to assessment by him on or before the fourth Monday of June. In making such assessment, the assessor shall determine, according to recognized appraisal methods and techniques, the market value for assessment purposes of real and personal property. Said assessments shall be entered on the property roll. After the aforesaid date, any property which has been omitted from the property roll shall be entered on the subsequent property roll and submitted to the county commissioners meeting as a board of equalization, from the fourth Monday of November through the first Monday of December of the current year, or entered on the missed property roll and submitted during the county board of equalization's monthly meeting in January of the following year.

(2) The market value for assessment purposes of each parcel of property subject to assessment shall be listed on the appropriate roll, as defined in subsection (1) of this section, by category of property established and defined pursuant to section 63-109, Idaho Code.

63-302. LIST OF TAXABLE PERSONAL PROPERTY. (1) The assessor shall leave at the office, place of business or residence of each personal property owner, or mail to such personal property owner at his last known post office address, a form with notice requiring such personal property owner to make a correct list of taxable personal property. Every personal property owner so required shall enter a true and correct statement of such personal property and the ownership thereof, which statement shall be signed and verified by the oath of the personal property owner or his agent listing such personal property, and shall be delivered to the assessor, not later than March 15. The assessor shall thereupon determine the market value for assessment purposes of such personal property and enter the same on the property roll. However, if for any reason the assessor shall fail to contact such personal property owner, the failure shall not impair or invalidate any assessment, nor will such failure relieve the personal property owner or his agent of the responsibility to obtain such declaration and to comply with the requirements of this title. Any willful failure to personally contact each personal property owner, shall be deemed malfeasance in office and grounds for the removal of the assessor from office.

(2) If such person fails to make and deliver the list as required, the assessor may list and assess such personal property according to his best judgment and information.

(3) Whenever a taxpayer's list of taxable personal property discloses personal property having a situs for purposes of taxation in

another county in this state, the assessor must immediately make a copy of that portion of such list for each county in which such personal property is situated, and transmit the same by mail to the assessor of the proper county, who must, upon receipt of such copy, enter such personal property upon the property roll therein, unless such personal property has already been entered. The assessor shall strike from the original list all personal property so disclosed as having a situs in another county, and shall assess and enter only the balance of the personal property in his county.

63-303. ASSESSMENT OF MANUFACTURED HOMES. Manufactured homes shall be assessed as other residential housing and such assessments shall be entered on the property roll except that the following manufactured homes are specifically exempt from the provisions of this section:

(1) Manufactured homes eligible to be used under a dealer's license plate;

(2) Manufactured homes designated as sheep and cow camps.

63-304. MANUFACTURED HOMES TO CONSTITUTE REAL PROPERTY. (1) A manufactured home may constitute real property if the running gear is removed and:

(a) If the manufactured home becomes permanently affixed to a foundation on land which is owned or being purchased by the owner or purchaser of said manufactured home; and

(b) If the owner or purchaser of a manufactured home records with the county recorder in the county in which the manufactured home will be situated a statement of intent to declare the manufactured home as real property.

(2) The exercise of said option shall require all county assessors to treat those manufactured homes whose owners or purchasers have exercised said option as any other site-built residence and shall permit lending institutions to treat said manufactured homes as real property or as any other residence.

(3) The form of the declaration shall be prescribed by the state tax commission. Any form used shall have attached to it the certificate of origin or the original title to the manufactured home to allow a reversal of the declaration as provided in section 63-305, Idaho Code.

63-305. REVERSAL OF DECLARATION WHICH TREATS A MANUFACTURED HOME AS REAL PROPERTY. (1) Once a manufactured home has been converted to real property under the provisions of section 63-304, Idaho Code, it shall be deemed a fixture and an improvement to the real property to which it is affixed. Physical removal shall be prohibited without the consent of all persons or entities who, at the time of removal have an interest in the real property or title to any estate in the real property to which the manufactured home has been affixed. The homeowner shall obtain a title report from a title insurance company which shall establish the identity of those individuals or entities whose consent must be obtained. Consent to removal of the manufactured home shall not be required from the owners of rights-of-way, easements or owners of subsurface rights.

(2) Physical removal shall include, without limitation, the separation of the manufactured home from the foundation system, except for the temporary purposes of repair or improvement thereto.

(3) At least thirty (30) days before the manufactured home is to be removed, the homeowner shall give written notice of the intended removal to the county assessor in the county in which the real property is located. The county assessor shall require written evidence that the necessary consents have been obtained from those persons or entities identified in the title report as required in the provisions of subsection (1) of this section. In addition, removal shall be prohibited until the county tax collector has given written approval for the removal of the manufactured home by certifying that all property taxes, due and payable, have been paid.

(4) The homeowner shall, within five (5) days of removal, make application for the issuance of a certificate of title for the manufactured home. Prior to the issuance of a certificate of title, the declaration of reversal shall be recorded. Immediately upon issuance of a certificate of title, the manufactured home shall again become personal property for the purpose of financing and for the purpose of taxation shall be assessed pursuant to section 63-302, Idaho Code.

(5) The state tax commission shall prescribe the forms to be used by the county assessor to reverse the option exercised under the provisions of section 63-304, Idaho Code, which created the real property designation.

63-306. LISTING OF PROPERTY BY OWNER, AGENT OR FIDUCIARY. (1) All property required to be listed and assessed under the provisions of this title shall be listed by the owner or his agent, except as hereinafter provided:

(a) The property of a minor shall be listed by his guardian, or by the person having such property in charge.

(b) The property of a person determined by a court to be legally incompetent, by the person having charge of such property.

(c) The property of a person for whose benefit it is held in trust, by the trustee.

(d) The property of a deceased person, by the executor or administrator.

(e) The property of a person or corporation whose assets are in the hands of a receiver, by the receiver or his agent.

(f) The property of a corporation, by the president, secretary, treasurer or other proper agent or officer.

(g) The property of a firm, partnership, limited liability company, association or company, or other such entities as recognized by the state of Idaho, by a partner, member or agent.

(h) Property in litigation in possession of a receiver, or of any county officer, or officer of a court, by the custodian thereof.

(2) Whenever property is listed to any person in a representative capacity, his representative designation must be added to his name, and such property must be entered upon the property roll separate and apart from any individual property of such person.

63-307. OWNERSHIP IDENTIFICATION. (1) The assessor shall ascertain the current ownership of land from documents recorded in the

county recorder's office.

(2) Whenever any person is the owner of, or has contracted to purchase, either an undivided or defined portion of any real property assessed as a whole, such owner or purchaser, upon producing his deed, contract or other muniment of title, to the assessor at any time before the assessor has completed the assessment for that year, may have such assessment changed and corrected accordingly.

(3) No mistake in the name of the owner or failure to designate such owner shall in any manner affect the validity of the assessment or tax lien.

(4) If the ownership of any property is not known, such property must be assessed in the name of "unknown owner."

63-308. VALUATION ASSESSMENT NOTICE TO BE FURNISHED TAXPAYER. (1) The valuation assessment notice required under the provisions of this chapter shall be delivered to the taxpayer, or to his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address no later than the first Monday in June. The original valuation assessment notice so mailed or delivered must contain notices of all meetings of the board of equalization prescribed by this title for the purposes of equalizing assessments of property, and for granting exemptions from taxation. The notice shall, in clear terms, inform the taxpayer of the assessed market value for assessment purposes of his property for the current year, and his right to appeal to the county board of equalization. The state tax commission may require that other data or information be shown on the form.

(2) In case any changes or corrections are made by the assessor from the original valuation assessment notice, the assessor shall immediately deliver or mail a corrected valuation assessment notice to the taxpayer, or his agent or representative.

(3) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall deliver to the equitable titleholder a true copy of the valuation assessment notice on or before the second Monday in June.

(4) For property entered and assessed on the subsequent property roll pursuant to section 63-311, Idaho Code, the valuation assessment notice shall be delivered to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the fourth Monday in November.

(5) For property entered and assessed on the missed property roll pursuant to section 63-311, Idaho Code, the valuation assessment notice shall be delivered to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the first Monday of January of the following year.

63-309. IMPROVEMENTS ON EXEMPT AND RAILROAD RIGHTS-OF-WAY LANDS -- EQUITY IN STATE PROPERTY. (1) All taxable improvements on government, Indian, state, county, municipal or other lands exempt from tax-

ation, and all improvements on all railroad rights-of-way owned separately from the ownership of the rights-of-way upon which the same stands, or in which nonexempt persons have possessory interests, shall be assessed and taxed as personal property.

(2) Property of the state of Idaho or any department, agency or subdivision thereof, or any other property not subject to property taxation to the owner thereof by reason of the legal status of the owner, held under contract of sale or lease with option to purchase, with lease moneys applicable to the purchase price, by any person, corporation or other association for his or its exclusive use, shall be subject to the purchaser or lessee for property taxation. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, firm, corporation or association, such property shall be assessed to such person, firm, corporation or association and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid. The lien for any such property tax shall neither attach to, impair or be enforced against any interest of the state of Idaho or any department, agency or subdivision thereof.

(3) Refusal to pay the property tax levied upon any equity in state property by the owner upon demand by the tax collector shall operate as forfeiture of such equity.

63-310. COMPLETION AND DELIVERY OF PROPERTY ROLL. The assessor must certify the completion of the property roll on or before the fourth Monday of June in each year, and must, on or before that date, deliver the completed property roll, together with all claims for exemptions from assessment or taxation to the clerk of the board. The property roll and claims for exemptions must remain in the office of the clerk until the second Monday of July for the inspection of all persons interested.

63-311. COMPLETION AND DELIVERY OF SUBSEQUENT AND MISSED PROPERTY ROLLS. (1) The assessor shall assess all personal property and all improvements to real property except as otherwise provided in section 63-317, Idaho Code, which have been completed or discovered between the fourth Monday of June and the fourth Monday of November and which were not included on the property roll delivered on the fourth Monday of June, and shall enter such assessments on the subsequent property roll to be delivered to the clerk of the board on the fourth Monday of November of the current year.

(2) If other real or personal property is discovered and assessed between the fourth Monday of November and December 31st, it shall be assessed and entered on the missed property roll to be delivered to the clerk of the board on the first Monday of January of the following year.

(3) Personal property coming into the state from without the state after the first day of January shall be assessed as of the date of its entry into the state as follows; if before the first day of April, for its full market value for assessment purposes; if on the first day of April and before the first day of July, for three-fourths (3/4) of its full market value for assessment purposes; if on the

first day of July and before the first day of October, for one-half (1/2) of its full market value for assessment purposes; and if on the first day of October and on or before the thirty-first day of December, for one-fourth (1/4) of its full market value for assessment purposes, and the taxes so levied thereupon shall be a first and prior lien on such property from the date of its entry into the state so assessed, and upon all other personal or real property, belonging to the same owner, and no personal property of any kind shall be exempt from such lien.

63-312. AFFIDAVIT TO COMPLETED ROLL -- EFFECT OF FAILURE TO MAKE AFFIDAVIT. (1) The county assessor, at the time of delivery of the property roll, subsequent property roll or missed property roll to the clerk of the board, must subscribe an affidavit that the property roll, subsequent property roll or missed property roll is, to the best of his knowledge and ability, a true and complete statement of market value for assessment purposes of all property subject to appraisal by him and that he has faithfully complied with all the duties imposed upon him under law.

(2) Failure by the assessor to make the affidavit shall not affect the validity of any appraisal entered on the property roll, subsequent property roll or missed property roll. The making of such affidavit, however, is declared to be a duty pertaining to the office of the assessor, and when the same is to be made by the deputy assessor it shall be the duty of the assessor to have the same properly made. In every case where the said affidavit is omitted from any assessment roll as completed as aforesaid, the board of county commissioners must require the assessor to make the same, or have the same made by the deputy assessor, and upon refusal or neglect of such assessor to supply such affidavit forthwith, the chairman of the board of county commissioners must immediately file in the district court in the county any information, in writing, verified by his oath, charging such assessor with refusal or neglect to perform the official duties pertaining to his office, and thereupon he must be proceeded against as in such cases provided by law.

63-313. SPECIAL PROVISIONS FOR TRANSIENT PERSONAL PROPERTY. (1) All transient personal property shall be listed by the owner and shall show the quantity, name, model, serial number, if any, year of manufacture, date of purchase, cost, whether new or used and other identifying information required by the county assessor. The list of transient personal property shall identify the owner of the property and shall be filed with the home county assessor on or before the first day of November of each year. The owner of transient personal property may elect to treat as his home county that county in which he maintains his residence or usual place of business or in which the transient personal property is usually kept. The report shall be made on forms prescribed by the state tax commission and shall identify periods of thirty (30) days or more during which the personal property is located in a county, specifying the location of the transient personal property for each month of the current calendar year with a projection of the location for the remaining months of November and December.

(2) The county assessor of the home county or the receiving county of the listing shall file within ten (10) days with the county assessor of all counties identified on the report a copy of the report. Each county so identified shall then place a prorated assessment on such personal property on the subsequent or missed property roll only for the length of time that the personal property was located in their county.

(3) In the event that any transient personal property has been or will be taxed for the current year in another state, the property shall be taxed for only that portion of the year that the transient personal property is kept and does remain in the state of Idaho.

(4) The provisions of this section shall not apply to transient personal property in transit through this state, or to transient personal property sold by the owner thereof in the home county upon which the taxes for the full year have been paid or secured, which said transient personal property is kept, moved, transported, shipped or hauled into and remaining in another county, and there kept or remaining either for the purpose of use or sale within the current year.

63-314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR. (1) It shall be the duty of the county assessor of each county in the state to conduct and carry out a continuing program of valuation of all properties under his jurisdiction pursuant to such rules as the state tax commission may prescribe, to the end that all parcels of property under the assessor's jurisdiction are assessed at current market values. It is legislative intent that in order to promote uniform assessment of property in the state of Idaho, taxable property shall be appraised or indexed annually. In order to achieve this goal, at least twenty percent (20%) of the property in each of the categories of property established by rules of the state tax commission shall be included in each year's appraisal, resulting in a complete appraisal of all taxable property every five (5) years. The results of the annual appraisal of twenty percent (20%) of taxable property shall be used to index all property not actually appraised each year so as to reflect current market value for assessment purposes. The county assessor shall maintain in the respective offices sufficient records to show when each parcel or item of property was last appraised. The state tax commission is hereby authorized, empowered and directed to promulgate rules for the implementation of this program, and to provide any such county assessor with such supervision and technical assistance as may be necessary.

(2) The county commissioners of each county shall furnish the assessor with such additional funds and personnel as may be required to carry out the program hereby provided, and for this purpose may levy annually a property tax of not to exceed four-hundredths percent (.04%) of the market value for assessment purposes on all taxable property in the county to be collected and paid into the county treasury and appropriated to the property valuation fund which is hereby created.

(3) If compliance with the requirements of subsection (1) of this section is not obtained, or if any county fails to meet the goals set in subsection (1) of this section, the state tax commission may proceed as required by section 63-316, Idaho Code.

63-315. ASSESSMENT RATIOS AND THE DETERMINATION OF ADJUSTED MARKET VALUE FOR ASSESSMENT PURPOSES FOR SCHOOL DISTRICTS. (1) For the purpose of this section, adjusted market value for assessment purposes shall be the adjusted market value for assessment purposes of all property assessed for property tax purposes for the year referred to in sections 33-802 and 33-1002, Idaho Code.

(2) The state tax commission shall conduct a ratio study to annually ascertain the ratio between the assessed value and the market value for assessment purposes of all property assessed for property tax purposes. Said ratio study shall be conducted in accordance with nationally accepted procedures. From the ratio so ascertained the state tax commission shall compute the adjusted market value of all property assessed for property tax purposes.

(3) This ratio shall be computed in each county and applied to the market value for assessment purposes within each school district in each county. The ratio shall be computed in each school district and applied to the market value for assessment purposes within each school district.

(4) The ratio will be determined using arm's length property sales occurring between October 1 and September 30 of the year preceding the year for which the adjusted market value is to be determined. The state tax commission may, at its discretion, modify the sales period when doing so produces provably better representativeness of the actual ratio in any county or school district. The state tax commission may also add independently conducted appraisals when the state tax commission believes that this procedure will improve the representativeness and reliability of the ratio.

(5) Whenever the state tax commission is unable to determine with reasonable statistical certainty that the assessed value within any county or school district differs from the market value for assessment purposes, the state tax commission may certify the assessed value to be the adjusted market value of any county or school district.

(6) The state tax commission shall certify the adjusted market value of each school district to the state department of education and each county auditor no later than the first Monday in April each year. The state tax commission shall prepare a report indicating procedures used in computing the adjusted market value and showing statistical measures computed in the ratio study. This report shall be submitted to the state department of education at the same time as the certification of adjusted market value. The report of the state tax commission shall also be made available for public inspection in the office of the county auditor.

(7) The state tax commission shall promulgate rules to implement the ratio study described in this section.

63-316. ADJUSTMENT OF ASSESSED VALUE -- COMPLETION OF ASSESSMENT PROGRAM BY STATE TAX COMMISSION -- PAYMENT OF COSTS. (1) Whenever the state tax commission, after a hearing, determines that any county assessor or the county commissioners in assessing property in the county subject to taxation have failed to abide by, adhere to and conform with the laws of the state of Idaho and the rules of the state tax commission in determining market value for assessment purposes, the state tax commission shall order the county assessor and county

commissioners of such county to make the necessary changes or corrections in such assessments and if the county assessor and the county commissioners refuse or neglect to comply with such order, the state tax commission is authorized to and shall forthwith adjust or change the property roll in such county.

(2) In lieu of the hearings and actions permitted in subsection (1) of this section, the state tax commission shall monitor each county's implementation of the continuing appraisal required in section 63-314, Idaho Code, and may require each county to file such reports of its progress at implementation of such continuing appraisals as the commission may find necessary. In the event that the commission finds that any county is failing to meet the requirements of section 63-314, Idaho Code, the commission may order that county's indexing or appraisal or reappraisal programs be conducted under the exclusive and complete control of the state tax commission and the results of such programs shall be binding upon the county officers of the county for which ordered. Payments for the actual cost of such programs shall be made from the sales tax distribution created in section 63-3638, Idaho Code, and the amount of such payments shall be withheld from the payments otherwise made under the provisions of section 63-3638(e) and (g), Idaho Code, to the county for which indexing, appraisal or reappraisal has been ordered, and this subsection shall constitute the necessary appropriation to accomplish such payments, any other provision of law notwithstanding.

63-317. OCCUPANCY TAX -- PROCEDURES. (1) All real property subject to property taxation shall be valued and taxed based upon its status as of January 1 of each tax year. Improvements, other than additions to existing improvements, constructed upon real property shall not be subject to property taxation during the year of construction other than that portion actually in place as of January 1 of each calendar year.

(2) There is hereby levied an occupancy tax upon all newly constructed and occupied residential and commercial structures, except additions to existing improvements, prorated for the portion of the year for which the structure was occupied. The occupancy tax shall be upon those improvements for that portion of the calendar year in which first occupancy occurs. For the purposes of this section, the term "occupied" means:

(a) Use of the property by any person as a residence; or

(b) Use of the property for any business or commercial purpose unrelated to the construction and sale of the property; or

(c) Any possessory use of the property for which the owner received any compensation or consideration.

(3) The owner of any newly constructed improvement, as described in this section, upon which no occupancy tax has been charged shall report to the county assessor that the improvement has been occupied. As soon as practical after receiving such a report, the county assessor shall appraise and determine the market value for assessment purposes.

(a) At the time the county assessor determines the market value for assessment purposes of any improvement, he shall allow as an offset against the market value of the improvement, the market

value of any portion of that improvement which was existing on January 1 and placed upon the real property roll.

(b) Upon completion of the appraisal, the county assessor shall notify the owner of the appraisal, and further shall notify the owner of their right to apply for the exemption provided in section 63-602G, Idaho Code. If the owner applies for and meets the requirements for such exemption within thirty (30) days of the notification by the county assessor, the exemption shall be extended to the newly constructed and occupied residential structures in compliance with section 63-602G, Idaho Code, not withstanding limitations requiring occupancy as of January 1 of the tax year.

(c) In the event that the owner fails to report to the county assessor that the property is ready for occupancy, the assessor shall notify the county board of equalization, who may impose as penalty an additional amount equal to five percent (5%) of the tax for each month following the date of first occupancy during which the report is not made, to a maximum of twenty-five percent (25%) of the tax.

(4) Appeals of the market value for assessment purposes shall be resolved in the same manner as all other appeals of valuation by the board of equalization.

(5) The occupancy tax calculated upon the values set by the county assessor, and any penalty imposed by the board of equalization shall be collected in the same manner as all other property taxes.

(6) An occupancy tax lien shall be imposed in the manner provided in section 63-206, Idaho Code.

(7) Occupancy taxes shall be billed, collected and distributed in the same manner as all other property taxes.

SECTION 5. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 4, Title 63, Idaho Code, and to read as follows:

CHAPTER 4
APPRAISAL, ASSESSMENT AND TAXATION OF OPERATING PROPERTY

63-401. OPERATING PROPERTY ASSESSED BY STATE TAX COMMISSION. Operating property, completed or under construction, and the franchises of persons operating a public utility, railroad or private railcar fleet shall be assessed by the state tax commission.

63-402. NONOPERATING PROPERTY ASSESSED BY COUNTY ASSESSOR. All property belonging to any person owning, operating or constructing any public utility or railroad, wholly or partly within this state, not included within the meaning of the term "operating property" as defined in this title, namely, property not reasonably necessary for the maintenance and operation of such public utility or railroad, including land or buildings rented by a company or corporation as lessee which is used as or in connection with its business, such as business offices, warehouses, service centers, moorage grounds or docks, vacant lots and tracts of land, and lots and tracts of land with the buildings thereon not used or intended to be used in the operation of

such public utility or railroad, also tenement and resident property, except section houses, also hotels and eating houses, not situated adjacent to the main track of any such railroad, shall be assessed by the assessor of the county wherein the same is situated.

63-403. OPERATOR REPRESENTATIVE OF OWNER. Any person operating a public utility, railroad or private railcar fleet in this state shall be representative of every title and interest in the operating property and franchises of said public utility, railroad or private railcar fleet as owner, lessee or otherwise, and notice to such person, or his agent or representative, shall be notice to all interests in such property for the purpose of taxation. The assessment of such operating property in the name of the owner, lessee or operating company, shall be deemed and held to be an assessment of all title and interest in such property of every kind and nature.

63-404. OPERATOR'S STATEMENT -- ARBITRARY ASSESSMENT. (1) Every person owning, operating or constructing, either as owner or lessee, any public utility, railroad or private railcar fleet which is not exempt from taxation under the provisions of this title, shall prepare or cause to be prepared an annual statement showing all property subject to assessment by the state tax commission, together with such pertinent information as may be required on forms supplied by the state tax commission for such purposes, which statement and forms must be signed by the owner or lessee, or the president, secretary, auditor, superintendent or principal accounting officer or agent of such person, and delivered to the state tax commission on or before such time as the state tax commission may determine, and the state tax commission must file such statement and forms in its office.

(2) The statement must contain such information as the state tax commission determines to be necessary for it to properly assess the operating property. This information shall include, unless otherwise specified, such a general description of the property of such owner or lessee situated or operated in the state of Idaho as would be sufficient to identify the same for all purposes of assessment; the entire length of the system, the length of the system within this state, the length of the line owned and the length of the line operated for the whole system and in this state being separately shown; the total number of miles of each line within the state, the number of miles of main line, branch line, second track, siding and spurs being shown and the number of miles within any county, and within any incorporated city, and within any school or other taxing district into or through which said line extends; the total number of shares of capital stock for the whole system; the amount authorized, the amount issued, the amount outstanding and the dividends paid thereon being separately shown; the market and actual value of the shares of capital stock for the whole system; the funded debt for the whole system; and a detailed statement of all series of bonds, debentures and other securities forming part of the funded debt, at par value, with date of issue, date of maturity, rate of interest and interest paid; the market and actual cash values of such series of funded debt for the whole system; a detailed statement of all capital stock and bonds or other securities of such person, or of other persons, owned by or held in trust,

the par value and market and actual value of the same; the entire gross receipts and gross expenses for the entire system each year, ending on the thirty-first day of December; and such other matters and things as may be required in the annual statement supplied by the state tax commission.

(3) In addition to the statement required by this section, every person filing such statement shall, at the same time, furnish to the state tax commission unless otherwise specified, certified copies of the annual reports of the board of directors or other officers to the stockholders, and the annual reports made to the interstate commerce commission, federal communications commission, federal energy commission and the securities exchange commission.

(4) If any person or officer refuses or neglects to furnish the annual statement, list, or copies of the reports required to be furnished under the provisions of this chapter, or refuses or neglects to appear before the state tax commission, or to answer under oath all questions propounded to him in relation to matters necessary to be known by the commission in order to discharge its duties in the assessment of his property or the property of the person represented by him, then the commission shall make an arbitrary assessment of such property, except as otherwise provided in section 63-411, Idaho Code, which shall be as fair and equitable as it may be able to make from the best information it possesses, and any such person shall be estopped to question or impeach any such assessment in any hearing or proceeding thereafter.

63-405. ASSESSMENT OF OPERATING PROPERTY. (1) The state tax commission must assess all operating property at a meeting of the commission convening on the second Monday of August in each year, and must complete the assessment of such property on the fourth Monday in August.

(2) The state tax commission shall determine the system value and calculate the allocation and apportionment of the system value for all operating property and specifically determine:

(a) The number of miles and the value per mile of each railroad in the state and for each taxing district in which such railroad may exist.

(b) The number of miles and the value per mile of each telephone company in the state and for each taxing district in which such telephone company may exist.

(c) The number of miles and the value per mile of each pipeline in the state and for each taxing district in which such pipeline may exist.

(d) The number of miles and the value per mile of each water company under the jurisdiction of the public utilities commission in the state, and for each taxing district in which such water company may exist. The value per mile of any line included in this subsection, except railroads, shall be determined by dividing the total value of such line within the state by the number of miles of such line within the state. The value per mile of railroad line shall be determined by apportionment of the total value of line within the state. The apportionment shall be based twenty percent (20%) on the ratio of line miles in the state to line miles in the

county; forty percent (40%) on the ratio of net ton miles in the state to net ton miles in the county; and forty percent (40%) on the ratio of station revenues in the state to station revenues in the county. All operating property of railroads shall be apportioned to the counties as part of the railroad line in the county. The apportionment for taxing districts shall be the same as the apportionment among counties.

(e) The system value, the number of miles and the value per mile of each electric current transmission line and each electric current distribution line in each county separately, and for each taxing district within said county in which such transmission and distribution lines may exist. The value per mile of any line included in this subsection shall be determined by dividing the apportioned value of such line within each county by the number of miles of such line within said county.

(f) The system value of private railcar fleets entering or standing in Idaho in the year preceding the constituted lien as provided in section 63-411(3), Idaho Code.

(g) The system value and calculate the allocation and apportionment of the system value for all other operating property.

63-406. ATTENDANCE AT ASSESSMENT HEARING. The state tax commission may, for the purpose of securing evidence, facts or information to enable it to properly assess any operating property, require the attendance of the person, or any officer, manager or agent of such person, whose property is to be assessed, and require him to answer, under oath, all questions propounded which, in the judgment of the commission, would assist it in fixing the value of such property, whether such person, officer, manager or agent resides within or without this state.

63-407. APPEAL OF OPERATING PROPERTY ASSESSMENTS. Every person whose property is to be assessed by the state tax commission shall, upon request therefor in writing, be entitled to a hearing before the commission in relation to the assessment on his property or the assessment of other property in the state, and the commission shall, upon any such request, fix a time for such hearing within the period in which such assessment must be made, and such hearing shall be conducted in such manner as the commission may direct.

63-408. REEXAMINATION OF VALUE -- COMPLAINT BY ASSESSOR. The state tax commission shall, upon complaint by a county assessor, examine the valuation and allocation of value of property assessable on a statewide basis any part of which is allocable to his county.

63-409. APPEALS FROM STATE TAX COMMISSION VALUATIONS OF OPERATING PROPERTY. Any taxpayer or county assessor who is aggrieved by a state tax commission decision assessing a taxpayer's operating property may file an appeal to the district court of Ada county or, if such operating property is located in only one (1) county, to the district court in and for the county in which such operating property is located. The appeal shall be filed within thirty (30) days after service upon the taxpayer of the decision. The appeal may be based upon any issue pre-

sented by the taxpayer to the state tax commission and shall be heard by the district court in a trial de novo without a jury in the same manner as though it were an original proceeding in that court. Nothing in this section shall be construed to suspend the payment of taxes pending appeal. Payment of taxes while an appeal hereunder is pending shall not operate to waive the right to an appeal. Any final order of the district court under this section shall be subject to appeal to the Idaho supreme court in the manner provided by the Idaho appellate rules.

63-410. CERTIFICATION OF VALUE TO COUNTIES -- COMPARISONS -- SPECIAL MEETING -- ESCAPED ASSESSMENTS. (1) On or before the first Monday of September in each year the chairman of the state tax commission, or his designee, must prepare and transmit certified statements of the taxable value of operating property by the commission to the county auditors of the several counties of this state. The certified statements shall show each type of operating property separately, shall show the taxable value of the operating property, and shall show the taxable value of operating property to be apportioned to each of the various taxing districts within a county, as provided in section 63-405, Idaho Code. The Idaho taxable value of private railcar fleets shall be apportioned to the several counties as provided in section 63-405, Idaho Code.

(2) Each county auditor, upon receipt of certified statements of the taxable value of operating property apportioned to his county, shall compare the same with the previous year's taxable values, and if any errors are made by the state tax commission or if in the opinion of the county auditor any property in the county subject to assessment by the state tax commission, has not been assessed by the state commission or that any assessment as certified is erroneous it shall be the duty of the county auditor, as soon as any error or omission in such statement is discovered, to forthwith notify the chairman of the state tax commission of such error or omission, with as full an explanation as can be made by such county auditor. The county auditor shall send a duplicate copy of any such notice and explanation sent to the chairman of the state tax commission, to the office of the owner or nearest managing agent of any property which may be affected by any change in assessment under the provisions of this section.

(3) The governor may call a special meeting of the state tax commission for the purpose of correcting any errors made or to assess, allocate, and apportion any operating property which may have been omitted. Notice of at least ten (10) days of such special meeting shall be mailed by the chairman of the state tax commission to the owner or nearest managing agent of any property which may be affected by any change in assessment as originally certified. The procedure in the special meeting shall be as nearly as possible the same as provided in section 63-406, Idaho Code. Corrected statements shall be certified in the same manner as the original statements.

(4) Any property which has escaped taxation in the previous year shall be assessed by said commission on an equalized value, as with other property assessed in the preceding year, and such value shall be added to the value of the assessment for the current year.

63-411. SPECIAL PROVISIONS FOR PRIVATE RAILCAR FLEETS -- NOTICE OF DELINQUENCY -- COLLECTION OF DELINQUENCY. (1) In case any such private railcar fleet shall fail or refuse to make the annual statement herein required within the time above specified, or shall make a false annual statement, the state tax commission shall proceed to assess the property of such private railcar fleet so failing, and shall add fifty percent (50%) to the value thereof, as ascertained and determined by the commission.

(2) The president or other officer of every railroad company whose lines run through, in or into this state shall, on or before such time as may be determined by the state tax commission, furnish to said commission a statement, verified by the affidavit of the officer or person making the same, showing the total number of miles made by the cars of every such private railcar fleet on their lines, branches, sidings, spurs and warehouse tracks in this state during the year ending on the thirty-first day of December last past. The state tax commission shall declare the date for the filing of the statement in its rules.

(3) The state tax commission shall determine the system value of private railcar fleets utilizing statements and data furnished by the railroads and private railcar operators, and such other pertinent information deemed necessary by the state tax commission. The state tax commission shall also be responsible for the allocation of the system value of private railcar fleets taxable in this state. In developing the allocation method, the state tax commission may use and consider any of the following factors or criteria:

(a) An actual count of cars in this state;

(b) The ratio between the mileage traveled by taxpayers' cars in this state as compared with the mileage traveled by taxpayers' cars everywhere;

(c) Such other factors or criteria as the state tax commission may deem appropriate.

(4) Private railcar fleets having an Idaho taxable value of five hundred thousand dollars ($500,000) or more shall be apportioned to where said cars were present in each county as determined by the state tax commission. The state tax commission shall certify the taxable value to the county auditor of each county showing the amounts of taxable value to be apportioned to the qualified taxing districts. The county auditor shall cause the taxable value to be entered upon the tax roll in the same manner as all other properties. The taxes shall be collected in the same manner as other operating property taxes by the county tax collector as provided by law.

(5) Private railcar fleets having an Idaho taxable value of less than five hundred thousand dollars ($500,000) shall not be apportioned to counties. The state tax commission hereby is empowered to charge, levy and collect the property tax so determined on the private railcar fleets under five hundred thousand dollars ($500,000) having a taxable situs in the state and such property shall be treated as personal property for taxing purposes.

(a) The state tax commission shall determine the property tax to be charged on the property covered by each such assessment by applying to the taxable value thereof the average tax rate in the state for the current year on private railcar fleets having an

Idaho taxable value equal to or greater than five hundred thousand dollars ($500,000). In the event no private railcar fleets are assessed for five hundred thousand dollars ($500,000) or more in the current year, then the average property tax rate shall be the average tax rate on all taxable property for the prior year.

(b) Each property tax so charged and levied shall constitute a perpetual lien as of January 1 of the year of assessment on all the operating property of the private railcar fleet within this state and shall be payable in the same manner and at the same due dates provided by law in respect to property taxes on personal property payable in the several counties.

(c) In collecting such property taxes, the state tax commission is hereby authorized to pursue any or all of the rights, remedies or processes provided by law for the collection of a delinquency on personal property.

(d) All moneys collected by the state tax commission as provided under this subsection shall be paid forthwith to the state treasurer for transfer to the public school income fund.

(6) Whenever any person is delinquent in the payment of any obligation imposed by law, the state tax commission may give notice of the amount of the delinquency by registered mail to any railroad company over whose line or lines in this state the cars of said person have been transported, or are being transported, and which said railroad company has in its possession or under its control any credits or other personal property belonging to that person, or owes any debts to the delinquent.

(a) After receiving the notice the railroad company so notified shall neither transfer nor make other disposition of the credits, personal property, or debts until the state tax commission consents to a transfer or disposition, or until thirty (30) days elapse after receipt of the notice.

(b) All railroad companies so notified shall advise the state tax commission within five (5) days after receipt of the notice of all such credits, personal property, or debts in their possession, under their control, or owing by them.

(7) Whenever any railroad company advises the state tax commission that it has within its possession or under its control any credits or personal property belonging to a person with a delinquency, or owes any debt to that person, and the amount thereof, the state tax commission may thereupon issue a warrant of distraint and have the same served upon any such railroad company. Service of said warrant upon an agent of such railroad company within this state shall constitute valid service. Any railroad company so served shall pay over to the state tax commission the sum of any credits belonging to that person, or any debts owing to that person, whenever such credits or debts are less than the delinquency, penalty and costs; or shall pay over to the state tax commission the amount of the delinquency, penalty and costs, whenever such credits or debts are greater, and shall deduct the sum so paid over from the credits or debts due that person.

SECTION 6. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 5, Title 63, Idaho Code, and to read as follows:

CHAPTER 5
EQUALIZATION OF ASSESSMENTS

63-501. MEETING OF COMMISSIONERS AS A BOARD OF EQUALIZATION. (1) The county commissioners of each county shall convene as a board of equalization at least once in every month of the year up to the fourth Monday of June for the purpose of equalizing the assessments of property on the property roll and shall meet on the aforesaid date in each year:

(a) To complete the equalization of assessments on all property which has not yet been equalized;

(b) To grant, allow or deny applications for exemption from property tax valuation; and

(c) To hear appeals of assessment of property which are received on or before the end of each county's normal business hours on the fourth Monday of June.

Upon meeting to complete the equalization of assessments, the board of equalization shall continue in session from day to day until equalization of the assessments of such property has been completed and shall also hear and determine complaints upon allowing or disallowing exemptions under chapter 6, title 63, Idaho Code. The board of equalization must complete such business and adjourn as a board of equalization on the second Monday of July, provided that the board of equalization may adjourn any time prior to the aforesaid date when they have completed all of the business as a board of equalization.

The county assessor or his designee shall attend all meetings of the county commissioners in session as a board of equalization and he may make any statements or introduce testimony and examine witnesses on questions before the board of equalization relating to the assessments.

(2) The county commissioners of each county in this state shall meet as a board of equalization on the fourth Monday of November in each year for the purpose of:

(a) Equalizing the assessments of all property entered upon the subsequent property roll;

(b) Determining complaints and hearing appeals in regard to the assessment of such property;

(c) Allowing or disallowing exemptions and cancellations claimed under the provisions of this title affecting the assessment or taxation of property entered upon the rolls, and having a settlement with the assessor and tax collector.

The board of equalization shall complete its business and adjourn on or before the first Monday of December in each year, but if other personal or real property is discovered and assessed after the subsequent board of equalization has adjourned, and is entered on the missed property roll, the taxpayer may appeal that assessment to the county commissioners meeting as a board of equalization, for the purposes stated in subsection (2)(a), (b) and (c) of this section, during its monthly meeting in January of the following year, provided however, that said meeting must be no sooner than the first Monday in January.

63-501A. TAXPAYER'S RIGHT TO APPEAL. (1) Taxpayers may appeal an

assessment to the county board of equalization. The taxpayer may file an appeal of an assessment listed on the real or personal property roll on or before the end of the county's normal business hours on the fourth Monday of June. The taxpayer may file an appeal of an assessment listed on the subsequent property roll on or before the end of the county's normal business hours on the fourth Monday of November. The taxpayer may file an appeal of an assessment listed on the missed property roll on or before the end of the county's normal business hours on the day of the January meeting of the board of equalization.

(2) Appeals from the county board of equalization shall be made pursuant to section 63-511, Idaho Code.

63-502. FUNCTION OF BOARD OF EQUALIZATION ON ASSESSMENTS. The function of the board of equalization shall be confined strictly to assuring that the market value for assessment purposes of property has been found by the assessor, and to the functions provided for in chapter 6, title 63, Idaho Code, relating to exemptions from taxation. It is hereby made the duty of the board of equalization to enforce and compel a proper classification and assessment of all property required under the provisions of this title to be entered on the property rolls, and in so doing, the board of equalization shall examine the rolls and shall raise or cause to be raised, or lower or cause to be lowered, the assessment of any property which in the judgment of the board has not been properly assessed. The board of equalization must examine and act upon all complaints filed with the board in regard to the assessed value of any property entered on the property rolls and must correct any assessment improperly made.

63-503. NEW AND ADDITIONAL ASSESSMENTS. (1) The board of equalization, during its sessions, must direct and require the assessor to assess any property required by this title to be entered upon the property rolls, which is known to have escaped assessment, and in case any assessment of property made by the assessor is deemed by the board of equalization to be so incomplete or inaccurate as to render doubtful the collection of the taxes thereon, the said board must direct the assessor to make a new assessment of such property, in which case the defective assessment shall be cancelled.

(2) All changes in assessments and all new assessments ordered by the board of equalization shall be entered on the property rolls, under the direction of the clerk of the board, and any assessment so changed or entered has the same force and effect as if made and entered by the assessor before the completion of the property rolls.

(3) The county commissioners meeting as a board of equalization shall make no reduction in the assessment of any property when, according to the notation made by the assessor upon the roll, the owner, or his agent or representative, has refused to make the sworn taxpayer's declaration required of him or has willfully concealed, removed, transferred, misrepresented or failed to list such property for the purpose of evading taxation, unless it is shown to the satisfaction of the board that such notation by the assessor is erroneous or false.

63-504. LIEN OF UNPAID PERSONAL PROPERTY TAXES ON REAL PROPERTY.

All taxes upon personal property, where the owners of such personal property are owners of real property in the county, which have not been paid at the time of the November meeting of the county commissioners, sitting as a board of equalization, and which said board of equalization finds to be a lien upon the real property, may be certified to the county auditor and the tax collector. Such taxes must be entered by the tax collector upon the property roll against the real property subject to such lien. The tax collector shall immediately notify the property owner of any such taxes which have been added.

63-505. PRODUCTION OF EVIDENCE BY COUNTY OFFICIALS AND OTHERS. The board of equalization may require the attendance of any county officer or deputy, who must furnish the board with any information which may be had from the records in his office and which the board may deem necessary in equalizing the assessments, and may also subpoena witnesses and hear evidence in all matters relating to the assessment of property, and may arbitrarily assess the property of any person refusing to appear or testify, and any assessment so made shall be conclusive on all questions of assessment in any court or proceeding.

63-506. NOTICE TO TAXPAYER OF NEW ASSESSMENTS AND CHANGES. The board of equalization must, before taking final action in equalizing the assessed value of the property of any person refusing to appear and testify, or in increasing the assessed value of any property, notify the owner thereof, or his agent or representative, of its intention to do so, and require such person to appear forthwith before the board and make objection, if he has any. The board may direct the notice to be served personally upon the owner, or his agent or representative; or, it may direct the clerk to serve the notice by mail, addressed to such owner, or his agent or representative, at his last known post office address. In the case of service by mail, the board of equalization shall not take final action until five (5) days after the mailing of such notice, unless the owner, or his agent, or representative, shall sooner appear. If the owner is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the owner shall, within ten (10) days, deliver to the equitable titleholder a true copy of the notice from the board of equalization.

63-507. RECORD OF PROCEEDINGS. The clerk of the board must record in the official minutes all proceedings of the county commissioners relating to the equalization of assessments, the allowance of exemptions, and all changes, corrections and orders made by the board of equalization, and the names of all persons who have appeared before the board of equalization and who have been heard upon matters affecting the assessment of property.

63-508. COMPLETION OF PROPERTY ROLL AFTER EQUALIZATION. As soon as the county auditor receives the certified statements prescribed in section 63-111, Idaho Code, he shall cause to be entered all changes and corrections made by the state tax commission in the assessments upon the property tax roll. The county auditor shall enter upon the

operating property roll all assessments of operating property under the jurisdiction of the state tax commission in his county, and made by the state tax commission in adjusting the valuations among the taxing districts in accordance with the certified statement of the chairman of the state tax commission. The auditor shall enter the total equalized values and show the amount, and reasons for any exemptions which have been allowed by the county commissioners, and shall thereafter enter the total equalized values for taxation on the property rolls. The auditor shall then add up the total equalized values, amounts of exemption and total equalized values for taxation, and enter the total in the property rolls.

63-509. DELIVERY OF ROLLS TO COUNTY AUDITOR -- ABSTRACTS OF ROLLS. (1) On or before the second Monday of July the board of equalization must deliver the property rolls, with all changes, corrections and additions and exemptions from taxation entered therein, to the county auditor. It shall be the duty of the county auditor to cause to be prepared the roll for delivery to the county tax collector on or before the first Monday of November. It shall be the duty of the county auditor to cause to be prepared a total of the amount and value of each category of property and prepare an abstract of all the property entered upon the roll in the manner and form required by the state tax commission. Such forms must show, but need not be limited to, the market value for assessment purposes of all property by categories, and the exemptions from taxation allowed by categories. Any abstracts needed by and prepared for the state tax commission must be delivered by certified mail to the state tax commission by the fourth Monday of July. The value of exemptions will be shown and identified for exemptions granted pursuant to chapters 20 and 29, title 50, Idaho Code, for the value in excess of the equalized assessment valuation as shown on the base assessment roll in any revenue allocation area, and sections 63-602G, 63-602K and 63-602P, Idaho Code, as well as the net taxable value for each of the categories. The abstracts shall be prepared and duly verified and must show a correct classification of all the property in accordance with the classification of such property upon the property roll, and all matters and things required to be shown upon the abstracts must be entered.

(2) The subsequent property roll shall be delivered to the county auditor as soon as possible after the first Monday in December. The county auditor shall deliver the subsequent property roll to the county tax collector without delay.

(3) The missed property roll shall be delivered to the county auditor as soon as possible, but no later than the first Monday in March of the succeeding year. The county auditor shall deliver the missed property roll to the county tax collector without delay.

(4) The county auditor must cause to be prepared abstracts of the combined subsequent and missed property rolls as prescribed in subsection (1) and submit the abstracts by certified mail to the state tax commission on or before the first Monday in March of the succeeding year.

63-510. NOTIFICATION OF VALUATION DUE TO STATE TAX COMMISSION. (1) Prior to the first Monday of August the auditor of each county in

the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the property roll for the current year and shall provide an estimate of the net taxable value for each taxing unit or district from the current year's estimated subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year to any taxing unit or district.

(2) Prior to the first Monday of March the auditor of each county in the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year, and listed on the subsequent or missed property roll, to any taxing unit or district.

(3) The notification required in subsections (1) and (2) of this section shall be on forms prescribed and provided by the state tax commission and shall list separately the value exempt from property taxation in accordance with section 63-602G, Idaho Code, and the value in excess of the equalized assessment valuation as shown on the base assessment roll in any revenue allocation area, pursuant to chapters 20 and 29, title 50, Idaho Code.

(4) For the purposes of this section, "taxing district," as defined in section 63-201(22), Idaho Code, shall include each incorporated city in each county, regardless of whether said city certifies a property tax budget.

63-511. APPEALS FROM COUNTY BOARD OF EQUALIZATION. (1) Any time within thirty (30) days after mailing of notice of a decision of the board of equalization, or pronouncement of a decision announced at a hearing, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals. Such appeal may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

(2) Notice of such appeal stating the grounds therefor shall be filed with the county auditor, who shall forthwith transmit to the board of tax appeals a copy of said notice, together with a certified copy of the minutes of the proceedings of the board of equalization resulting in such act, order or proceeding, or a certificate to be furnished by the clerk of the board that said board of equalization has failed to act in the time required by law on any complaint, protest, objection, application or petition in regard to assessment of the complainant's property, or a petition of the state tax commission. The county auditor shall also forthwith transmit all evidence taken in connection with the matter appealed. The board of tax appeals may receive further evidence and will hear the appeal as provided in chapter 38, title 63, Idaho Code.

(3) Any appeal that may be taken to the board of tax appeals may, during the same time period, be taken to the district court for the county in which the property is located.

SECTION 7. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 6, Title 63, Idaho Code, and to read as follows:

CHAPTER 6
EXEMPTIONS FROM TAXATION

63-601. ALL PROPERTY SUBJECT TO TAXATION. All property within the jurisdiction of this state, not expressly exempted, is subject to assessment and taxation.

63-602. PROPERTY EXEMPT FROM TAXATION. (1) Property shall be exempt from taxation as provided in this chapter; provided, that no deduction shall be made in assessment of shares of capital stock of any corporation or association for exemptions claimed under this section, and provided further, that the term "full cash value" wherever used in this act shall mean the actual assessed value of the property as to which an exemption is claimed.

(2) The use of the words "exclusive" or "exclusively" in this chapter shall mean used exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder and property used for more than one (1) exempt purpose, pursuant to the provisions of sections 63-602A through 63-602Z, Idaho Code, shall be exempt from taxation hereunder so long as the property is used exclusively for one (1) or more or any combination of the exempt purposes provided hereunder.

(3) All exemptions from property taxation claimed under this chapter shall be approved annually by the county board of equalization.

63-602A. PROPERTY EXEMPT FROM TAXATION -- GOVERNMENT PROPERTY. (1) The following property is exempt from taxation: property belonging to the United States, except when taxation thereof is authorized by the congress of the United States, this state, or to any county or municipal corporation or school district within this state.

(2) However, inventory property of the farmers home administration of the United States department of agriculture shall be subject to taxation as other property in the county.

(3) However, unimproved real property of more than ten (10) contiguous acres owned in fee simple by the department of fish and game shall be subject to a fee in lieu of property taxes contingent upon the following conditions and requirements:

(a) The fee in lieu of property taxes shall not exceed the property tax for the property at the time of acquisition by the department of fish and game, unless the property tax rate for the property shall have been increased.

(b) The department shall determine and identify the parcels of property and their current use as qualified under the provisions of this act. The department shall consult with the appropriate county treasurer and determine the fee to be paid on the property and credited continuously to the county current expense fund. The fee shall be an amount equal to the property tax the property would generate if assessed as agricultural property.

(c) Any future increase in the fee paid in lieu of property taxes shall be determined by the amount of property taxes the property would generate if assessed as agricultural property. The increase may be determined by the department working cooperatively with the appropriate county assessor. The method used for determining the fee that would be due on department property is to be used only under this subsection and has no other application in any other section of the Idaho Code.

(d) The department shall then provide to the assessor of the county where the parcels are located on or before the second Monday of March each year, a listing identifying each parcel of unimproved property by legal description, size and amount of the fee for the preceding calendar year. The treasurer shall prepare and submit a billing for payment based on this information to the department. Once the fee has been determined, payment shall be made by June 20 of that year from moneys appropriated for that purpose. However, if the fees exceed the moneys appropriated for that purpose, the director of the department of fish and game shall calculate the percent reduction that must be made and certify the proportionate reduction to each county treasurer.

(e) For the purpose of this section only, unimproved real property shall mean property on which no homesite or improved site is located, and homesite or improved site shall mean any buildings, structures, or fixtures which have been erected or affixed to the land and the necessary acreage required to utilize the homesite or improved site as determined by the county assessor shall be exempt. For purposes of this subsection only, roads or fences shall not be considered as improvements.

63-602B. PROPERTY EXEMPT FROM TAXATION -- RELIGIOUS CORPORATIONS OR SOCIETIES. The following property is exempt from taxation: property belonging to any religious corporation or society of this state, used exclusively for and in connection with public worship, and any parsonage belonging to such corporation or society and occupied as such, and any recreational hall belonging to and used in connection with the activities of such corporation or society; and this exemption shall extend to property owned by any religious corporation or society which is used for any combination of religious worship, educational purposes and recreational activities, not designed for profit.

63-602C. PROPERTY EXEMPT FROM TAXATION -- FRATERNAL, BENEVOLENT, OR CHARITABLE CORPORATIONS OR SOCIETIES. The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such corporation or society is organized; provided, that if any building or property belonging to any such corporation or society is leased by such owner or if such corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property, and if any such property is leased in part or used in part

by such corporation or society for such purposes the assessor shall determine the value of the entire building and the value of the part used or leased for commercial purposes. If the value of the part used for commercial purposes is determined to be three percent (3%) or less than the value of the entirety, the whole of said property shall remain exempt. If the value of the part used for commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such building including the value of the real estate as is so leased or used for such purposes, and shall assess all merchandise kept for sale, and the trade fixtures used in connection with the sale of such merchandise; provided however, that the lease or use of any property by any such corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.

63-602D. PROPERTY EXEMPT FROM TAXATION -- CERTAIN HOSPITALS AND REFUGE HOMES. The following property is exempt from taxation: hospitals and refuge homes, their furniture and equipment, owned, operated and controlled, and medical equipment leased, by any religious or benevolent corporation or society with the necessary grounds used therewith, and from which no gain or profit is derived by reason of their operation.

63-602E. PROPERTY EXEMPT FROM TAXATION -- PROPERTY USED FOR SCHOOL OR EDUCATIONAL PURPOSES. The following property is exempt from taxation: all property used exclusively for nonprofit school or educational purposes, and all property from which no profit is derived and which is held or used exclusively for endowment, building or maintenance purposes of schools or educational institutions.

63-602F. PROPERTY EXEMPT FROM TAXATION. The following property is exempt from taxation:

(1) Possessory rights to public lands;
(2) Mining claims not patented;
(3) All public cemeteries;
(4) All public libraries.

63-602G. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS. (1) During the tax year 1983 and each year thereafter, the first fifty thousand dollars ($50,000) of the market value for assessment purposes of residential improvements, or fifty percent (50%) of the market value for assessment purposes of residential improvements, whichever is the lesser, shall be exempt from property taxation.

(2) The exemption allowed by this section may be granted only if:

(a) The residential improvements are owner-occupied and used as the primary dwelling place of the owner as of January 1;

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised

uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

(ii) That the residential improvements are his primary dwelling place; and

(iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other residential improvements in the county.

(d) For the purpose of this section, the definition of owner shall be the same definition set forth in section 63-701(8), Idaho Code.

When an "owner" is any person who as grantor created a revocable trust and named himself or herself as beneficiary of that trust, he or she may provide proof of the revocable trust with an affidavit stating: (i) the name of the grantor; (ii) a statement that the grantor is the beneficiary of the trust; (iii) the trust is revocable during the grantor's lifetime; and (iv) the grantor is the owner-occupier of the residential property and uses the property as the primary dwelling place of the owner as of January 1.

The affidavit shall include the attaching of the copies of those portions of the trust which set forth the grantor, the grantor as beneficiary, the revocable character of the trust and the signature page of the trust.

(e) Any owner may request in writing the return of all copies of any revocable trust created by the owner that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit set forth in paragraph (d) of this subsection in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(9), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(7), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner still occupies the same residential improvements for which he made application.

(c) The residential improvements described in subsection (3)(b) of this section are owner-occupied and used as the primary dwelling place of the owner as of January 1.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) The legislature declares that this exemption is necessary and just.

(6) Residential improvements having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to the owner's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the internal revenue code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone, as defined in section 112 of the internal revenue code, and such improvements would have otherwise qualified under this section, then the board of county commissioners of the county in which the residential improvements are located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

63-602H. VALUE OF RESIDENTIAL PROPERTY IN CERTAIN ZONED AREAS. (1) Residential property located in an area which was previously zoned residential but has been changed to a zone other than residential shall be appraised, assessed and taxed as if such property were in an area zoned residential as long as such property is continuously used by the owner thereof solely for residential purposes.

(2) "Residential property" as used herein is defined as any tract of three (3) acres or less which is used by the owner thereof solely for residential purposes.

63-602I. PROPERTY EXEMPT FROM TAXATION -- HOUSEHOLD GOODS, WEARING APPAREL AND OTHER PERSONAL EFFECTS IN CERTAIN CASES. The following property is exempt from taxation: all household goods, furniture and furnishings actually in use by the owner in his private home or dwelling place, or temporarily in storage pending delivery by a vendor to him for his personal use, and not for sale or in commercial use, and all wearing apparel and other personal effects held by any person for the exclusive use and benefit of himself or family and not for sale or commercial use.

63-602J. PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES AND VESSELS PROPERLY REGISTERED. The following property is exempt from taxation: motor vehicles properly registered and for which the required fee has been paid under the provisions of the laws of the state of Idaho, recreational vehicles for which the fees imposed by law have been paid and vessels for which the certificate of registration fees imposed by law have been paid.

63-602K. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND. (1) The speculative portion of the value of land devoted to agriculture is exempt from taxation.

(2) "Land devoted to agriculture" shall mean that property defined by section 63-604, Idaho Code.

(3) "Speculative portion" shall mean that portion of the value of agricultural land which represents the excess over the actual use value of such land established by comparable sales data compared to value established by capitalization of economic rent or long-term average crop rental at a capitalization rate which shall be the rate

of interest charged by the Spokane office of the farm credit system averaged over the immediate past five (5) years plus a component for the local tax rate.

(4) The state tax commission shall adopt rules implementing this section which shall establish economic rent, average crop rental and capitalization rates.

63-602L. PROPERTY EXEMPT FROM TAXATION -- CAPITAL STOCK, BONDS, DEPOSITS AND INTANGIBLE PERSONAL PROPERTY. The following property is exempt from taxation: capital stock, bonds and other intangible personal property. The deposits in national banks, state banks, and savings and loan associations. Shares and accounts of savings and loan associations, credit unions or associations organized under the laws of the state of Idaho for the purpose of accumulating the savings and funds of their members and lending the same to their members.

63-602M. PROPERTY EXEMPT FROM TAXATION -- CERTAIN SECURED DUES AND CREDITS. The following property is exempt from taxation: all dues and credits secured by mortgage, trust deed or other liens except as otherwise provided by law.

63-602N. PROPERTY EXEMPT FROM TAXATION -- IRRIGATION WATER AND STRUCTURES -- OPERATING PROPERTY OF IRRIGATION DISTRICTS OR CANAL COMPANIES. (1) Water rights for the irrigation of lands are exempt from taxation.

(2) Canals, ditches, pipelines, flumes, aqueducts, reservoirs, dams, and any other necessary facility used primarily for the conveyance, storage, or providing of water for the irrigation of lands, are exempt from taxation to the extent irrigation water is thereby conveyed, stored or diverted; provided that if any portion of such property is used for purposes other than irrigation of lands or the conveyance, storage, or providing of water to a nonprofit irrigation company or irrigation district, the assessor shall determine the entire value of such property so used and assess the proportionate part of such property that is devoted to such use.

(3) The operating property of all organizations, whether incorporated or unincorporated, heretofore organized or which shall hereafter be organized, for the operation, maintenance, or management of an irrigation project or irrigation works or system or for the purpose of furnishing water to its landowners, members or shareholders, the control of which is actually vested in those entitled to the use of the water from such irrigation works or system for the irrigation of lands to which the water from such irrigation works or system is appurtenant, is exempt from taxation. The term "operating property" as used in this section shall include all real and personal property owned, used, operated or occupied primarily for the maintenance and operation of such irrigation project or irrigation works and system or in conducting its business of furnishing water to its landowners, members or shareholders and shall include all title and interest in such property as owner, lessee, or otherwise; provided, that if any portion of such operating property is used for commercial purposes by others than its landowners, members or shareholders, the assessor shall determine the entire value of such portion of the operating property so used and

assess the proportionate part of such operating property that is used for commercial purposes.

63-602O. PROPERTY EXEMPT FROM TAXATION -- PROPERTY USED FOR GENERATING AND DELIVERING ELECTRICAL POWER FOR IRRIGATION OR DRAINAGE PURPOSES AND PROPERTY USED FOR TRANSMITTING AND DELIVERING NATURAL GAS ENERGY FOR IRRIGATION OR DRAINAGE PURPOSES. The following property is exempt from taxation: property used for generating or delivering electrical power to the extent that such property is used for furnishing power for pumping water for irrigation or drainage purposes on lands in the state of Idaho, and property used for transmitting or delivering natural gas energy to the extent that such property is used for furnishing natural gas energy for pumping water for irrigation or drainage purposes on lands in the state of Idaho. This exemption shall accrue to the benefit of the consumer of such power, or the consumer of such natural gas energy, except in cases where the water so pumped is sold or rented to irrigate lands, in which event the property used for generating or delivering power, and property used for transmitting or delivering natural gas energy, shall be assessed for taxation to the extent that such water is so sold or rented.

63-602P. PROPERTY EXEMPT FROM TAXATION -- FACILITIES FOR WATER OR AIR POLLUTION CONTROL. (1) The following property is exempt from taxation: facilities, installations, machinery or equipment, attached or unattached to real property, and designed, installed and utilized in the elimination, control or prevention of water or air pollution, or, in event such facilities, installations, equipment or machinery shall also serve other beneficial purposes and uses, such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to elimination, control or prevention of water or air pollution. The state tax commission or county assessor shall determine such exempt portion, and shall not include as exempt any portion of any facilities which have value as the specific source of marketable byproducts.

(2) If any water corporation, as defined by section 61-125, Idaho Code, regulated by the Idaho public utilities commission is or has been ordered by the state board of health or the Idaho public utilities commission to install equipment designed and utilized in the elimination, control or prevention of water pollution, the Idaho public utilities commission shall notify the Idaho state tax commission of the percentage such property bears to the total invested plant of the company and said portion shall be exempt from property taxation. Said percentage reported to the Idaho state tax commission by the Idaho public utilities commission may be contested by any person or party at a public hearing held before the Idaho state tax commission.

63-602Q. PROPERTY EXEMPT FROM TAXATION -- CERTAIN COOPERATIVE TELEPHONE LINES. The following property is exempt from taxation: cooperative telephone lines from which no profit is derived and upon or over which no fees or tolls are charged or collected. This exemption shall only apply to any cooperative telephone system having twenty-five (25) or less subscribers or users.

63-602R. PROPERTY EXEMPT FROM TAXATION -- AGRICULTURAL CROPS. The following property is exempt from property taxation: agricultural crops, whether growing or held for use or sale, while the legal or equitable title remains with the producer, and fruit and nut-bearing trees and grapevines; provided that nothing herein contained shall be construed to exempt timber, forest, forest land, or forest products from the provisions of chapter 17, title 63, Idaho Code.

63-602S. PROPERTY EXEMPT FROM TAXATION -- FRUITS AND VEGETABLES HELD FOR HUMAN CONSUMPTION, AND SEEDS, SHIPPED OUT OF THE STATE. (1) Any person, firm or corporation engaged in the storing or processing of fruits or vegetables held for human consumption or shipment of seeds out of the state must file a full declaration of such property as of the assessment date with the county assessor. On any assessment made on fruits and vegetables held for sale for human consumption, or any processed product, thereof, or seeds, in the hands of farmers, producers, or of a processor, or while being transported to or held in storage in a public or private warehouse structure, the board of equalization of the county in which the assessment was made, at its meeting on the first Monday of December as provided by law for equalizing the assessments of personal property on the subsequent personal property assessment roll, shall cancel such assessments in whole or proportionate part on receipt of sufficient documentary proof that the personal property so assessed was actually sold and transported or shipped to another point outside the state of Idaho on or before December 1 of the current year of assessment. No such cancellation shall be made unless such proof be furnished to said board on or before such meeting in such year.

(2) Public warehousing is the storing of personal property by any person, firm or corporation regularly engaged in the business of storing such property for hire.

(3) Private warehousing is the storage of personal property by any person, firm or corporation which is carrying on the activity of warehousing or storing such property only in the operation of his or its own business.

(4) This exemption shall only apply to private storage from and after a notice, describing by address and physical premises, is filed with the county assessor, which notice shall be filed annually.

63-602T. PROPERTY EXEMPT FROM TAXATION -- PERSONAL PROPERTY MANUFACTURED OR PROCESSED IN THIS STATE AND ACTUALLY SOLD AND SHIPPED OUT OF STATE. (1) Any person, firm, or corporation engaged in the manufacture or processing of personal property in this state which property is stored in a public or private warehouse structure or area must file a full declaration of such property as of the assessment date with the county assessor. On any assessment made on personal property manufactured or processed in this state by person, firms or corporations having a domicile or place of business in Idaho, being stored in a public or private warehouse structure or area, the board of equalization of the county in which such assessment was made, at its meeting on the first Monday of December as provided by law for equalizing the assessments of personal property on the subsequent personal property assessment roll, shall cancel such assessments in whole or proportionate

part on receipt of sufficient documentary proof that the personal property so assessed was actually sold and transported or shipped to another point outside the state of Idaho on or before December 1 of the current year of assessment. No such cancellation shall be made unless such proof be furnished to said board on or before such meeting in such year. The term "manufactured" or "processed" as used herein refers to personal property which has been fabricated, constructed, assembled, milled or converted into a finished product and is not intended to include any personal property undergoing a stage of manufacture or process prior to the end finished product.

(2) Public warehousing is the storing of personal property by any person, firm or corporation regularly engaged in the business of storing such property for hire.

(3) Private warehousing is the storage of personal property by any person, firm or corporation which is carrying on the activity of warehousing or storing such property only in the operation of his or its own business.

(4) Private or public warehouse area is intended to mean for purposes of this act open storage or place properly identified which is normally used to store personal property by any person, firm or corporation.

(5) This exemption shall only apply to a private warehouse, private and public warehousing area from and after a notice, describing by address and physical premises, is filed with the county assessor, which notice shall be filed annually.

63-602U. PROPERTY EXEMPT FROM TAXATION -- PERSONAL PROPERTY SHIPPED INTO THE STATE AND STORED IN A PUBLIC OR PRIVATE WAREHOUSE STRUCTURE, AND DESIGNATED FOR SHIPMENT OUT OF THE STATE TO BE CONSIDERED IN TRANSIT. (1) Personal property shipped into this state and stored in a public or private warehouse structure, which property is not offered for sale in Idaho and designated for reshipment outside of the state, is considered to be "in transit" and shall be exempt from taxation. Such property shall not be deprived of exemption because while in storage, awaiting such further shipment, such personal property is labeled, packaged, disassembled, divided, broken in bulk, relabeled, or repackaged, or because the personal property is held for resale to customers outside the state of Idaho. Provided that all personal property claimed to be exempt "in transit" be labeled as such and shall be designated immediately upon receipt as being in transit upon the books and records of the warehouse, whether public or private, wherein the same is located. The books and records of such storage warehouse shall contain a full, true and correct inventory of all such property, together with the date of receipt of same, the point of origin, the date of its withdrawal, and, if known, the ultimate destination thereof. The books and records pertaining to the storage of any such in transit property shall be opened to inspection by any taxing authority in the state of Idaho having jurisdiction thereof upon reasonable demand having been made.

(2) Public warehousing is the storing of personal property by any person, firm or corporation regularly engaged in the business of storing such property for hire.

(3) Private warehousing is the storage of personal property by

any person, firm or corporation which is carrying on the activity of warehousing or storing such property only in the operation of his or its own business. This exemption shall only apply to private storage from and after a notice, describing by address and physical premises, is filed with the county assessor, which notice shall be filed annually.

63-602V. PROPERTY EXEMPT FROM TAXATION -- PERSONAL PROPERTY SHIPPED INTO THE STATE AND STORED IN THE ORIGINAL PACKAGE. Personal property of any person, firm or corporation, having neither domicile nor place of business in this state, which property upon being brought or shipped into this state is forthwith stored in the original package in a warehouse operated for public use and for hire, shall, while so stored, be deemed in transit and shall be exempt from taxation.

63-602W. BUSINESS INVENTORY EXEMPT FROM TAXATION. The following property is exempt from property taxation: business inventory. For the purpose of this section, "business inventory" means all items of tangible personal property described as:

(1) All livestock, fur-bearing animals, fish, fowl and bees.

(2) All nursery stock, stock-in-trade, merchandise, products, finished or partly finished goods, raw materials, and all forest products subject to the provisions of chapter 17, title 63, Idaho Code, supplies, containers and other personal property which is held for sale or consumption in the ordinary course of the taxpayer's manufacturing, farming, wholesale jobbing, or merchandising business.

63-602X. PROPERTY EXEMPT FROM TAXATION -- CASUALTY LOSS. (1) The following property is exempt from taxation: real and personal property which has been damaged by an event causing casualty loss to all or a portion of the property. The board of equalization on a case-by-case basis shall determine whether to grant an exemption.

An exemption granted under this section shall be for all tax years in which the real or personal property has been destroyed and has not been replaced. Claimants seeking exemption under this section must apply to the board of equalization in accordance with the procedure prescribed in section 63-711, Idaho Code. If an exemption is granted, the property taxes that shall be paid shall be upon those improvements for that portion of the calendar year in which they were in existence and usable. The property tax imposed shall be an amount equal to the proportion of property taxes which would have been paid on the property had it been on the assessment rolls January 1 prorated for that portion of the calendar year for which the structure was in existence. For real or personal property to be granted an exemption pursuant to this section it shall not have been used by any person as a residence, it shall not have been used for any business or commercial purpose unrelated to the construction of the property or it shall not have been used for any possessory use for which the owner received any compensation or consideration.

(2) The board of equalization may sit and grant such claim for exemption at any time within the limits allowed in this section, and if granted, either in whole or in part, shall order all necessary adjustments made in the tax records of the various county officers and

taxing districts. The granting of an exemption for property taxes which have become delinquent shall annul and cancel only those property taxes exempted by order of the board of equalization, and all interest and late charges on such taxes.

63-602Y. PROPERTY EXEMPT FROM TAXATION -- EFFECT OF CHANGE OF STATUS. (1) If any property, real or personal, which is exempted from taxation on the first day of January shall thereafter have a changed status during the year, either by change in ownership or otherwise, in a manner that if the changed status had existed on the first day of January the property would have been taxable at that time, then the property shall be assessed in the following manner: If the status changed before the first day of April, then for its full market value for assessment purposes; if on the first day of April and before the first day of July, then for three-fourths (3/4) of its full market value for assessment purposes; if on the first day of July and before the first day of October, then for one-half (1/2) of its full market value for assessment purposes; and if the status changed on or after the first day of October, then for one-fourth (1/4) of its full market value for assessment purposes. However, if the changed status results from the leasing or rental of property normally constituting business inventory, the same shall be subject to property tax only for the period it is so leased or rented and upon its return to business inventory shall again be exempt. Each owner of such property shall, on the first Monday of November of each year, file with the assessor for the home county of the owner with a copy for every other county involved, a statement listing and sufficiently identifying such property, the counties where it was situated and the periods of the preceding twelve (12) calendar months during which the property was leased or rented within each county.

(2) At the time of filing such statement with the assessor of his home county, the owner of such leased or rented property shall provide such assessor with a copy for every other county involved.

(3) The assessor of such home county shall ascertain the portion of said preceding twelve (12) calendar months during which such property was leased or rented in the home county and shall enter such property upon the subsequent or missed property roll and the tax collector of the home county shall compute and collect the property tax thereon. The assessor shall indorse the full market value for assessment purposes of each item of such property upon copies of the statement and the owner of the property shall, within five (5) days, furnish an indorsed copy of the owner's statement to the assessor of each county of the state wherein such property was located during the lease or rental period, and each such other county assessor shall likewise assess and the tax collector shall collect the property taxes due for the portion of the preceding twelve (12) calendar months the leased or rented property was situate in their county.

(4) The property taxes due thereon shall be a first and prior lien upon such property and all real and personal property of the owner thereof within the state until all property taxes due have been paid.

63-602Z. EXEMPTION FROM OCCUPANCY TAX. Any improvement to real

property exempt from property taxation under the laws of this state or under the laws of the United States shall be exempt from occupancy taxation.

63-602AA. PROPERTY EXEMPT FROM TAXATION -- EXCEPTIONAL SITUATIONS. (1) The following property is exempt or partially exempt from taxation: real and personal property belonging to persons who, because of unusual circumstances which affect their ability to pay the property tax, should be relieved from paying all or part of said tax in order to avoid undue hardship, which undue hardship must be determined by the board of equalization.

(2) An exceptional value exemption granted under this section shall be for the current tax year only and property exempted hereunder shall continue to be listed and assessed for the ensuing tax years as other property.

(3) Claimants seeking exemption under this section must apply each year to the board of equalization and such claim must be submitted by June 20 of the current year. The board of equalization must consider and act on all such claims no later than the second Monday of July.

(4) Each person claiming such exemption shall give a sworn statement containing full and complete information of his financial status to such board and shall make true answers to all questions propounded in writing, or otherwise, touching such person's right to the exemption claimed. The chairman of the board shall have authority to administer oaths to each person appearing as a claimant for such exemption and in addition to such examination each claimant shall subscribe to and swear that his answers to questions propounded on written forms to be prescribed by the state tax commission are true, and which sworn statement shall be kept and filed by the clerk of the county board of equalization. The board may, in its discretion and for good cause shown, allow an agent or some person acting for and on behalf of the claimant to make the claim for exemption for any claimant in the manner herein provided, or where a person unable to make such sworn statement, his wife, widow, guardian or personal representative, or other person having knowledge of the facts, may make such sworn statement in his stead.

(5) The county board of equalization shall decide and determine from each examination and from each written claim for exemption whether or not such person is entitled to the exemption claimed or to any part thereof, and shall make a record thereof accordingly.

63-603. ELECTRIC, OR GAS, PUBLIC UTILITIES PUMPING WATER FOR IRRIGATION OR DRAINAGE -- REDUCTION OF ASSESSMENT IN ACCORDANCE WITH EXEMPTION -- CREDIT ON CUSTOMERS' BILLS OR PAYMENT TO CONSUMERS. (1) The state tax commission shall, at the time of assessment of the property of any electrical, or gas, public utility, cooperative organized under the rural electrification administration act of the United States congress, or other company distributing electrical power ("utility"), determine the amount of the exemption under section 63-6020, Idaho Code, and shall reduce such assessment so that any such utility shall not be required to pay any property taxes upon that portion of its property so exempted.

The amount of such exemption or reduction by the state tax commission shall be as nearly as practicable, such as would yield the amount of property taxes included in the rates of such utility under the tariff schedule(s) applicable to the furnishing of such electricity or gas.

(2) The full amount of property taxes which would have been due from such utility if such exemption had not been made, shall be credited or paid annually, for the year in which the exemption is made, on the electric or gas bill, to the consumer by the utility furnishing such electricity or gas for irrigation purposes.

(3) If the consumer is not a customer of the deliverer of electrical power or natural gas energy, the full amount of property taxes which would have been due from such utility if such exemption had not been made, shall be paid annually, for the year in which the exemption is made, directly to the consumer by the utility delivering such electricity or gas for irrigation purposes. To qualify for credit or direct payment the person or organization at the point of delivery must also be the person or organization pumping water for irrigation purposes and not a distributor or redistributor of electrical power or natural gas energy.

(4) For the purposes of determining the benefit to which each consumer is entitled by virtue of this exemption, the following procedure is provided.

To receive the benefit of the exemption under section 63-6020, Idaho Code, and this section, each consumer who is not a customer of the deliverer of electrical power or gas energy must file an application with the state tax commission on or before April 30 each year except that for the year 1993, only such application may be filed on or before June 15. The state tax commission shall prescribe by rule the form and information necessary for such application.

On or before the fifteenth day of November each year, the tax collector of each county shall transmit to the state tax commission, duplicate tax statements of each utility, showing the property taxes payable by such utility in his county. The state tax commission shall as soon as practicable thereafter, certify to each utility, the aggregate saving in property taxes effected in the several counties to each utility by reason of this exemption. On or before the fifteenth day of December of each year, each utility shall file with the state tax commission of Idaho, a statement showing the revenues which were or are to be collected from each irrigation or drainage pumping consumer, and the ratio between the aggregate savings in property taxes certified to it by the state tax commission and the aggregate revenues which were or are to be collected from these consumers. The utility shall determine the credit to which each consumer is entitled by virtue of this exemption and shall certify to the state tax commission that it has refunded or credited against the consumer's bills, the amounts due each consumer. This refund or credit shall equal each consumer's bill for the year multiplied by the ratio calculated pursuant to the provisions of this paragraph. The public utilities commission shall have jurisdiction under the public utilities law to insure utility compliance with the provisions of this statute.

63-604. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED. (1) For

property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

(i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or

(ii) It is used by the owner for the grazing of livestock to be sold as part of a net profit-making enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or

(iii) It is in a cropland retirement or rotation program.

(b) The area of such land is five (5) acres or less and such land has been actively devoted to agriculture within the meaning of subsection (1)(a) of this section during the last three (3) growing seasons; and

(i) It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owners' or lessees' annual gross income; or

(ii) It agriculturally produced gross revenues in the immediately preceding year of one thousand dollars ($1,000) or more. When the area of land is five (5) acres or less, such land shall be presumed to be nonagricultural land until it is established that the requirements of this subsection have been met.

(2) Land shall not be classified or valued as agricultural land which is part of a platted subdivision with stated restrictions prohibiting its use for agricultural purposes, whether within or without a city.

(3) Land utilized for the grazing of a horse or other animals kept primarily for personal use or pleasure rather than as part of a bona fide profit-making agricultural enterprise shall not be considered to be land which is actively devoted to agriculture.

(4) Land actively devoted to agriculture, having previously qualified for exemption under this section in the preceding year, or which would have qualified under this section during the current year, shall not lose such qualification due to the owner's or lessee's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the internal revenue code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone, as defined in section 112 of the internal revenue code, and the land would otherwise qualify for exemption under this section, then the board of county commissioners of the county in which the land actively devoted to agriculture is located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

63-605. LAND USED TO PROTECT WILDLIFE AND WILDLIFE HABITAT. Land which is owned and used for wildlife habitat by a private, nonprofit corporation which corporation has a recognized tax exempt status under

section 501(C)(3) of the internal revenue code, and which corporation qualifies for exemption status under section 63-602C, Idaho Code, and which corporation is dedicated to the conservation of wildlife or wildlife habitat, shall be eligible for appraisal, assessment and taxation as agricultural property.

SECTION 8. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 7, Title 63, Idaho Code, and to read as follows:

CHAPTER 7
PROPERTY TAX RELIEF

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed a claim under the provisions of this chapter. On January 1 of the year in which the claim was filed a claimant must own a homestead and be:

(a) Not less than sixty-five (65) years old; or

(b) A fatherless or motherless child under the age of eighteen (18) years of age; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled pursuant to 42 USC 423, 45 USC 228, 45 USC 231 or 5 USC 8337; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or

(f) A person as specified in 42 USC 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. Homestead does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and any person or persons who live in the same dwelling, and share its furnishings, facilities, accommodations or expenses. The term includes any person owing a duty of support to the applicant pursuant to section 32-1002, Idaho Code, unless the person qualifies as a "nonhousehold member" pursuant to subsection (6) of this section. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(4) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(5) "Income" means the sum of federal adjusted gross income as defined in the internal revenue code, as defined in section 63-3004,

Idaho Code, alimony, support money, income from inheritances, nontaxable strike benefits, the nontaxable amount of any individual retirement account pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act, state unemployment insurance laws, and veterans' disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the internal revenue code). Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities, worker's compensation and the gross amount of loss of earnings insurance. It does not include capital gains, gifts from nongovernmental sources, inheritances, or medical care as defined in section 213(d) of the internal revenue code, incurred by the household. Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant does not file a federal tax return the claimant's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant filed a federal tax return.

(6) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal care services to the claimant, or who is receiving disability benefits pursuant to subsection (1)(d) of this section.

(7) "Occupied" means actual use and possession.

(8) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate. "Owner" shall also include any person who as grantor created a revocable trust and named himself as beneficiary of that trust. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered ownership for determining qualification for property tax reduction benefits, however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be reduced to a proportion commensurate with the proportion of partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property is held by a person who has died without timely filing a claim for property tax reduction, the estate shall be the "owner."

(9) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and con-

vincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(15), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

63-702. CLAIM IS PERSONAL. (1) The right to file a claim under the provisions of this chapter shall be personal to the claimant and shall not survive his death. Such right may be exercised on behalf of a living claimant by an agent authorized in writing to so act or by a guardian or other representative acting pursuant to judicial authority. If a claimant dies after having filed a timely claim, the amount thereof shall be allowed to his personal representative, if one is appointed, or to surviving heirs.

(2) A claimant's spouse may file a claim subject to the provisions of section 63-706, Idaho Code, on behalf of a claimant who dies on or after January 1, only if the claimant qualified for property tax reduction granted under the provisions of this chapter on January 1.

63-703. PROCEDURE FOR FILING CLAIMS. (1) Any claim filed shall be signed by the claimant. By signing such claim, the claimant shall attest to the truth of such claim, and shall be subject to the penalties provided by section 18-5401, Idaho Code, for stating as true any material fact known to be false. All claims shall be made on forms prescribed by the state tax commission and shall be in triplicate. One (1) copy of the form shall be provided to the claimant, one (1) copy shall be kept for all county purposes, and one (1) copy shall be forwarded to the state tax commission with the property tax reduction roll.

(2) By filing a claim, a claimant does not relinquish any right he or any member of his household may have to apply for a cancellation of property taxes pursuant to section 63-711, Idaho Code. The county commissioners may grant any such claimant, or any member of his household, a cancellation of property taxes, late charges and interest under such section, if a claim has been filed under the provisions of this chapter.

(3) If two (2) or more individuals of a household are able to meet the qualifications of a claimant, they may decide between themselves who may obtain a reduction in property taxes under the provisions of this chapter, but if they do not decide between themselves, then the reduction shall be divided equally among or between the claimants in the household.

(4) A claimant who requests nonhousehold member status for any nonspouse residing in the dwelling must provide a statement from the attending physician, verifying that the claimant would not be able to maintain residency in the dwelling in the absence of the nonhousehold member. To establish nonhousehold member status for any disabled nonspouse for whom the claimant provides care, the claimant must provide proof of disability from the recognizing agency.

(5) When an "owner" is any person who as grantor created a revocable trust and named himself or herself as beneficiary of that trust, he or she may provide proof of the revocable trust with an affidavit stating: (i) the name of the grantor, (ii) a statement that the grantor is the beneficiary of the trust, (iii) the trust is revocable during the grantor's lifetime, and (iv) the grantor is the owner-occupier of the residential property and uses the property as the primary dwelling place of the owner as of January 1.

The affidavit shall include the attaching of the copies of those portions of the trust which sets forth the grantor, the grantor as beneficiary, the revocable character of the trust and the signature page of the trust.

63-704. AMOUNT OF PROPERTY TAX REDUCTION. (1) Each claimant qualifying for and applying for a reduction in property taxes under the provisions of this chapter, shall be allowed a reduction in property taxes on his homestead for the current year only, in the amounts provided by subsection (4) of this section.

(2) All property taxes continue to be the responsibility of the individual taxpayer, all property taxes continue to be perpetual liens against the property against which assessed, and all property taxes may be collected and enforced in the usual manner, if the taxpayer does not receive any property tax reduction as provided under this chapter, or if the taxpayer receives less property tax reduction than the whole amount of property taxes he is charged with.

(3) The claimant property owner's property tax reduction shall be based upon the current year's assessed value and the current year's levy.

(4) Property tax reductions qualified under this chapter shall be allowed as set out in section 2, chapter 59, laws of 1992, and adjusted for cost-of-living fluctuations as provided in section 63-705, Idaho Code.

63-705. RULES -- CHANGES IN INCOME LIMITATIONS AND PROPERTY TAX REDUCTION AMOUNTS. (1) The state tax commission shall promulgate rules adjusting the income limitations and property tax reduction amounts to reflect cost-of-living fluctuations. Said rules shall effect change in each income limitation by a percentage equal as near as practicable to the annual cost-of-living percentage modification as determined by the secretary of health and human services pursuant to 42 USC 415(i). The

lowest limitation shall allow a maximum reduction of eight hundred dollars ($800), or actual property taxes, whichever is less. Each income limitation and reduction amount shall be prorated based on the basic eight hundred dollars ($800) maximum reduction, in practicable increments so that the highest income limitation will provide for a reduction of one hundred dollars ($100), or actual property taxes, whichever is less.

(2) The tax commission shall promulgate said rules each and every year the secretary of health and human services announces said cost-of-living modification. The rules shall be promulgated no later than October 1 of each such year and shall be effective for claims filed in and for the following property tax year.

63-706. TIME REQUIREMENTS FOR FILING CLAIM. (1) Any claim for property tax reduction to be granted under the provisions of this chapter shall be filed in the office of the county assessor between January 1 and April 15 of each year. The county assessor shall examine each claim and determine whether it is in conformity with section 63-701, Idaho Code, and shall accordingly approve, modify or disapprove the claim in total at the time the application is received. Additionally, the county assessor shall notify the claimant in writing by May 1 if his claim has been modified or has been disapproved. The notice of modification or disapproval shall declare that the claimant may appeal the assessor's decision to the county board of equalization, and shall state the time and place that the county board of equalization shall meet for such purposes.

(2) All claims filed with the county assessor shall be completed by him and forwarded to the county commissioners, which shall convene as a board of equalization, any other provision of law notwithstanding, on or before May 15, and shall approve all claims approved by the county assessor, and shall approve the action of the county assessor in modifying or disapproving all other claims unless an appeal has been filed with the board of equalization prior to May 15. In considering any appeal of the assessor's decision in modifying or disapproving a claim, the board of equalization may affirm the assessor's decision, may modify the assessor's decision, or may reject the assessor's decision and proceed to approve all or any part of the claim as submitted to the assessor originally.

(3) No informality on the part of the board of equalization shall invalidate any action of the board. The decision of the board of equalization shall be final, except that within thirty (30) days the claimant may appeal to the district court on matters of law, and may appeal the decision of the board of equalization when the board has acted arbitrarily. The claimant shall be notified immediately, in writing, of the board of equalization's action on his appeal to it.

63-707. PROCEDURE AFTER CLAIM APPROVAL. (1) Immediately after claims have been approved by the board of equalization, the county assessor shall prepare a property tax reduction roll, which shall be in addition to the property roll, the subsequent property roll and missed property rolls which property tax reduction roll shall show:

(a) The name of the taxpayer;

(b) The description of the property for which a reduction in

property taxes is claimed, suitably detailed to meet the requirements of the individual county;

(c) The property's prior year's market value for assessment purposes or the assessor's best estimate of current market value for assessment purposes; and

(d) The amount of tax reduction for which the applicant is eligible as determined by the applicant's household income, pursuant to sections 63-704 and 63-705, Idaho Code.

(2) As soon as possible, but in any event by no later than the fourth Monday of June, the property tax reduction roll shall be certified to the county auditor and to the state tax commission in the manner prescribed by rules promulgated by the state tax commission. The property tax reduction roll shall be accompanied by a copy of the claim forms for disapproved claims, when requested by the state tax commission and a copy of the approved claims form signed by each claimant.

(3) (a) As soon as possible, but in any event by no later than the fourth Monday of October, the county auditor shall complete the property tax reduction roll by adding the following information:

(i) The current year's levy for the code area in which the property is situated;

(ii) The amount of property tax reduction claimed based on the current year's market value for assessment purposes and the current year's levy; and

(iii) The current year's market value for assessment purposes.

(b) As soon as possible, but in any event no later than the fourth Monday of October, the county auditor shall certify the completed property tax reduction roll to the state tax commission in the manner prescribed by rules promulgated by the state tax commission.

(4) The state tax commission shall calculate the total of all claims for reduction in property taxes from current year's property taxes, evidenced by the abstracts and claims forms from all the counties. Each county auditor shall be notified by the third Monday in November of the amount of property tax reduction to be granted.

(5) The state tax commission may audit each and every claim submitted to it, and, any other provision of law notwithstanding, may utilize income tax returns filed by the claimant or by any member of his household to determine household income of the claimant.

(6) If it is determined by the state tax commission that a claim is erroneous, the tax commission shall disapprove so much of the claim as necessary in order to conform with statutory standards. The tax commission shall provide the claimant written notice of the tax commission's intent to disapprove all or a portion of the claim. The claimant shall have fourteen (14) days to make written protest to the tax commission of the intended action. The claimant may submit additional information and may request an informal hearing with the commission. If the claimant fails to make written protest within fourteen (14) days, the tax commission shall provide written notice of disapproval to the claimant by the fourth Monday of October and to the county auditor of the county from which the claim was received. Any

claimant whose claim is disapproved in whole or in part by the state tax commission may:

(a) File a claim with the county commissioners for a special cancellation pursuant to section 63-711, Idaho Code;

(b) Appeal such disapproval by the state tax commission to the board of tax appeals or to the district court of the county of residence of the taxpayer within thirty (30) days.

63-708. RECOVERY OF ERRONEOUS CLAIMS. Within three (3) years of payment, the state tax commission may recover any erroneous or incorrect payment made under this act from any "claimant" as defined in section 63-701(1), Idaho Code. The deficiency determination, collection, and enforcement procedures provided by the Idaho income tax act, sections 63-3039, 63-3042, 63-3043 through 63-3064, Idaho Code, shall apply and be available to the commission for enforcement and collection under this chapter and such sections shall, for this purpose, be considered part of this chapter. Wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this chapter, be described as tax relief liens and proceedings. In connection with such sections, a deficiency shall consist of any amount erroneously claimed by or paid to a claimant under this chapter.

63-709. REIMBURSEMENT BY STATE TAX COMMISSION. (1) The state tax commission shall determine the total number of claims to be allowed in each county, the dollar amount of each claim allowed, and the total dollar amount for all claims for each county. These amounts shall be certified to the county auditor and tax collector by the state tax commission by no later than the first Monday in November.

(2) By no later than December 20 of each year the state tax commission shall pay to the county tax collector of each county one-half (1/2) of the amount due each county as reimbursement for reduction in property taxes as provided in this chapter, as shown on the abstract of property tax reduction roll and claims forms approved by the state tax commission, and shall pay the second one-half (1/2) of such amount by not later than June 20 of the following year.

63-710. PROCEDURE AFTER REIMBURSEMENT. (1) Upon receipt of the notice of percentage reduction from the state tax commission, the county auditor shall immediately notify the county commissioners, and the commissioners may take this reduction into consideration in making its property tax levies, and the county commissioners are authorized, but not required, to increase any levy to the extent necessary to compensate for the percentage reduction.

(2) The money received by the county tax collector under the provisions of section 63-709(2), Idaho Code, may be considered by the counties and other taxing districts and budgeted against at the same time, in the same manner and in the same year as revenues from taxation.

63-711. CANCELLATION OF TAXES -- HARDSHIP -- SPECIAL. (1) Property taxes may be cancelled for reason of undue hardship. The commissioners may, at their discretion, grant such cancellation for a speci-

fied time period.

(2) Applicants seeking a cancellation pursuant to this section must apply to the county commissioners. Each applicant shall give a sworn statement containing full and complete information of his financial status to the county commissioners and shall make true answers to all questions put before him touching such person's right to the cancellation. The county commissioners shall decide and determine from each examination and from each written application for said cancellation whether or not such person is entitled to the cancellation claimed or any part thereof accordingly. In applying for a cancellation pursuant to this section, an applicant may submit an application at any time and the county commissioners may grant such application, either in whole or in part, at any regular meeting and the burden of proving the right of such cancellation shall rest upon the applicant.

(3) A special cancellation under this section shall be granted by cancelling taxes on property of persons filing an application pursuant to section 63-707, Idaho Code.

(4) The county commissioners may, for good cause shown, allow an agent or some person acting for and on behalf of the applicant to make the application for the cancellation provided in this section for any applicant, or where a person is entitled to cancellation shall be mentally incompetent or physically unable to make such sworn statement, his or her spouse, widow, widower, guardian or personal representative, or other person having knowledge of the facts, may make the application for the cancellation.

(5) Any time within thirty (30) days after mailing of a decision of the county commissioners, or pronouncement of a decision announced at a meeting, or the failure of the county commissioners to act, an appeal may be taken to the district court for the county in which the property is located. Such appeal may only be filed by the property owner or by any person aggrieved when he deems any such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

Notice of such appeal stating the grounds thereafter shall be filed with the county auditor, who shall forthwith transmit a copy of said notice to the county commissioners.

(6) The county commissioners shall order all necessary adjustments to be made in the property tax records of the various county officers and taxing districts.

(7) The cancellation of property taxes which have become delinquent shall affect only those property taxes granted a cancellation by order of the county commissioners and all interest and late charges on such taxes.

SECTION 9. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 8, Title 63, Idaho Code, and to read as follows:

CHAPTER 8
LEVY AND APPORTIONMENT OF TAXES

63-801. ANNUAL STATE PROPERTY TAX LEVY. (1) The county commis-

sioners in each county in this state must meet on the second Monday of September in each year to ascertain the tax rate necessary to be levied on each dollar of the valuation of all the taxable property in the county for such year in order to raise the amount of state taxes apportioned to such county by the state tax commission. The total of all levies must be within the limits prescribed by the laws of this state.

(2) In any period during which a sales tax is in force in this state, there shall be no levy of the general state property tax permitted by section 9, article VII, of the constitution of the state of Idaho.

63-802. LIMITATION ON BUDGET REQUESTS -- LIMITATION ON TAX CHARGES -- EXCEPTIONS. (1) Except as provided in subsection (2) of this section for tax year 1995, and each year thereafter, no taxing district shall certify a budget request to finance the ad valorem portion of its annual budget that exceeds the greater of:

(a) The dollar amount of ad valorem taxes certified for its annual budget for any one (1) of the three (3) tax years preceding the current tax year, whichever is greater, which amount may be increased by a growth factor of not to exceed three percent (3%) plus the amount of revenue that would have been generated by applying the levy of the previous year, not including any levy for voter approved bonds, override levies, supplemental levies, plant facilities reserve fund levies or school emergency fund levies, to any increase in market value subject to taxation resulting from new construction as evidenced by the value of either: (i) property subject to the occupancy tax pursuant to section 63-317, Idaho Code, for the preceding tax year; or (ii) new construction based upon a quantitative formula approved by the state tax commission which uses the value of building permits for the preceding year; and by the value of annexation during the previous calendar year, as certified by the county assessor;

(b) The dollar amount of ad valorem taxes certified for its annual budget during the last year in which a levy was made; or

(c) The dollar amount of the actual budget request, if the taxing district is newly created; or

(d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code; or

(e) In the case of a nonschool district for which less than the maximum allowable increase in the dollar amount of ad valorem taxes is certified for annual budget purposes in any one (1) year, such a district may, in any following year, recover the foregone increase by certifying, in addition to any increase otherwise allowed, an amount not to exceed one hundred percent (100%) of the increase originally foregone. Said additional amount shall be included in future calculations for increases as allowed.

(2) No board of county commissioners shall set a levy, nor shall the state tax commission approve a levy for annual budget purposes which exceeds the limitation imposed in subsection (1) of this section, unless authority to exceed such limitation has been approved by a majority of the taxing district's electors voting on the question at an election called for that purpose and held pursuant to section

34-106, Idaho Code, provided however, that such voter approval shall be for a period of not to exceed two (2) years.

(3) The amount of ad valorem tax revenues to finance an annual budget does not include revenues from non-ad valorem tax sources, and does not include revenue from levies that are voter approved for bonds, override levies or supplemental levies or for levies applicable to newly annexed property or for levies applicable to new construction as evidenced by the value of property subject to the occupancy tax pursuant to section 63-317, Idaho Code, for the preceding tax year and does not include plant facility reserve fund levies or school emergency fund levies.

63-803. CERTIFICATION OF BUDGETS IN DOLLARS. (1) Whenever any taxing district is required by law to certify to any county treasurer, county auditor, county assessor, county commissioners or to any other county officer, any property tax levy, upon property located within said district, such certification shall, notwithstanding any other provision of the law applicable to any such district, be made at the time and in the manner hereinafter provided.

(2) The county auditor shall inform each of the taxing districts within his county of the taxable value of that district as soon as such value is known to the auditor, whether the value comes from the appraisal and assessment of real and personal property, or from allocation of the taxable value of operating property, or from other sources.

(3) Using the taxable value of the district, the council, trustees, board or other governing body of any taxing district shall certify the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved. The amount of money so determined shall be certified in dollars to the appropriate county commissioners. Any taxing unit, except regional airport authorities, located in more than one (1) county shall divide its dollar budget for certification to the separate counties by multiplying the amount of such budget by a fraction, the numerator of which shall be the total taxable value of all property in such taxing unit within the county to which such certification is to be made, and the denominator of which shall be the total taxable value of property in such taxing unit in all such counties. Budget certification to the participating counties of regional airport authorities shall be made in the manner prescribed in section 21-807(10), Idaho Code. Taxable value shall be certified by the county auditor of each affected county to such taxing unit and such certification shall be used in this formula. The certification to the county commissioners required in this section shall be made not later than the second Monday in September, unless, upon application therefor, the county commissioners grant an extension of not more than one (1) week. After receipt of this certification, the county commissioners shall make a tax levy as a percent of taxable value of all property in the taxing district, which when applied to the tax rolls, will meet the budget requirements certified by such taxing districts.

(4) For the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions and the value that exceeds the value of the base assessment roll for the

portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy. For each taxing district, taxable value shall include the value from the property and operating property rolls for the current year and subsequent and missed property rolls for the prior year or the best estimate of the subsequent and missed property rolls for the current year.

63-804. FILING COPY OF BUDGET. The council, trustees, board or other governing body of any taxing district shall at the time of certifying the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved and as provided for in section 63-803, Idaho Code, file with the appropriate county commissioners a certified copy of their budget as previously prepared, approved and adopted.

63-805. ANNUAL LEVIES. (1) The county commissioners of each county in this state may levy annually upon all taxable property of said county, a property tax for general county purposes, to be collected and paid into the county treasury and apportioned to the county current expense fund which levy shall not exceed twenty-six hundredths percent (.26%) of market value for assessment purposes of such property, or a levy sufficient to raise two hundred fifty thousand dollars ($250,000), whichever is greater. If a county establishes the justice fund, as provided in section 31-4602, Idaho Code, the maximum current expense levy shall be reduced to twenty hundredths percent (.20%) of market value for assessment purposes, or a levy sufficient to raise two hundred fifty thousand dollars ($250,000), whichever is greater.

(2) The county commissioners of each county in this state may levy upon all taxable property of said county, a property tax for the purposes set forth in the statutes authorizing a county justice fund, to be collected and paid into the county treasury and apportioned to the county justice fund, if one has been established. Said levy shall not exceed twenty hundredths percent (.20%) of market value for assessment purposes of such property, or a levy sufficient to raise two hundred fifty thousand dollars ($250,000), whichever is greater.

The county commissioners shall have the right to make a "general reserve appropriation," said appropriation not to exceed five percent (5%) of the county justice fund budget as finally adopted. The total levy, however, for the county justice fund, including the "general reserve appropriation," shall be within the limitations imposed by chapter 8, title 63, Idaho Code, or by any statutes of the state of Idaho in force and effect.

(3) Annually, before the second Monday in September, the board of trustees of any school district within the county having determined the number, if any, of pupils in average daily attendance above the number included in the last annual report thereof, and the amount of money required to provide the educational support programs and transportation support programs for such additional pupils in average daily attendance, as defined in chapter 10, title 33, Idaho Code, the county commissioners shall determine the total of such new requirements within the county and upon the taxable property situate within the

district requesting the same, and the county commissioners shall levy a tax sufficient to provide such amount, provided in no case shall the levy be more than six-hundredths percent (.06%) of the taxable value of the property to be collected and paid to the requesting district.

(4) (a) The county commissioners of each county in this state may levy annually upon all taxable property of its county, a property tax for the acquisition, maintenance and operation of public parks or public recreational facilities, to be collected and paid into the county treasury and apportioned to a fund to be designated as the "parks and recreation fund," which is hereby created, and such county commissioners may appropriate otherwise unappropriated funds for such purposes. No levy made under this subsection shall exceed one-hundredth percent (.01%) of the market value for assessment purposes on all taxable property within the district.

(b) Any funds unexpended from the "parks and recreation fund," or any funds unexpended from the current year's certified parks and recreation budget may be retained in, or deposited to, the "parks and recreation fund" for the purpose of future land acquisition, park expansion or improvement, or the acquisition of operating equipment. The maximum accumulation of funds allowable shall not exceed twice the amount of money provided by the levy authorized in paragraph (a) of this subsection.

(5) Upon the same property and for the same year the county commissioners must also levy such other property taxes as may be necessary for the payment of the interest on county bonds or to provide a sinking fund for the redemption of county bonds or such other authorized taxes as may be necessary for any other or special purposes, to be collected and paid into the county treasury and apportioned as provided by the laws of this state.

63-806. WARRANT REDEMPTION FUND. (1) Upon the same property and for the same year the county commissioners shall levy a property tax for the redemption of outstanding county warrants issued prior to the first day of October in said year, to be collected and paid into the county treasury and apportioned to the county warrant redemption fund, which levy shall be sufficient for the redemption of all the outstanding county warrants, unless the amount of outstanding warrants exceeds the amount that would be raised by a levy of two-tenths of one percent (.2%) of the market value for assessment purposes on all taxable property in the county, in which case the county commissioners shall annually levy a property tax of two-tenths of one percent (.2%) of the market value for assessment purposes on all taxable property in the county for the redemption of such outstanding warrants.

(2) All property taxes levied in any year for the county current expense fund, county road fund and county bridge fund and collected on or after the first day of January in the succeeding year and any property tax levied for any purpose and which is no longer needed for such purpose when collected must be paid into the county treasury and apportioned to the county warrant redemption fund, except as otherwise provided by law. All money in the county treasury on the first day of October to the credit of the county current expense fund, county road fund, county bridge fund or any other fund which is no longer needed must be transferred to the county warrant redemption fund upon the

books of the county auditor and county treasurer by resolution of the county commissioners entered upon the records of the proceedings.

63-807. LEVY BY NEW TAXING UNITS -- DUTIES OF AUDITOR. Except as otherwise provided by law, no taxing district formed or organized after the first day of January, in any year, shall be authorized to make a levy for that calendar year, nor shall the auditor of any county in which the taxing district may be situated be required to extend any levy on behalf of the taxing district upon the county rolls extended by him for the year. No existing taxing district which shall annex any territory after the first day of January of the current year, shall be authorized to levy a property tax for the year upon the property situated in the annexed territory and the property shall in all respects be taxed as if the annexation had not taken place. However, should any existing school district or school districts divide, consolidate or reorganize after the assessment date in any year, the board of trustees of the divided, consolidated or reorganized school district shall have the power to levy property taxes and certify the levy for the year in the same manner and according to the same boundaries which the separate school districts involved in the division, consolidation or reorganization could have levied property taxes had the division, consolidation or reorganization not taken place.

63-808. RECORD OF PROCEEDINGS. (1) The clerk of the board must keep a record of all proceedings of the county commissioners relating to the levy of property taxes in the minutes and all levies authorized and fixed by the county commissioners must be recorded in said minutes. Except as otherwise provided in subsection (2) of this section, the clerk must, on or before the third Monday of September in each year, prepare four (4) certified copies of the record of all levies authorized and fixed by the county commissioners, and deliver one (1) of such copies to the assessor, and one (1) of such copies to the tax collector, and one (1) of such copies to the state tax commission, who must each file the same in his or their office, and the clerk must file the other copy in his office as county auditor.

(2) When the county commissioners grant an extension for the certification required in section 63-803(3), Idaho Code, the clerk must prepare the certified copies specified in subsection (1) of this section on or before the fourth Monday of September.

63-809. UNAUTHORIZED LEVY -- NOTIFICATION BY STATE TAX COMMISSION -- ACTION TO SET ASIDE. (1) The state tax commission shall carefully examine the statements furnished to it, as provided in section 63-808, Idaho Code. On or before the fourth Monday in October, the state tax commission shall notify the county commissioners of each county of the approval of all previously certified levies. The state tax commission shall also notify the county commissioners of each county and the governing authorities of any city, school district, or any other taxing district or municipality no later than the fourth Monday of October if it appears that the county commissioners or governing authorities have fixed a levy or certified a property tax budget increase that exceeds any limitation provided by law.

(2) If it appears that the county commissioners of any county

have fixed a levy for any purpose or purposes not authorized by law, or in excess of the maximum provided by law for any purpose or purposes, the state tax commission shall thereupon notify the attorney general, and if it appears that the governing authorities of any city, school district, or any other district or municipality to which is delegated by law the authority to levy property taxes, have fixed a levy for any purpose or purposes not authorized by law or in excess of the maximum provided by law for any purpose or purposes, the commission shall thereupon notify the county attorney of the county in which it appears that such unauthorized or excess levy has or levies have been fixed.

(3) The attorney general or the county attorney so notified shall immediately bring suit in a court of proper jurisdiction against the county commissioners or governing authorities of any city, school district or other district or municipality levying such unauthorized or excess levy to set aside such levy as being illegal.

(4) Any necessary expenses incurred by the attorney general or the county attorney in the prosecution of such action shall be borne by the county in which the suit was brought.

63-810. ERRONEOUS LEVY -- CORRECTIVE ACTION. (1) Whenever the county commissioners have discovered that a levy has been made by unintentional clerical, mathematical or electronic error, in any levy certified by such board, the county commissioners on its own motion may:

(a) If discovered prior to the fourth Monday of November of the year for which the levy is certified, order all necessary corrections made in all property tax records, if the corrected levy is otherwise within statutory limits.

(b) If discovered after the fourth Monday of November of the year for which the levy is certified, but before January 30 of the succeeding year, order all necessary corrections made in all property tax records, if the corrected levy is otherwise within statutory limits. The corrected levy shall be applied to the taxable value within each taxing district and the property taxes so applied shall be a perpetual lien on the property, and such property tax levy and tax charge shall supersede all previous incorrect levies and charges made for that year, except that the property tax computed using the corrected levy shall allow a credit for the amount of property taxes previously paid. If additional property tax is owed due to the corrected levy, the county tax collector shall, prior to the fourth Monday in May, mail to the last record owner of any property affected by such erroneous levy a notice of tax correction. The deadline for paying such property tax shall be no later than June 20 of that year. Late charges and interest will be added if full property tax is not paid by June 20 and interest will be calculated from January 1 as provided in section 63-1001, Idaho Code.

(c) The levy correction shall be considered at a hearing held by the county commissioners at which time any taxpayer may appear and be heard upon the issue. Notice of the date, time, place and purpose of such hearing shall be published in a newspaper published in the county, or if there is none, then in a newspaper of general

circulation in the county. The notice shall be run once each week for the two (2) weeks preceding the hearing. The hearing shall be held not less than seven (7) days after the first notice is published.

(2) The county commissioners shall submit the corrected levy and a copy of the order to the state tax commission. The state tax commission shall review the corrected levy and take action as required in section 63-809, Idaho Code.

(3) For the purposes of sections 63-701 through 63-710, Idaho Code, and for the purposes of the distributions required in section 63-3638, Idaho Code, the state tax commission, county auditor, and the county commissioners shall use the corrected values and numbers allowed in this section to recompute and correct such distributions by adjusting future distributions to account for any difference. For the purposes of chapters 8 and 10, title 33, Idaho Code, the state department of education shall use the corrected values and numbers allowed in this section.

63-811. COMPUTATION OF PROPERTY TAXES -- DUTY OF COUNTY AUDITOR. (1) The county auditor must cause to be computed the amount of the local property taxes levied on the total of the taxable value as entered on the property and operating property rolls, and must deliver the property and operating property rolls to the tax collector on or before the first Monday of November.

(2) The county auditor must cause to be computed the amount of the local property taxes levied on the total of the taxable value as entered on the subsequent property roll, and must deliver the subsequent property roll to the tax collector as soon as possible, without delay, after the first Monday of December.

(3) The county auditor must cause to be computed the amount of the state property tax and the amount of the local property taxes levied on the total taxable value as entered on the missed property roll, and must deliver the missed property roll to the tax collector as soon as possible, without delay, after the first Monday of March of the year following the year in which the assessment was entered on the missed property roll.

(4) For the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy. When the portion of the property tax to be allocated to school districts as required in sections 33-1002 and 50-2908, Idaho Code, is calculated, the taxable value must include the value that exceeds the value of the base assessment roll.

(5) The county auditor, at the time of delivery to the county tax collector of the property roll, subsequent property roll, missed property roll or operating property roll with all property taxes computed, must subscribe an affidavit to such roll that he has to the best of his knowledge and ability computed the proper amount of property taxes due, and recorded such orders of the board of equalization as have been made and have made no other changes.

(6) Failure of the auditor to make the affidavit shall not affect the validity of any entry on the roll. The making of such affidavit, however, is declared to be a duty pertaining to the office of the county auditor. In every case where the said affidavit is omitted from the real property assessment roll, completed and delivered as aforesaid, the board of county commissioners must require the county auditor to make the same, and upon refusal or neglect of such county auditor to make and subscribe to such affidavit forthwith, the chairman of the said board must immediately file in the district court in the county, an information in writing, verified by his oath, charging such county auditor with refusal or neglect to perform the official duties pertaining to his office, and thereupon he must be proceeded against as in such cases provided by law.

63-812. ACCOUNTING AND COLLECTION OF PROPERTY TAXES. The tax collector shall collect and account for the amount of property taxes due and remit any property tax revenues collected to the county auditor showing distribution to the proper accounts or funds.

SECTION 10. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 9, Title 63, Idaho Code, and to read as follows:

CHAPTER 9
PAYMENT AND COLLECTION OF PROPERTY TAXES

63-901. PROPERTY TAXES PAYABLE ONLY IN LEGAL TENDER. All property taxes must be paid in lawful money of the United States.

63-902. PROPERTY TAX NOTICE AND RECEIPTS -- DUTY OF TAX COLLECTOR. (1) For property on the property roll or operating property roll, the county tax collector must, prior to the fourth Monday of November in each year, mail to every taxpayer, or to his agent or representative, at his last known post-office address, a tax notice prepared upon forms prescribed in section 63-219, Idaho Code, which shall contain at least the following:

(a) The year in which the property tax was levied;
(b) The name and address of the property owner;
(c) An accurate description of the property, or in lieu thereof, the tax number of record;
(d) The parcel number;
(e) Full market value for assessment purposes;
(f) The total amount of property taxes due:
  (i) State;
  (ii) County;
  (iii) City;
  (iv) School district;
  (v) And every other tax being separately shown.
(g) All property tax levies in the tax code area;
(h) The date when such property taxes become delinquent;
(i) Notation of delinquencies against said property;
(j) Whether an interim payment account exists.

(2) The tax notices shall be numbered consecutively and the num-

bers must be entered upon all property rolls.

(3) Tax notices prepared in tax code area format shall state that levy sheets are available to the public.

(4) Levy sheets shall list the total property tax levy for each taxing district or taxing jurisdiction and the total in each tax code area.

(5) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall deliver to the equitable titleholder a statement of the total amount of property taxes billed, on or before the second Monday of December.

(6) The tax collector in each county of the state is authorized to destroy all duplicate property tax receipts and microfilm of tax receipts on file in his office as they reach ten (10) years old. Property tax receipts may be destroyed if information has been replicated in other storage media.

(7) Computer and data processing routines for completion of all phases of the property tax roll procedures may be utilized with the responsibility for completion of each office's statutory duties to remain under the supervision of that office. Wherever the designation "property roll" appears within title 63, data processing or computer procedures and forms may be substituted as permanent records.

(8) The county tax collector must, as soon as possible after the subsequent or missed property roll is delivered to him from the county auditor, mail a notice to every taxpayer listed on the subsequent or missed property roll, or to his agent or representative. The notice shall conform as nearly as possible to the notice required for property listed on the property roll.

(9) Failure to mail such property tax notice, or receipt of said notice by the taxpayer, shall not invalidate the property taxes, or any proceedings in the collection of property taxes, or any proceedings in the foreclosure of property tax liens.

63-903. WHEN PAYABLE. (1) All property taxes extended on the property and operating property rolls shall be due and payable in full to the tax collector without late charges and interest on or before December 20 of the year in which the property taxes are levied. The property taxes may be paid in full or paid in two (2) halves, the first half on or before December 20 with a grace period extending to June 20 for the second half if the first half is totally paid.

(2) Any portion of a property tax may be paid at any time, but nothing in this section shall excuse costs, interest or late charges pursuant to section 63-1002, Idaho Code.

(3) If the first one-half (1/2) is not totally paid on or before December 20 late charges as defined in section 63-201, Idaho Code, and interest as defined in section 63-1001, Idaho Code, shall be assessed. If the first one-half (1/2) of the property tax has been paid in part, late charges and interest shall be calculated on the remaining first half tax due.

(4) If the second one-half (1/2) is not totally paid on or before June 20 late charges as defined in section 63-201, Idaho Code, and interest as defined in section 63-1001, Idaho Code, shall be assessed. If the second one-half (1/2) has been paid in part, late charges and

interest shall be calculated on the remaining property tax due.

(5) Property taxes on the subsequent or missed property roll shall be billed within thirty (30) days after delivery of the property roll to the county tax collector or as otherwise provided for. The tax collector shall notify the property owner of the property taxes due without delay after delivery of the property roll. Delinquency occurs if the tax remains unpaid thirty (30) days after the bills are mailed.

(6) All property taxes and fees, together with any costs, late charges and interest collected by the county tax collector shall be remitted to the county auditor as provided in section 63-1201, Idaho Code.

(7) Payment of any current property taxes shall not invalidate any proceeding in the collection of a delinquency.

63-904. SPECIAL PROVISIONS FOR COLLECTION OF PROPERTY TAXES ON PERSONAL PROPERTY. (1) If a personal property owner fails to make timely payment on the first one-half (1/2) provided for, the unpaid portion of the entire tax shall immediately become due and payable and a late charge as provided in section 63-201, Idaho Code, and interest as provided in section 63-1001, Idaho Code, on the unpaid portion of the first half shall be added. Interest shall be calculated from January 1 of the year following the year for which the taxes were assessed.

(2) All personal property taxes are due and payable upon demand. If no demand is made, taxes may be paid in part or in full until the tax collector issues a warrant of distraint for collection of said taxes.

(3) Whenever the county assessor notifies the tax collector of personal property that has been listed on a property roll, the tax collector may demand immediate payment of any property taxes due from the owner. Property taxes due shall be calculated using the previous year's levies, unless current year's levies are known.

(4) In lieu of demanding immediate payment of property taxes due, the county tax collector may require a surety bond adequate to secure the payment and collection of property taxes that may be due to that county.

(5) Property taxes on transient personal property shall be payable on demand, or in full on the due date stated on the notice. No extensions shall be granted on transient personal property.

(6) In the event a taxpayer is unable to pay his personal property tax due on or before December 20, he may appeal to the county commissioners prior to the property tax becoming delinquent. If sufficient information is given to satisfy the county commissioners that the property taxes will be paid, the county commissioners may grant an extension of time for the payment of the property taxes, late charges and interest, not to exceed four (4) months. A warrant of distraint shall not be issued until the expiration of the extended time. No extensions shall be granted on the second one-half (1/2) of the property tax.

63-905. RECEIPT FOR PROPERTY TAXES PAID. Upon payment of property taxes, the tax collector shall issue a receipt if requested by the taxpayer. The record of payment must show the date paid and the amount

of payment. If the taxpayer is other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall, upon request of the equitable titleholder, deliver to the equitable titleholder a receipt of property taxes paid. In the event payment is mailed to the tax collector, the cancelled check may serve as a receipt.

63-906. INTERIM PAYMENT ACCOUNT -- RECEIPT FOR DEPOSITS. Any person, upon application to the tax collector, may establish a payment schedule to allow payments of at least twenty-five dollars ($25.00) or the balance owing, to be accumulated toward the payment of current or future real or personal property taxes.

(1) The tax collector shall issue a numbered receipt consisting of:

(a) Date deposited;

(b) Name and address of person making deposit;

(c) The amount of payment; and

(d) Account identification number or parcel number or legal description.

(2) The county shall pay no interest on any interim payment receipts, and the amount so deposited cannot be withdrawn by the depositor. Such receipts shall not invalidate any proceedings in the collection of property taxes, or in the issuance of any delinquency or any proceedings in the foreclosure of tax liens.

(3) The payment shall be posted to the roll when the current property tax becomes due.

(4) The tax collector may return to the depositor any moneys deposited in excess of the amount necessary to satisfy the tax lien if the payment schedule is not maintained.

(5) The tax collector shall be held accountable for all moneys received under this subsection and shall be liable on his official bond for the custody and safekeeping of such moneys, except as to what may be on deposit in designated depositories under the provisions of the public depository law, which is hereby made applicable to such deposits.

63-907. ENTRY OF DELINQUENT TAX -- DUTY OF COUNTY TREASURER. The county treasurer shall, on or before the first day of January in the succeeding year, enter all delinquent taxes on the property rolls. Such entries shall be dated as of the first day of January and shall have the force and effect of a sale to the treasurer as grantee in trust for the county, for all property entered upon the property roll on which first installment of the taxes has not been paid. The settlement date shall be as of the close of business on the December due date of the preceding year.

The county treasurer shall, on or before the first day of July in the succeeding year, make delinquency entries to be dated as of the first day of January in the year the taxes fall delinquent for all property entered upon the property roll on which the second installment of the taxes have not been paid. The settlement date shall be as of the close of business on the June due date of the current year.

SECTION 11. That Title 63, Idaho Code, be, and the same is hereby

amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 10, Title 63, Idaho Code, and to read as follows:

CHAPTER 10
COLLECTION OF DELINQUENCY ON REAL, PERSONAL AND OPERATING PROPERTY

63-1001. EFFECT OF DELINQUENCY -- INTEREST RATE. To avoid delinquency, total payment must be made in full to the county tax collector by the due date. Any delinquency shall have the force and effect of a sale to the county tax collector as grantee in trust for the county of the property described. Any payment on a delinquency is, in effect, a partial redemption of the property from tax sale. Interest on a delinquency will be charged at one percent (1%) per month calculated from January 1 following the year the tax lien attached, provided however, that the interest shall not be charged on collection costs.

63-1002. PAYMENT OF DELINQUENCY -- ORDER -- RECEIPT. (1) Whenever a delinquency exists for any year, the taxpayer may pay to the tax collector any part of such delinquency together with the costs, late charges and interest. Costs include certified mailings, title searches, advertising and all other expenses for the processing and collection of the delinquency. Provided however, that any delinquency shall be applied to costs, collection costs, special assessments, charges, fees, interest, late charges and property tax in the proportion each bears to the total amount due. Payment applied to the property tax shall be posted directly to the roll.

(2) Payment may only be paid and accepted upon the oldest delinquency standing on the records of the county tax collector wherein such payment is made unless otherwise authorized by a judicial action. The second one-half (1/2) shall not be considered current if the first one-half (1/2) is delinquent.

(3) Upon payment of a delinquency, the tax collector shall issue to the taxpayer a receipt, if requested by the taxpayer. In the event payment is mailed to the tax collector, the cancelled check may serve as the receipt. Payment of current taxes shall not invalidate any proceeding in the collection of a delinquency.

63-1003. LIEN AND EFFECT OF DELINQUENCY. (1) Any delinquency on real property taxes in accordance with the provisions of this title shall constitute a perpetual lien in favor of the county for all property taxes, late charges and interest on the property described and shall entitle the county to a tax deed for such property in the manner provided for in this title. Such delinquency entry shall further constitute prima facie evidence in any legal proceedings in which it may lawfully be used that the property described was subject to appraisal, assessment and taxation at the time the same was assessed, that said property was appraised, assessed and equalized according to law, that the property taxes levied on such property were levied according to law, that such taxes were not paid before the delinquency became effective, and that the property and taxes were entered upon the property roll.

(2) Any delinquency on personal property taxes in accordance with the provisions of this title shall be a first and prior, perpetual

lien, except as otherwise provided by law, upon such personal property and all real and personal property of the owner of such personal property until all property taxes due upon such personal property have been paid.

63-1004. PAYMENT OF DELINQUENCY ON SEGREGATED PROPERTY. (1) The record owner or owners or any party in interest of a segregated portion of the property covered by a delinquency may release the lien for property taxes, by paying to the tax collector the amount of property taxes due along with late charges, interest and costs, if any, on that particular piece of property. The county assessor shall determine and provide to the tax collector the market value for assessment purposes of that segregated portion of property, and the tax collector will calculate the property tax to be paid for any prior year or years of delinquency, including the late charges, accrued interest and costs incurred.

(2) The record owner or owners or any party in interest of a segregated portion of property covered by a tax deed may redeem that property at the time and in the manner provided in section 63-1007, Idaho Code, by paying to the tax collector the amount due on that particular piece of property including, but not limited to, the late charges, accrued interest, title search fees and other costs incurred. The county assessor shall determine and provide to the tax collector the market value for assessment purposes of that segregated portion of property, and the tax collector will calculate the property tax to be paid for that current calendar year and all prior years of delinquency.

63-1005. PENDING ISSUE OF TAX DEED -- GENERAL PROVISIONS -- NOTICE. (1) If real property on which there is a delinquency is not redeemed within three (3) years from the date of delinquency, the county tax collector of the county wherein such property is situated must make, in favor of said county, a tax deed for such property. However, the county shall not be entitled to a tax deed for such real property until:

(a) A notice of pending issue of tax deed has been given; and

(b) An affidavit of compliance has been recorded.

(2) The county tax collector of the county wherein the real property for which a tax deed may issue shall serve or cause to be served written notice of pending issue of tax deed upon the record owner or owners and parties in interest of record in the following exclusive manner:

(a) By serving or causing to be served a copy of such notice by certified mail with return receipt demanded upon the record owner or owners and parties in interest of record at their last known address, such service of notice to be made no more than five (5) months nor less than two (2) months before the time set for the tax deed to issue;

(b) In the event that such notice is served as above described and returned undelivered after attempting to locate and serve the record owner or owners and parties in interest of record, by publishing a summary of such notice in a newspaper having general circulation in the county wherein the real property is situated.

Such publication must be made at least once a week for four (4) consecutive weeks, the last publication of which is to be no more than two (2) months nor less than fourteen (14) days before the time set for the tax deed to issue.

(3) The record owner or owners and parties in interest of record shall be liable and pay to the county tax collector all costs and fees in the preparation, service and publication of such notice and the tax deed process and such costs shall become a perpetual lien upon the property in favor of the county tax collector.

(4) Such notice and summary thereof must contain the following items:

(a) The name and last known address of the record owner or owners;

(b) An accurate description of the property on which the delinquency stands, or, in lieu thereof, the tax number of record or parcel number used in assessing the same;

(i) A street address or other information which would be of assistance to the public in ascertaining the location of the property; or

(ii) The name and telephone number of a person, firm or business office from whom information concerning the location of the property may be obtained;

(c) The year for which the property tax was assessed and for which the delinquency exists;

(d) An itemized statement detailing the delinquency and all costs and fees incident to the delinquency and notice up to and including the date of the making of such notice;

(e) The date the delinquency occurred;

(f) The time, date, place at which, and by whom the tax deed will issue; and

(g) A statement that the record owner or owners or any party in interest shall have adequate opportunity to be heard, to confront and cross-examine any evidence or witness against the record owner or owners, and obtain and present evidence on behalf of the record owner or owners or any party in interest. Such statement shall also contain notice of to whom inquiries and objections shall be directed concerning the notice and information contained therein and by what date such inquiries and objections must be received.

(5) Any party in interest may file a written request for such notice in the office of the county tax collector of the county wherein the property for which the delinquency stands have been made is situated. Such request shall contain the following items:

(a) The name and address of the record owner or owners;

(b) An accurate description of the property covered by the interest, or, in lieu thereof, the tax number of record or parcel number used in assessing the same;

(c) The name and address of the party in interest;

(d) An accurate description of the interest held; and

(e) The date of expiration of the interest held.

(6) If a record owner or owners or a party in interest shall have actual notice of the notice of pending issue of tax deed or that issuance of a tax deed is pending, it shall be deemed sufficient notice under this section.

(7) Service shall be deemed completed upon depositing the certified letter containing the original or a copy of the notice of pending issue of tax deed with return receipt demanded in any United States post office, or upon physical delivery of such notice or copy thereof by the county tax collector or his appointed agent to the record owner or owners or party in interest, or upon the date of last publication.

(8) No less than five (5) working days prior to the date on which the tax deed shall be issued, the county tax collector shall make an affidavit of compliance stating that he has complied with the conditions of issuance of notice of pending issue of tax deed described in this section, and stating particularly the facts relied on as constituting such compliance.

(9) Such affidavit shall be recorded in the office of the county recorder. Such record of affidavit shall be prima facie evidence that such notice has been given.

(10) Any person who knowingly and intentionally swears falsely to facts averred in any affidavit shall be guilty of perjury and be punished by a fine of not more than three hundred dollars ($300).

63-1006. HEARING AND ISSUANCE OF TAX DEED. (1) When a record owner or owners or any party in interest upon whom a notice of pending issue of tax deed is served or who has actual knowledge of such notice or its contents fails, to appear or otherwise defend and answer at the time set for hearing in such notice and the county commissioners are satisfied that the county tax collector has fulfilled the requirements of section 63-1005, Idaho Code, the county commissioners shall, without further notice, immediately direct the county tax collector to issue and record a tax deed in favor of the county.

(2) When a record owner or owners or any party in interest upon whom such notice is served or who has actual knowledge of such notice or its contents appears or answers at the date specified in such notice, the county commissioners shall hear evidence and witnesses and make a final decision in writing. Such final decision shall be mailed by registered or certified mail return receipt demanded upon all parties affected by its action. If the county commissioners shall find that the county tax collector has conformed to the requirements of section 63-1005, Idaho Code, and that a delinquency was owing on the property described and that such delinquency has not been paid, the county commissioners shall immediately direct the county tax collector to issue a tax deed in favor of the county. Such final decision shall include findings of fact and conclusions of law.

(3) A record of the proceedings shall be kept and entered into the county minutes.

(4) Any person who is aggrieved by a final decision of the county commissioners concerning the issuance of a tax deed is entitled to have that decision reviewed by the district court of the district wherein the county is located by filing a petition in the district court within thirty (30) days after receipt of the final decision of the county commissioners. Such filing does not itself stay enforcement of the county commissioners' decision; however, the county commissioners may grant, or the reviewing court may order, a stay upon appropriate terms. Review shall be conducted by the court without a jury and shall be confined to the record in the county minutes. The court may

reverse or modify the decision of the county commissioners if substantial rights of the appellant have been prejudiced because the county commissioners' findings, conclusions or decisions are:

(a) Made upon unlawful procedure;

(b) Clearly erroneous in view of reliable, probative and substantial evidence on the whole record; or

(c) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(5) All costs and fees of any hearing or proceeding shall be awarded to the prevailing party or in the discretion of the reviewing court each party shall be responsible for their own costs and fees; provided however, the costs and fees shall not be ordered paid by any county or its officials in absence of a showing of gross negligence, gross nonfeasance or gross malfeasance by the county or its officers and a showing of substantial and definite injury to the petitioning party.

(6) The form of the tax deed issued must contain the following items:

(a) The name and address of the former record owner or owners;

(b) The name of the county in whose favor the tax deed issues;

(c) An accurate description of the property using a township, range, section and division of section, together with a statement as to acreage, or in the appropriate case, using block and lot numbers or as described in a city plat; and if appropriate, include the tax number;

(d) A statement that the tax deed issues out of a delinquency and hearing; and

(e) The tax deed must be signed by the county tax collector and acknowledged before the county recorder and shall be recorded as provided by law.

63-1007. REDEMPTION -- EXPIRATION OF RIGHT. (1) After the issuance of a tax deed, real property may be redeemed only by the record owner or owners, or party in interest, up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed. In order to redeem real property, the record owner or owners, or party in interest shall pay any delinquency including the late charges, accrued interest, and costs, including, but not limited to, title search and other professional fees. The property taxes accrued against such property subsequent to the issuance of a tax deed to the county shall be extended upon a valuation to be given by the assessor upon application of the tax collector. The property taxes shall be computed according to the authorized levies for the year or years to be extended, including the current calendar year which shall be calculated using the previous year's levies until the current levies are authorized.

(2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner and the rights, title and interest acquired by the county shall cease and terminate; provided however, that such right of redemption shall expire three (3) years from the date of issuance of a tax deed to the county, in the event the county commissioners have not extinguished the right of redemption by contract of sale or transfer by county deed

during said redemption period. In the event a tax deed is issued and payment is not received within three (3) years of the issuance of such tax deed, then said tax deed to the county is presumptive evidence of the regularity of all proceedings prior thereto and the fee simple title, after the issuance of said tax deed, rests in the county.

63-1008. EFFECT OF TAX DEED AS EVIDENCE. (1) The matters recited in the delinquency must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that:

(a) The property was appraised and assessed as required by law;

(b) The property was equalized as required by law;

(c) The property taxes were levied in accordance with law;

(d) The property taxes were not paid;

(e) The delinquency took effect at the proper time as prescribed by law;

(f) The property was not redeemed;

(g) The person who executed the deed was the proper officer;

(h) Where the real property was sold to pay property taxes on personal property that the real property belonged to the person liable to pay the property tax.

(2) The deed duly acknowledged or proved is prima facie evidence of the regularity of all other proceedings, from the assessment by the assessor inclusive up to the execution of the deed.

63-1009. EFFECT OF TAX DEED AS CONVEYANCE. The deed conveys to the grantee the absolute title to the land described therein, free of all encumbrances except mortgages of record to the holders of which notice has not been sent as provided in section 63-1005, Idaho Code, any lien for property taxes which may have attached subsequently to the assessment and any lien for special assessments.

63-1010. DEEDS UPON REDEMPTION. In all cases where real property has been or may hereafter be sold for delinquency and a deed has been issued to the county therefor, and redemption has been made in the manner provided and in accordance with the provisions of section 63-1007, Idaho Code, the county tax collector, must issue a deed to the redemptioner; and upon the giving of such deed, such tax deed so issued to the county and the delinquency and tax sale upon which the same is based and all delinquencies and sales for prior year delinquencies shall become null and void, and all right, title and interest acquired by the county, under and by virtue of such tax deed, or tax sales, or delinquencies, shall cease and terminate.

63-1011. POSSESSION UNDER TAX DEED CONCLUSIVE AS TO REGULARITY OF PROCEEDINGS. (1) Any and all tax deeds issued by counties, or any other municipal or quasi-municipal corporations of the state of Idaho, authorized by law to issue deeds for delinquencies or assessments, shall, when the property has been sold by such counties or other municipal or quasi-municipal corporations and held and peaceably possessed by the purchaser or his successors in interest for more than three (3) years and upon which the purchaser or his successors in interest have paid all property taxes lawfully assessed thereon for such period, be conclusive as to the regularity and validity of all

proceedings required by law to be done in making the levy, assessment, or sale of such property for the delinquency or assessment for which such property was sold.

(2) No action shall be maintained to contest any delinquency or assessment, or the proceedings upon which the tax deed has been issued after such property has been sold by the taxing agency, and the purchaser or his successors in interest have paid all property taxes legally levied or assessed thereon for a period of three (3) years, and such purchaser's deed from such county or other taxing agency, shall be conclusive evidence of the doing of each and all of the acts, and taking of each and all proceedings required by law as to the issuance of a valid tax deed to such property.

63-1012. SALE OF PERSONAL PROPERTY UPON DELINQUENCY. (1) Upon a delinquency of any personal property tax, the county tax collector shall issue a warrant of distraint for the collection of the delinquency. The warrant of distraint shall bear the date of its issuance, and shall be directed to the county sheriff. The warrant shall give the name of the delinquent taxpayer and his mailing address as ascertained by the county tax collector. The warrant shall also describe generally the personal property upon which the delinquency exists and give the amount of each delinquency. The warrant shall contain a direction to the county sheriff to seize and sell a sufficient amount of the property, or any other personal property of the delinquent taxpayer to be found within the county, with the minimum bid sufficient to pay the delinquency, together with interest and late charges thereon and together with all fees, commissions, mileage and costs accruing thereon.

(2) The county tax collector shall keep a record of the date of the issuance of each warrant of distraint and of the return, showing in detail the amount collected or the fact that no personal property belonging to the delinquent taxpayer was found. A record of all warrants of distraint shall, upon their return, be kept by the tax collector for a period of two (2) years. The collection of any delinquency, or the return of a warrant of distraint showing no property found, shall relieve the county sheriff and tax collector and their bondsmen from responsibility of that delinquency. Upon the return of any warrant of distraint showing property taxes uncollected it shall be the duty of the tax collector, when directed by the county commissioners, to commence and prosecute to judgment an action against the delinquent taxpayer, and no property shall be exempt from levy and sale upon execution issued on the judgment.

63-1013. WARRANTS OF DISTRAINT -- SERVICE AND EXECUTION. (1) All warrants of distraint issued by the tax collector shall be served and executed by the sheriff in the manner provided by law for the services of executions by levy upon personal property issued out of the district court, and he shall make return of the same to the tax collector of the county within ninety (90) days from the date of his receipt thereof with an endorsement thereon showing that the delinquency therein described, together with interest, late charges and costs, as provided by law, have been collected, or that, no property can be found to seize under the warrant. For making a false return the sher-

iff shall be liable to the county for double the amount of the property taxes, with interest and costs.

(2) Fees allowed for issuing warrants of distraint, collection, levy and return of same, shall be ten dollars ($10.00) for issuing each warrant. When levying on a warrant of distraint, the provisions of section 31-3203, Idaho Code, shall apply in determining service fees.

(3) If the sheriff returns the warrant of distraint showing that no property can be found upon which a levy can be made to collect the delinquency, he shall note in the return the county, if any, in this state to which the delinquent taxpayer may have moved together with his mailing address and the date of his departure shall also be noted on the returns. Upon the filing of the sheriff's return showing that any delinquent taxpayer has moved to another county in this state, it shall be the duty of the tax collector to immediately issue and mail another warrant of distraint to the sheriff of the county to which the delinquent taxpayer is so shown to have moved, or in which personal property belonging to him may be found, and the sheriff to whom the other warrant of distraint is issued shall serve and return the warrant in the manner provided for the service and return of original warrants of distraint, making return of fees and commissions earned by him to the county auditor of his county, and paying any delinquency and fees collected, shown by the other warrant of distraint to be due, to the tax collector issuing the other warrant. Should a sheriff to whom the other warrant of distraint is issued be unable to find any property out of which the delinquency may be collected, he shall so return to the tax collector issuing the warrant.

63-1014. REMOVAL OR SALE OR REPOSSESSION OF PERSONAL PROPERTY BEFORE PAYMENT OF PROPERTY TAXES ON PROPERTY ROLLS. (1) Whenever any person, firm or corporation owning any personal property shall desire to remove the personal property from the county or sell or repossess the property before all property taxes due and payable including the current year's taxes have been paid upon the personal property, the property taxes shall be paid to the tax collector upon demand and before the removal of the property from the county. It shall be the duty of the tax collector to collect the property taxes provided for in this section, and all the provisions of this chapter are hereby made available to the tax collector in the collection of such taxes.

(2) It shall be a misdemeanor for any person, firm or corporation to move from the county or sell or repossess any personal property or manufactured home without the payment of the current year's property taxes or without paying property taxes due and owing, and upon conviction the person, firm or corporation shall, in addition to any penalty which the court may impose, pay to the tax collector a sum not in excess of double the amount of property tax which was collectible on the property removed or sold or repossessed, together with all costs and late charges provided for in this chapter. The excess sum shall be collected by the tax collector in the same manner as the original property tax.

63-1015. APPORTIONMENT OF PROCEEDS FROM REDEMPTION. Upon the redemption from tax sale of any property described in any delinquency

entry, the amount paid on account of such redemption, shall be paid into the county treasury by the tax collector, upon the certificate of the county auditor, to be apportioned among the several state and county funds and taxing districts, as provided for the apportionment of property taxes.

SECTION 12. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 11, Title 63, Idaho Code, and to read as follows:

CHAPTER 11
SEIZURE AND SALE OF PERSONAL PROPERTY FOR TAXES

63-1101. SEIZURE OF PROPERTY FOR REFUSAL TO PAY PROPERTY TAX -- DUTY OF TAX COLLECTOR. In case any person refuses to pay the property tax levied on any personal property belonging to him when demanded by the tax collector, the tax collector shall direct the sheriff to seize and sell as much of the personal property or any other property of the person as will be sufficient to pay the property taxes, late charges, interest, costs and expenses accruing thereon, as estimated by the tax collector.

63-1102. SALE. The sale must be made after one (1) week's notice of the time and place thereof, given by publication in a newspaper of general circulation in the county or posting in three (3) public places within the county, and must be at public auction for cash, and each article seized must be sold separately to the highest bidder.

63-1103. DISPOSITION OF PROCEEDS. The sheriff shall collect from the proceeds of the sale, in addition to the estimated amount of property taxes, all costs and expenses incurred in publishing or posting the notices of the sale, in making the sale and in keeping and caring for the property. After collecting the proceeds and noting the costs of the sale, the sheriff shall have an immediate settlement with the tax collector.

63-1104. BILL OF SALE. On payment of the amount bid for the property sold the sheriff shall make out and deliver a bill of sale thereof which, with the delivery of the property sold, vests title thereto, in the purchaser.

63-1105. RESALE. In the event of the refusal of any bidder to pay the amount bid and complete his purchase, the sheriff may either sue the purchaser upon his bid or offer the property for resale.

63-1106. SALE OF ADDITIONAL PROPERTY. In the event that the property seized does not bring sufficient money to pay the property taxes and costs, the tax collector shall direct the sheriff to seize and sell additional property liable for the property tax, pursuant to section 63-1012(1), Idaho Code.

63-1107. DISPOSITION OF EXCESS. All excess over the property taxes and costs of the proceedings of any sale must be returned to the

owner of the property or deposited in the county treasury to be refunded by order of the county commissioners. Any unsold portion of any such property shall be stored until claimed by the owner or for thirty (30) days, whichever is less. The owner shall pay storage and transportation costs when reclaiming any unsold property.

63-1108. PURCHASE BY COUNTY. In the event that no person bids on any property offered for sale, or if such property, in the judgment of the tax collector exceeds in value the amount of the highest bid made and the tax collector deems it for the best interests of the county, he shall bid on the property himself for the county. He shall dispose of the purchased property by sale in the same manner as other personal property belonging to the county. However, the tax collector shall not buy any property for the county when a sufficient sum to defray the property taxes and costs of sale is bid therefor.

SECTION 13. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 12, Title 63, Idaho Code, and to read as follows:

CHAPTER 12
SETTLEMENT OF REVENUE OFFICERS

63-1201. MONTHLY AND FINAL SETTLEMENT OF TAX COLLECTOR. On the first Monday of each month, except the second Monday of January and July, the county tax collector shall settle with the county auditor for all moneys collected, including property taxes levied on property, and make a detailed statement under oath, showing the amount of money collected for state and county purposes and for every city, school district, road district or other taxing district or authority, since his last settlement, and shall pay all the moneys into the county treasury upon the certificate of the county auditor, to be apportioned as provided by law.

63-1202. SETTLEMENT BY COUNTY AUDITOR. (1) The county auditor must, on the second Monday of each month, transmit to the clerk of every taxing district having a treasurer whose duty it is to receive, keep and disburse all moneys belonging to it, a settlement of all moneys belonging to each district, paid into the county treasury since the last transmittal; provided however, that in the months of July and January the money may be transmitted no later than the twenty-fifth day of the month.

(2) On the second Monday of each month the county auditor shall transmit to the appropriate agency all moneys belonging to the state paid into the county treasury on and after the second Monday of the preceding month, showing from what sources the money was received and the amount received from each source, with a statement duly sworn to before an officer authorized to administer oaths.

SECTION 14. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 13, Title 63, Idaho Code, and to read as follows:

CHAPTER 13
MISCELLANEOUS PROVISIONS OF TAX LAW

63-1301. APPLICATION TO TAXING DISTRICTS. The provisions of this title governing and in aid of the appraisal, assessment, levy and collection of state and county property taxes, are hereby made applicable to all general and special taxes of any taxing district incorporated, organized or chartered under any general or special laws of this state and authorized to collect revenue under the provisions of the laws of this state.

63-1302. CANCELLATION AND REFUND OF PROPERTY TAX. (1) The county commissioners may, at any time when in session, cancel property taxes which for any lawful reason should not be collected, and may refund to any taxpayer any money to which he may be entitled by reason of a double payment of property taxes on any property for the same year, or the double assessment or erroneous assessment of property through error. Notwithstanding any other provisions of law, in any case in which the county commissioners find that, due to error or otherwise by fault of the county, an excess amount of property tax was paid, the county commissioners may refund the excess amount so collected plus pay the same late charges and delinquency interest rate on that amount which the county would regularly require of a taxpayer who is delinquent, and the county commissioners may adopt an ordinance or resolution to establish such payments.

(2) The county commissioners may refund to the purchaser of any property when it has been determined by the county commissioners that such sale is void or invalid, the amount paid by such purchaser to the county with interest thereon from the date of such payment at the rate of six percent (6%) per annum.

(3) All proceedings of the county commissioners in the cancellation or refund of property taxes or refund of payments made at void sale must be recorded in the official minutes. All such refund of property taxes or payments must be paid upon warrants drawn on the county current expense fund by the county auditor or upon checks issued by the county tax collector. All such refunds shall be apportioned to the various funds or taxing districts.

63-1303. ADJUSTMENT OF PROPERTY TAXES BY COUNTY COMMISSIONERS -- DUTIES OF TAX COLLECTOR. (1) Whenever the county commissioners shall make any adjustments correcting errors or any other tax adjustments coming within the authority vested by law in such body, the clerk of the board shall, without delay, prepare and deliver to the county tax collector, a copy of the proceedings of the county commissioners.

(2) It shall be the duty of the tax collector to make the necessary corrections. All such copies shall be full authority for the tax collector to make adjustments as ordered; however, the tax collector shall assume no personal responsibility as to the legality of the orders but such responsibility shall rest entirely with the county commissioners.

63-1304. ADJUSTMENT OF LATE CHARGES OR INTEREST. The county commissioners of any county within the state of Idaho may, by resolution,

authorize the county tax collector to make adjustments of late charges, interest and fees, not to exceed the designated limit as set by the county commissioners, in order to facilitate the collection of property taxes.

63-1305. REFUND OR CREDIT OF PROPERTY TAXES BY ORDER OF COURT OR BOARD OF TAX APPEALS. (1) When any court or the board of tax appeals orders a refund of any property taxes imposed under chapters 1 through 17, title 63, the county commissioners of the county or counties which collected the taxes may either refund taxes or apply the amount to be refunded as a credit against taxes due from the taxpayer in the following year. The county commissioners may use a combination of both a payment and a credit to effect the refund.

(2) As used in this section, "refund" includes property tax described in subsection (1) of this section found by the court or the board of tax appeals to have been overpaid and not lawfully due, interest due on the refund of such tax, costs and other amounts ordered paid by a court or the board of tax appeals.

(3) In the event a refund is paid, payments must be made by warrants drawn on the county's current expense fund by the county auditor. The auditor shall apportion the amount of property taxes cancelled as credit to the tax collector. The auditor shall charge the various funds and taxing districts with their proportionate share of the refund and credit the current expense account.

(4) If a credit is given the following year, the credit shall be allowed against actual property taxes assessed to the taxpayer by the taxing districts which received the taxes ordered to be refunded.

(5) Amounts equal to the refunds or credits allowed in this section may be included in amounts certified pursuant to sections 63-802 through 63-807, Idaho Code, but shall not be a part of the operating budget within the meaning of section 63-802, Idaho Code.

63-1306. PROCEDURE AND PROOF OF PAYMENT. (1) No procedure or action relating to the appraisal or assessment of property or the collection of property taxes is illegal on account of informality.

(2) Proof of payment of property taxes shall be the sole responsibility of the taxpayer.

63-1307. TRANSMISSION OF FUNDS TO STATE TREASURER. All moneys required under the provisions of this title to be transmitted to the state treasurer shall be transmitted at the expense of the county.

63-1308. PROPERTY TAX PAID UNDER PROTEST -- APPORTIONMENT -- ACTION FOR RECOVERY. (1) All property taxes paid under protest shall be apportioned as other property taxes are apportioned.

(2) An action against a county, an officer, or officer de facto, for property taxes or money paid to such county, officer, or officer de facto under protest, or seized by such officer, in his official capacity as a collector of taxes, and which it is claimed ought to be refunded, shall be commenced within sixty (60) days after such payment or seizure.

63-1309. SPECIAL TAXING DISTRICT OR BOND PROPOSAL DEFEATED IN

ELECTION BARS SUBSEQUENT ELECTIONS FOR SPECIFIED TIME -- EXCEPTION -- BOARD OF EDUCATION MAY CONDUCT ELECTION -- MUNICIPALITIES, WATER OR SEWER DISTRICTS MAY CONDUCT BOND ELECTION. If any election has been held for the formation of any special taxing district, or for the approval of any bond issue or other proposal which would have resulted in a property tax levy, and the proposal submitted at such election was defeated, no subsequent election shall be held within six (6) months from and after the date of such prior election for the same or a similar purpose in any district which includes any part of the area which was affected by the prior election. In the event any school building is destroyed or rendered unusable for school purposes by reason of fire, flood or other catastrophe, and a school bond election for the purpose of the replacement of such building is prohibited by the provisions of this section, the state board of education shall have the power to authorize an election for such purpose by order based upon a finding of such facts. The provisions of this section shall not apply to school elections held solely for determining property tax levies for general school purposes not involving the issuance of bonds. This time requirement between elections shall not apply to municipalities or water and/or sewer districts when bond issues are being proposed for the installation or improvement of water supply systems or public sewerage systems which have been deemed necessary by the Idaho state board of health to bring such system or systems in conformance with state statutes or rules of the state board of health.

63-1310. DESTRUCTION OF PERSONAL PROPERTY. In the event of the destruction of personal property by fire, flood or other natural disaster after the first day of January of any year the lien of the personal property tax shall attach to and follow any insurance that may be upon said property and the insurer shall pay to the county tax collector from the insurance money all property taxes, late charges, interest and costs incurred that may be due unless cancelled by the county commissioners.

63-1311. FEES FOR SERVICES. Notwithstanding any other provision of law, the governing board of any taxing district may impose and cause to be collected fees for those services provided by that district which would otherwise be funded by property tax revenues. The fees collected pursuant to this section shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered.

63-1312. MUNICIPAL PROPERTY TAXES -- NOTIFICATION OF VALUATION. (1) Prior to the fourth Monday of March of the current year the county auditor must notify every taxing district or authority and the state board of education of the total taxable valuation of all the taxable property situated within such districts for the preceding calendar year for the purpose of assisting such governing authorities in their determination of tax rates to be levied for the current year and other informational purposes.

(2) Prior to the first Monday in August the auditor of each county in the state shall notify the state tax commission and the clerk of each taxing unit in his county of the taxable valuation of

all the taxable property situated within that taxing district from the property roll for the current year, from the operating property roll for the previous year, from the prior year's actual or current year's estimated subsequent property roll and missed property roll, and the amount of value subject to occupancy tax notwithstanding exemptions authorized in chapter 6, title 63, Idaho Code, for the previous year.

(3) The auditor shall furnish the valuation from the current operating property roll upon receipt from the state tax commission.

63-1313. LIMITATION ON PROPERTY TAXES -- VALUE OF REAL AND PERSONAL PROPERTY -- SPECIAL TAX LEVIES.

(1) (a) Except as provided in section 63-802, Idaho Code, during any one (1) tax year, the maximum amount of all property taxes from all sources on any property subject to appraisal, assessment, and property taxation within the state of Idaho shall not exceed one percent (1%) of the market value for assessment purposes of such property, including the current market values of all residential improvements, notwithstanding any exemption of a portion of such values from property taxation.

(b) The limitation provided for in paragraph (a) of this subsection shall not apply to property taxes or special assessments to pay the principal of and the interest and redemption charges on any indebtedness incurred prior to the time this section becomes effective, nor shall the limitation provided for in paragraph (a) of this subsection apply to property taxes to pay the principal of and the interest and redemption charges on any indebtedness incurred on or after November 7, 1978, as prescribed by the constitution of the state of Idaho, nor shall the limitation provided for in paragraph (a) of this subsection apply to special assessments levied on or after November 7, 1978, as provided by law.

(2) The market value for assessment purposes of real and personal property subject to appraisal by the county assessor shall be determined by the county assessor according to the rules prescribed by the state tax commission, as provided in section 63-208, Idaho Code, but where real property is concerned it shall be the actual and functional use of the real property. All taxable property shall be annually appraised or indexed to reflect that valuation.

63-1314. COSTS FOR PROFESSIONAL SERVICES TO BE LIEN ON PROPERTY. Costs and fees for professional services incurred by the county in the collection of property taxes are a perpetual lien on the property and may be attached to the property taxes, current and delinquent.

Such professional services shall include, but not be limited to, attorney fees and title searches.

SECTION 15. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 14, Title 63, Idaho Code, and to read as follows:

CHAPTER 14
ENFORCEMENT -- PENALTIES

63-1401. AUTHORITY OF ASSESSOR -- DUTY OF ASSESSOR. (1) The

assessor is hereby authorized to administer oaths to all persons who may be required to swear, and he may examine under oath any person who is required under the provisions of this chapter to list property for appraisal, assessment or taxation, concerning the amount and value of such property, and he may examine under oath any person whom he may suppose to have knowledge of the amount or value of the property of any person refusing to list such property or to verify such list, or whenever the assessor shall be of the opinion that the person listing property for himself or for any other person has not made a complete list of such property. If any person shall refuse to answer under oath any question asked of him by the assessor concerning the amount and value of the property required to be listed by him, the assessor may list and assess such property according to his best judgment and information, but, if any property is willfully concealed, removed, transferred, misrepresented or not listed by the person required to do so, such property, upon discovery, must be appraised, assessed and taxed at two (2) times its value for each year such property has escaped taxation. The county board of equalization may excuse the liability for such penalty upon a proper showing that by good and sufficient cause the requirement to list such property need not be complied with. Any person making a false list, schedule or statement under oath shall be guilty of perjury.

(2) The assessor shall note, at the time of appraisal, all cases where the owner, agent or other person required by this title to list property: refused or failed to make the sworn taxpayer's declaration required of him; refused to answer any question asked of him by the assessor in reference to the appraisal of property; was absent or willfully concealed, removed, transferred, misrepresented or failed to list such property.

63-1402. VIOLATIONS. (1) It is a misdemeanor:

(a) For any assessor to knowingly or willfully assess any property at more or less than market value.

(b) For any assessor to fail to complete and deliver the real, subsequent or missed property rolls or affidavits within the time prescribed by law.

(c) For any member of the board of equalization to knowingly or willfully permit any appraisal to stand, or permit any alteration to be made in the real, subsequent or missed property rolls whereby any property is appraised at more or less than market value.

(d) For any member of the county commissioners to knowingly or willfully permit any unjust, excessive or insufficient county property tax levy to stand.

(e) For any county officer or any officer of any taxing district to knowingly or willfully make any false statements to the county commissioners in its determination of the amount of property taxes to be levied.

(f) For any auditor to fail to complete and deliver the property rolls or affidavits within the time prescribed by law.

(g) For any tax collector to knowingly or willfully fail to mail a property tax notice within the time prescribed by law.

(h) For any tax collector to knowingly or willfully fail to col-

lect any property tax which has been properly levied.

(i) For any person to remove from the county or sell or repossess any personal property without the payment of property taxes levied thereon.

(j) For any treasurer to neglect or refuse to make any payments or settlements within ten (10) days after the time prescribed therefor.

(k) For any auditor to neglect or refuse to transmit any order or sworn statement within ten (10) days after the time prescribed therefor.

(l) For any assessor to neglect or refuse to transmit any order or sworn statement within ten (10) days after the time prescribed therefor.

(m) For any member of the state tax commission to knowingly or willfully permit any unjust appraisal or assessment, or incorrect apportionment of state property taxes to stand or be made.

(2) In addition to criminal penalties which may be imposed under this section:

(a) The assessor shall be liable upon his official bond for the amount of property tax on any property which he has knowingly or willfully allowed to escape appraisal or on any property on which he has knowingly or willfully entered any untrue or incorrect classification of land or other property upon the property roll.

(b) Any member of the board of equalization shall be liable upon his official bond for the amount of property tax on any property which he has knowingly or willfully allowed to escape assessment and taxation or on any property on which he has knowingly or willfully allowed any untrue or incorrect classification of land or other property to stand.

(c) The tax collector shall be liable upon his official bond for all property taxes which have not been collected or accounted for in his settlement with the county commissioners or county auditor.

(d) The treasurer shall be liable upon his official bond for all payments or settlements which he refuses or neglects to make within ten (10) days after the time prescribed therefor.

(e) The county auditor shall be liable upon his official bond for neglecting or refusing to transmit any order or sworn statement within ten (10) days after the time prescribed therefor and shall forfeit the sum of one thousand dollars ($1,000).

63-1403. SUITS BY ATTORNEY GENERAL. (1) The attorney general of this state is empowered to sue and collect, for and on behalf of any other political subdivision or state of the United States taxes legally due such political subdivision or state provided that the law of such state contains a reciprocal provision by which that state will enforce and collect taxes due this state or its political subdivision.

(2) The attorney general or an appropriate official of any political subdivision of this state may bring suits in the courts of other states to collect taxes legally due this state or any political subdivision thereof. The officials of other states which extend a like comity to this state are empowered to sue for the collection of such taxes in the courts of this state. A certificate by the secretary of state under the great seal of the state that such officers have

authority to collect the tax is conclusive evidence of such authority.

63-1404. COMPLIANCE OF PUBLIC OFFICERS WITH RULES AND ORDERS OF STATE TAX COMMISSION. (1) Every public officer shall comply with any lawful order or rule of the state tax commission made pursuant to the provisions of this title.

(2) Every county officer or employee performing related functions shall provide information regarding property rolls and related documents and procedures and parcel numbers to the state tax commission as provided in section 63-219, Idaho Code, may use the computer software prescribed and furnished by the state tax commission, and shall record and transmit information required by the state tax commission in the performance of its duties.

(3) Whenever it appears to the state tax commission that any public officer or employee whose duties relate to the assessment or equalization of assessments of property for taxation has failed to comply with any law relating to such duties, or the rules of the state tax commission made in pursuance thereof, the state tax commission, after a hearing on the facts, may request an order directing the public officer or employee to comply with such law or rule. An order of the state tax commission may require a county to conduct a revaluation of some or all of the property within the county as the state tax commission may find necessary to promote uniformity of taxation within the county. When necessary for the implementation of such an order, the state tax commission is empowered to reconvene a county board of equalization for a period not to exceed ninety (90) days beyond the date otherwise prescribed for the adjournment of such board for the sole purpose of permitting the board to hear and determine protests of valuations resulting from such ordered reappraisal provided that such protests are filed on or before the date otherwise prescribed for the adjournment of the board of equalization and that such extension is necessary for the proper completion of the board's duties. The order may further permit the certification of estimated values by the county to the state tax commission subject to the approval of the tax commission if necessary to permit the board of equalization to properly complete its work and such values, when approved by the tax commission, may be used to set levies if actual values are unavailable on the date prescribed for setting levies.

(4) If such public officer or employee, for a period of ten (10) days after service on him of the state tax commission's order, neglects or refuses to comply therewith, the state tax commission may apply to a judge of the district court of the county in which the public officer holds office for an order, returnable within five (5) days thereof, to compel such public officer or employee to comply with the state tax commission's order, or to show cause why he should not be compelled to do so.

(5) Any order issued by the judge pursuant thereto shall be final; provided however, that any person aggrieved by such order may appeal to the supreme court of the state of Idaho in the manner provided for appeals in other civil actions. An appeal shall not stay any order issued by any judge.

(6) The remedy provided in this section shall be cumulative and shall not exclude the state tax commission from exercising any other

power or right delegated to it.

63-1405. REMOVAL OF OFFICERS. Any county officer upon whom any duties devolve under the revenue laws of this state, who willfully neglects or refuses to perform any such duty, may be removed from office in the manner prescribed by law. When proceedings are commenced to remove such officer, the county commissioners, or in case such officer be a commissioner, then the district judge, may suspend such officer from his powers and duties under the revenue laws, and appoint a competent person in his place until a proper tribunal has either removed or acquitted such suspended officer. Any act relating to the appraisal of property, the assessment of property, the levy or collection of property taxes, or the sale of property for nonpayment of property taxes, performed by any such temporary officer, is valid and of the same force and effect as if performed by a duly qualified officer, elected to such office; provided, that such temporary officer has been bonded, as is required of persons duly elected to such office.

SECTION 16. That Chapter 8, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-806, Idaho Code, and to read as follows:

31-806. ACQUISITION OF PROPERTY FOR PARK OR RECREATIONAL PURPOSES -- DEDICATION -- EMINENT DOMAIN. The board of county commissioners of each county in this state may purchase, lease, obtain by gift or accept by grant from private persons, corporations, the United States, the state of Idaho or other governmental agencies, real or personal property, within or without its territorial limits, and may hold, maintain, improve and operate the same for the use and purpose of a public park or public recreation, and it may dedicate property already owned by the county to a like purpose. This section shall not affect the right of a county to acquire property by proceedings in eminent domain.

SECTION 17. That Section 63-1706, Idaho Code, be, and the same is hereby amended to read as follows:

63-1706. YIELD TAX ON APPLICABLE FOREST PRODUCTS. (1) All forest lands designated by the owner to be subject to the provisions of section 63-1703(b), Idaho Code, shall be appraised, assessed and taxed according to the provisions of this section.

(2) Forest lands held in private ownership and designated by the owner to be subject to the provisions of this section for ~~ad--valorem~~ property taxation shall be valued by the county assessor as real property at rates which reflect only bare forest land value as determined under rules of the state tax commission.

(3) All timber severed from lands subject to the provisions of this section and delivered to a point of utilization as logs or semiprocessed forest products, shall be subject to a forest products yield tax. This yield tax is in lieu of and replacement for, and not in addition to, ~~ad-valorem~~ property taxes on timber.

(4) The yield tax rate shall be three percent (3%) of stumpage

value as determined by the state tax commission. In establishing stumpage values, the state tax commission shall:

(a) Divide the state into appropriate stumpage value zones, with each zone designated so as to recognize the uniqueness of timber marketing areas.

(b) By November 1, set stumpage values by zone for each species and/or product, for use in the reporting and payment of yield taxes for timber severed during the following calendar year. Stumpage values shall be based on a five (5) year rolling average value of comparable timber harvested from state timber sales within the stumpage value zone and/or the best available data for the same five (5) year period.

(5) Report and payment of yield taxes is the direct liability and responsibility of the landowner at the time of severance. In the event of nonpayment, the yield taxes due shall constitute a perpetual lien on the assets of the landowner. Yield tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Yield tax amounts shall be supplied by the county assessor to the county ~~treasurer~~ tax collector on or before November 15 for timber that was severed from January 1 through June 30, with payments due and payable on or before December 20. If the taxes due for said period are not paid on or before December 20, the payment becomes delinquent and subject to ~~a penalty~~ late charges and interest in the amount provided in sections 63-~~110~~0201 and 63-1001, Idaho Code, calculated from the following January 1. Yield tax amounts shall be supplied by the county assessor to the county ~~treasurer~~ tax collector on or before May 15 for timber severed from July 1 through December 31 in the year following severance with payments due on or before June 20 in the year following severance. If the yield taxes due for said period are not paid on or before June 20, the payment becomes delinquent and subject to ~~a penalty~~ late charges and interest in the amount provided in sections 63-~~110~~0201 and 63-1001, Idaho Code, calculated from the following July 1. ~~If December 20 or June 20 falls on a Saturday, Sunday or holiday, any payment required in the provisions of this section shall be payable on the next regular workday following December 20 or June 20.~~

(6) All yield tax revenues and any ~~penalty~~ late charges or interest thereon shall be apportioned among the several county funds and taxing districts as provided for the apportionment of ~~ad valorem~~ property taxes.

(7) The party utilizing logs or semiprocessed forest products as raw materials shall be required to report the quantity, species and source of all such materials to the Idaho department of lands. Such report shall be structured to comply with and act as a simultaneous report of data already required under the provisions of section 38-122, Idaho Code. The report format shall include the identification of the forest landowner at the source, legal description of the source, timber or product owner at time of severance, harvester and volume of forest products severed. The Idaho department of lands shall deliver to the various county assessors without fee, copies of these reports as they are available. In the event the point of utilization lies out of the state or a report is not required under the provisions of section 38-122, Idaho Code, the timber owner at time of severance shall be responsible for the reporting of the above-stated data to the

department of lands.

(8) If reports required by this section are found to be intentionally false or when appropriate reports are not made, the assessor shall value the forest crop harvested, based on the best available estimates.

(9) Not reporting timber or forest products delivery or receipt as required by this section shall be deemed a misdemeanor.

(10) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable laws and rules.

SECTION 18. That Chapter 23, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-2321, Idaho Code, and to read as follows:

67-2321. CHANGE OF NAME OF TAXING DISTRICT -- HEARING -- ELECTION -- EXCEPTIONS. (1) Whenever the governing body of a taxing district, by a majority vote of its members, adopts a proposal to change the name of the district, it shall be the duty of such body to conduct at least one (1) public hearing on the proposal and to give notice of the hearing. At least fifteen (15) days prior to the hearing, notice of the time and place and a copy of the proposal of the name change shall be published in the official newspaper or paper of general circulation within the jurisdiction. The governing body may also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement.

(2) At the hearing, if it shall satisfactorily appear to the governing body that no good cause exists to deny the proposal for change of name, the governing body may adopt a resolution effecting the name change in the same form as was presented in the proposal on which the hearing was conducted. Such resolution shall also specify the date of organization of the district and its present name.

If a petition signed by ten percent (10%) of the qualified electors of the taxing district is presented in opposition to the proposed name change, the governing body of the taxing district shall submit the question to the electors of the district in accordance with the provisions of chapter 14, title 34, Idaho Code. If a majority of votes cast on the question of changing the name of the district are in favor of the name change, the governing body of the taxing district shall adopt a resolution effecting that change, specifying the date of organization of the district and its present name.

(3) No resolution for change of the name of a taxing district shall be effective until a certified copy of the resolution has been filed with the state tax commission and with the county recorder of each county in which the jurisdiction is situated.

(4) Any change of name under the provisions of this section shall not affect any of the rights, property or obligations of said taxing district.

(5) The provisions of this section shall not apply to any city, county or school district, nor to any taxing district for which provision for change of name is otherwise provided by law.

SECTION 19. That Chapter 26, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-2602A, Idaho Code, and to read as follows:

67-2602A. LICENSE FEES -- MILITARY EXEMPTION. All persons holding occupational or professional licenses issued by the state of Idaho and who are serving in the armed forces of the United States, or their allies, or auxiliary services thereof, and any prisoners of war in custody of the enemy countries of the United States or their allies, including those in the armed services and auxiliary services and any prisoners of war as of July 1, 1942, shall be exempt from the payment of any professional or occupational license or renewal fee required by any law of this state for the period during which such persons shall be engaged in the military services of the United States, or its auxiliary branches, or held as prisoners. And during such period of military service, or service in the auxiliary branches thereof, or servitude and for six (6) months following the discharge from such military service or auxiliary service or servitude in the present war, such license shall remain in good standing without the necessity of renewal and during said period the same shall not be cancelled, suspended or revoked.

SECTION 20. EXISTING RULES REMAIN IN EFFECT. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code.

SECTION 21. This act shall be in full force and effect on and after January 1, 1997.

Approved March 6, 1996.

CHAPTER 99
(S.B. No. 1531)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 1997; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO CERTAIN TRANSFERS BEING CONTINUOUSLY APPROPRIATED; AND LIMITING AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Idaho Transportation Department the following amount, to be expended for designated programs according to designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. MANAGEMENT AND SUPPORT:					
FROM:					
State Highway Fund	$ 9,522,800	$ 4,827,600	$ 499,500		$ 14,849,900
B. TRANSPORTATION PLANNING:					
FROM:					
State Highway Fund	$ 1,763,300	$ 802,400	$ 175,000	$ 725,000	$ 3,465,700
C. MOTOR VEHICLE SERVICES:					
FROM:					
State Highway Fund	$ 5,180,400	$ 3,250,700	$ 335,300		$ 8,766,400
D. HIGHWAY OPERATIONS:					
FROM:					
State Highway Fund	$62,889,700	$34,894,000	$ 11,481,500	$ 415,700	$109,680,900
Highway Safety Fund				1,351,400	1,351,400
TOTAL	$62,889,700	$34,894,000	$ 11,481,500	$1,767,100	$111,032,300
E. CAPITAL FACILITIES:					
FROM:					
State Highway Fund			$ 2,700,000		$ 2,700,000
F. CONTRACT CONSTRUCTION:					
FROM:					
State Highway Fund			$147,311,900		$147,311,900
G. AERONAUTICS:					
FROM:					
State Aeronautics Fund	$ 628,400	$ 573,600	$ 80,500	$1,037,400	$ 2,319,900
H. PUBLIC TRANSPORTATION:					
FROM:					
State Highway Fund	$ 336,400	$ 97,500	$	$3,030,000	$ 3,463,900
I. INTERDEPARTMENTAL SERVICES:					
FROM:					
State Aeronautics Fund	$ 79,100	$ 297,400			$ 376,500
State Highway Fund	66,100	739,900			806,000
TOTAL	$ 145,200	$ 1,037,300			$ 1,182,500
GRAND TOTAL	$80,466,200	$45,483,100	$162,583,700	$6,559,500	$295,092,500

SECTION 2. It is legislative intent that all moneys transferred to the Local Bridge Inspection Fund and to the Railroad Grade Crossing Protection Fund, as provided in Section 63-2412, Idaho Code, are

hereby continuously appropriated to the Idaho Transportation Department for the stated purposes of those funds.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Idaho Transportation Department is authorized no more than one thousand eight hundred eleven (1,811) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 6, 1996.

CHAPTER 100
(S.B. No. 1523)

AN ACT

APPROPRIATING MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 1997; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES.

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

SECTION 1. There is hereby appropriated to the Superintendent of Public Instruction/State Department of Education the following amounts, to be expended according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$2,465,700	$1,291,600	$104,800	$ 409,300	$ 4,271,400
Federal Grant Fund	2,493,100	1,821,700		75,776,700	80,091,500
Public Instruction Fund	222,700	892,700		10,500	1,125,900
Driver Education Fund	115,900	137,500		1,943,000	2,196,400
Data Processing Services Fund	131,100	39,400			170,500
Student Tuition Recovery Fund		5,100		46,500	51,600
TOTAL	$5,428,500	$4,188,000	$104,800	$78,186,000	$87,907,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Department of Education is authorized no more than one hundred

twelve and five-tenths (112.5) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that an amount, not to exceed $1,000 of the General Fund moneys appropriated in Section 1 of this act, may be used at the discretion of the Superintendent of Public Instruction to assist in defraying expenses relating to or resulting from the discharge of his official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

Approved March 6, 1996.

CHAPTER 101
(S.B. No. 1506)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 242, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 242, Laws of 1995, there is hereby appropriated to the Department of Agriculture, the following amount to be expended for the Quality Assurance Laboratory Program, according to the designated expense class from the listed fund for the period July 1, 1995, through June 30, 1996:

FOR:	
Operating Expenditures	$80,000
FROM:	
General Fund	$80,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 102
(H.B. No. 426)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION

59-1317, IDAHO CODE, TO ALLOW FOR A BENEFIT TO BE PAID TO A COURT ORDERED TRUST.

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

SECTION 1. That Section 59-1317, Idaho Code, be, and the same is hereby amended to read as follows:

59-1317. RIGHTS TO BENEFITS INALIENABLE. The right of a person to any benefits under this chapter and the money in any fund created by this chapter shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law, except that benefits of a member shall be subject to garnishment, execution, or wage withholding under chapter 12, title 7, Idaho Code, for the enforcement of an order for the support of a minor child. Should a court order direct distribution or partial distribution of a member benefit defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, be made to the member's spouse or former spouse, that member's full benefit entitlement will be forwarded to the court for distribution. Should a court order establish a trust pursuant to section 15-5-409, Idaho Code, the full benefit entitlement will be forwarded to the trustee, naming the trustee as payee.

Approved March 6, 1996.

CHAPTER 103
(H.B. No. 430)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1316, IDAHO CODE, TO ALLOW THE SYSTEM TO RELEASE INFORMATION UPON A WRITTEN RELEASE BY A BENEFICIARY IF THE MEMBER IS DEAD AND TO ALLOW THE SYSTEM TO RELEASE INFORMATION PERTAINING TO A COMMUNITY PROPERTY INTEREST TO A SPOUSE OR FORMER SPOUSE OF A MEMBER, AND TO THE COURT UPON RECEIVING A COURT ORDER DIRECTING DISTRIBUTION OF THE MEMBER'S ACCOUNT TO THE SPOUSE OR FORMER SPOUSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 59-1316, Idaho Code, be, and the same is hereby amended to read as follows:

59-1316. MEMBER'S RETIREMENT RECORDS CONFIDENTIAL. Each member shall furnish the board with such information as the board shall deem necessary for the proper operation of the system. Except as specifically provided by law, information contained in the retirement system mortgage portfolio loan documents and in each member's retirement system records is subject to disclosure according to chapter 3, title 9, Idaho Code, and may not be divulged except as ordered by a court; or except as may be required by the employer member or by the retirement

board and its staff in order to carry into effect the purposes of this chapter. A member may by his written authorization release specific information from his own retirement system records to a stated designee. If the member is deceased, the member's contingent annuitant or beneficiary may, by written authorization, release specific information from the member's retirement system records to a stated designee. Should a court order direct distribution or partial distribution of a member's benefit as defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, to the member's spouse or former spouse, the system may release to the spouse, former spouse, or the court issuing the order, information pertaining to the member's retirement account only with regard to the calculation, division and distribution of the spouse's or former spouse's community property portion of the account or benefit.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 104
(H.B. No. 650)

AN ACT

RELATING TO THE PERSONNEL COMMISSION; AMENDING SECTION 67-5307, IDAHO CODE, TO PROVIDE FOR COMPENSATION OF MEMBERS OF THE PERSONNEL COMMISSION IN ACCORDANCE WITH SECTION 59-509(n), IDAHO CODE, WHICH PROVIDES FOR THE PAYMENT OF AN HONORARIUM RATHER THAN SALARY.

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

SECTION 1. That Section 67-5307, Idaho Code, be, and the same is hereby amended to read as follows:

67-5307. ORGANIZATION OF COMMISSION. (1) The Idaho personnel commission created by this act shall consist of five (5) members, not more than three (3) of which at any time may belong to the same political party. The members of the commission shall be appointed by the governor on the basis of experience in personnel management, business or governmental management and their known sympathy with merit principles for the impartial selection of efficient state government employees; provided, however, that at least two (2) of the members shall have had at least five (5) years of personnel management experience.

(2) Members of the commission shall be appointed for overlapping terms of six (6) years, except that in the first instance one (1) member shall be appointed for two (2) years, one (1) member for four (4) years and one (1) member for six (6) years. Initial members shall be appointed to take office within thirty (30) days after the effective date of this act. The members of the personnel commission serving on the effective date of this act shall continue in office subject to the

provisions of this act. The additional members of the commission shall be appointed one (1) for four (4) years and one (1) for six (6) years, the term of each to be designated by the governor. Their successors shall be appointed for terms of six (6) years. If, for any reason, a member should leave the commission before his term expires, the governor shall appoint another member to fill out the unexpired term.

(3) No member of the commission shall hold political office or be an officer of a political organization during his term, nor shall any member have held political office or have been an officer of a political organization during the twelve (12) months preceding his appointment. No member of the commission shall have been employed as an official or employee of the state of Idaho during the twelve (12) months preceding his appointment, nor be so employed during his term. At its first meeting the commission shall elect one (1) of the members as chairman. Thereafter, the chairman shall be elected during the first meeting of each calendar year.

(4) Any department aggrieved by any action or inaction of the commission shall be afforded an opportunity for a hearing before the commission upon request therefor in writing. Minutes or summary of the proceedings of all hearings shall be made and filed with the commission, together with findings of fact and conclusions of law made by the commission.

(5) The governor may remove a commissioner for inefficiency, neglect of duty or misconduct in office after first giving him a copy of charges against him and an opportunity to be heard publicly before the governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state.

(6) The commission shall meet at regularly scheduled intervals or on call of the chairman. Three (3) members shall constitute a quorum for the transaction of business. Members shall each be compensated as provided by section 59-509(~~h~~n), Idaho Code.

Approved March 6, 1996.

CHAPTER 105
(H.B. No. 637)

AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1422, IDAHO CODE, TO AUTHORIZE THE BOARD OF FIRE PROTECTION COMMISSIONERS AND PUBLIC UTILITIES TO ENTER INTO AGREEMENTS RELATING TO TERMS AND CONDITIONS FOR THE PROVISION OF FIRE PROTECTION TO UTILITY PROPERTY.

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

SECTION 1. That Section 31-1422, Idaho Code, be, and the same is hereby amended to read as follows:

31-1422. EXEMPTIONS. (1) All public utilities, ~~including railroads, street railroads, bus lines, gas plants, pipe lines, telephone~~

~~and--telegraph-lines,-water-systems,-warehouses,-electric-transmission lines-and-every-common-carrier~~ as defined in section 61-129, Idaho Code, shall be exempt from taxation under the provisions of this act and shall not be entitled to the privileges or protection hereby provided without their consent in writing filed with the clerk of the board of county commissioners. Provided however, the board of fire protection commissioners, may enter into an agreement with a public utility for the purpose of affording the privileges or protection provided by the fire protection district to all, or such portion, of the property of the public utility as may be agreed upon between the parties and upon such terms and conditions as may be mutually agreed upon between the parties to the agreement.

(2) The board of county commissioners, upon application and recommendation of the board of fire protection commissioners, may, by an ordinance enacted by not later than the second Monday of July, exempt all or a portion of the unimproved real property within the district from taxation, and may exempt all or a portion of the taxable personal property within the district from taxation. Any ordinance of the board of county commissioners granting an exemption from taxation under the provisions of this section must provide that each category of property is treated uniformly. Notice of intent to adopt an ordinance which exempts unimproved real property shall be provided to property owners of record in substantially the same manner as required in section 67-6511(b), Idaho Code, as if the ordinance were making a zoning district boundary change.

Approved March 6, 1996.

CHAPTER 106
(H.B. No. 574)

AN ACT

RELATING TO THE CONVEYANCE OF CITY HOSPITALS; AMENDING SECTION 50-305, IDAHO CODE, TO PROVIDE THAT A CITY MAY NOT CONVEY A CITY HOSPITAL UNDER THE PROVISIONS OF SECTION 50-305, IDAHO CODE, EXCEPT BY ORDINANCE AND AFTER A PUBLIC HEARING AND PROVIDING FOR A SPECIAL ELECTION UPON A PETITION EXPRESSING DISSATISFACTION WITH THE CONVEYANCE.

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

SECTION 1. That Section 50-305, Idaho Code, be, and the same is hereby amended to read as follows:

50-305. HOSPITALS -- MAINTENANCE. (1) Any city may acquire, in the manner provided for acquiring other property, by purchase or otherwise, hospital grounds, buildings and equipment, and clinics or other health care facilities, and maintain and operate the same and to provide by general ordinance, rules and regulations for governing the

same. Cities acting through their respective city councils may convey or lease city hospitals, and the equipment therein, subject to the following conditions:

(a) The entity to which the hospital is to be transferred shall be a nonprofit corporation;

(b) No lease term shall exceed ninety-nine (99) years;

(c) The governing body of the nonprofit corporation must be composed initially of the incumbent members of the board of hospital trustees, as individuals. The articles of incorporation must provide for a membership of the corporation which is:

(i) Broadly representative of the public and includes residents of the city; or

(ii) A single nonprofit corporate member having articles of incorporation which provide for a membership of that corporation which is broadly representative of the public and includes residents of the city.

The articles must further provide for the selection of the governing body by the membership of the corporation, or exclusively by a parent corporation which is the corporate member, with voting power, and not by the governing body itself, except to fill a vacancy for the unexpired term. The articles must further provide that no member of the governing body shall serve more than two (2) consecutive three (3) year terms.

(d) The nonprofit corporation must provide care for indigent patients, and receive any person falling sick or maimed within the county.

(e) The transfer agreement must provide for the transfer of patients, staff and employees, and for the continuing administration of any trusts or bequests or maintenance of records pertaining to the existing public hospital.

(f) The transfer or lease agreement shall provide for a transfer or lease price which shall be either of the following:

(i) The acceptance of all assets and assumption of all liabilities; or

(ii) Such other price as the city council and the nonprofit corporation may agree.

(2) If any hospital which has been conveyed pursuant to this section ceases to be used as a nonprofit hospital, unless the premises so conveyed are sold and the proceeds used to erect or enlarge another nonprofit hospital for the city, the hospital so conveyed reverts to the ownership of the city. If any hospital which has been leased pursuant to this section ceases to be used as a nonprofit hospital, the lease shall terminate.

(3) The provisions of section 50-1403, Idaho Code, shall apply to transactions covered by this section, but all other provisions of chapter 14, title 50, Idaho Code, with respect to the sale, lease and disposition of real property owned by the city, shall not apply to transactions covered by this section.

Approved March 6, 1996.

CHAPTER 107
(H.B. No. 594, As Amended)

AN ACT

RELATING TO REGULATION OF INSURANCE; AMENDING SECTION 41-911, IDAHO CODE, TO PROVIDE THAT A THIRD PARTY ADMINISTRATOR SHALL MAINTAIN A BOND IN FAVOR OF THE DIRECTOR TO BE HELD IN TRUST FOR THE BENEFIT AND PROTECTION OF INSURED AND THE INSURER IN THE AMOUNT OF AT LEAST TWENTY THOUSAND DOLLARS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 41-911, Idaho Code, be, and the same is hereby amended to read as follows:

41-911. BONDING OF ADMINISTRATORS -- PURPOSE. Every administrator shall be bonded by a surety bond. The amount of the surety bond shall not be less than ten percent (10%) of the amount of total funds handled, except that in no case shall such bond be less than twenty thousand dollars ($20,000). For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the total funds handled for the benefit of Idaho residents by the administrator during the preceding year, or if no funds were handled during the preceding year, the amount of funds reasonably estimated to be handled for the benefit of Idaho residents during the current calendar year by the administrator. Such bond shall be in favor of the director to be held in trust for the benefit and protection of insureds and the insurer or insurers against loss by reason of acts of fraud or dishonesty and may include individual bonds or schedule or blanket forms of bonds. Only one (1) such bond shall be required of the administrator for all insureds which utilize the services of the administrator, unless provided otherwise in the written agreement between the insurer and the administrator.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 108
(H.B. No. 775)

AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 198, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 198, Laws of 1995, there is hereby appropriated to the State Controller the following amounts to be expended for the designated program according to the designated standard classifications from the listed fund for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ADMINISTRATIVE RULES COORDINATOR:				
FROM:				
General Fund	$40,200	$61,300	$16,200	$117,700

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 109
(H.B. No. 398)

AN ACT

RELATING TO THE CIRCUIT BREAKER; AMENDING SECTION 63-120A, IDAHO CODE, TO INCREASE THE MAXIMUM CIRCUIT BREAKER AMOUNT FROM EIGHT HUNDRED DOLLARS TO ONE THOUSAND TWO HUNDRED DOLLARS OVER A FOUR YEAR PERIOD AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 63-120A, Idaho Code, be, and the same is hereby amended to read as follows:

63-120A. ~~REGULATIONS~~ RULES -- CHANGES IN INCOME LIMITATIONS AND TAX REDUCTION AMOUNTS. Commencing in 199~~2~~6 the state tax commission shall promulgate ~~regulations~~ rules adjusting the income limitations and tax reduction amounts to reflect cost of living fluctuations. ~~Said regulations~~ The rules shall effect change in each income limitation by a percentage equal as near as practicable to the annual cost of living percentage modification as determined by the secretary of health and human services pursuant to 42 USC 415(i). The lowest limitation shall allow a maximum reduction of ~~eight~~ nine hundred dollars ($8~~0~~9~~0~~0) in tax year 1996, one thousand dollars ($1,000) in tax year 1997, one thousand one hundred dollars ($1,100) in tax year 1998 and one thousand two hundred dollars ($1,200) in tax year 1999, or actual taxes, whichever is less. Each income limitation and reduction amount shall be prorated based on the basic ~~eight--hundred--dollars--($800)~~ maximum reduction, in practicable increments so that the highest income limitation will provide for a reduction of one hundred fifty dollars ($1~~0~~50), or actual taxes, whichever is less. The tax commission shall promulgate ~~said regulations~~ rules each and every year the secretary of

health and human services announces said cost of living modification. The ~~regulations~~ rules shall be promulgated no later than October 1 of each such year and shall be effective for claims filed in and for the following ad valorem tax year.

Approved March 6, 1996.

CHAPTER 110
(H.B. No. 547)

AN ACT

RELATING TO LICENSING OF BARBERS; AMENDING SECTION 54-512, IDAHO CODE, TO PROVIDE THAT A PERSON WHO HAS BEEN LICENSED AS A BARBER IN ANOTHER STATE OR COUNTRY FOR AT LEAST THREE YEARS IMMEDIATELY PRIOR TO MAKING APPLICATION MAY BE GRANTED A LICENSE TO PRACTICE AS A REGISTERED BARBER UPON APPLICATION AND PAYMENT OF THE REQUIRED FEE.

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

SECTION 1. That Section 54-512, Idaho Code, be, and the same is hereby amended to read as follows:

54-512. PERSONS HAVING PRACTICED BARBERING IN ANOTHER STATE OR COUNTRY. A person who is at least eighteen (18) years of age and of good moral character and temperate habits and who has completed two (2) years of high school or its equivalent as determined by the board, and either:

1. Has a license or certificate of registration as a practicing barber from another state or country, which has substantially the same requirements for licensing or registering barbers as required by this chapter, or

2. Who ~~can--prove-by-sworn-affidavits-that-he-has-practiced-as-a~~ has been licensed as a barber in another state or country for at least three (3) years immediately prior to making application in this state:

May be granted a license by the board to practice as a registered barber upon application and payment of the required fee. ~~The-board-may require--the--applicant-to-submit-to-and-successfully-pass-an-examination.~~ No such license may be issued except upon authorization by the board. It is unlawful for any person to practice as a registered barber without a certificate of registration.

Approved March 6, 1996.

CHAPTER 111
(H.B. No. 614)

AN ACT

RELATING TO EXEMPTIONS FROM THE SALES TAX ACT; AMENDING SECTION

63-3622K, IDAHO CODE, TO EXTEND THE EXEMPTION FOR THE SALE BETWEEN RELATED PARTIES TO INCLUDE A LEASE OR RENTAL AND TO INCLUDE SUBSEQUENT SALES AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3622K, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622K. OCCASIONAL SALES. (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term "occasional sale" means:

(1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a "retailer" under section 63-3610(c), Idaho Code.

(2) Any transfer of all or substantially all of the property held or used by a person in a business requiring a seller's permit when, after such transfer, the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purpose of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having a "real or ultimate ownership" of the property of such corporation or other entity.

(3) A transfer of capital assets to or by a business when the transfer is accomplished through an adjustment of the beneficial interest of the business and the transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, on the capital assets, incidental to:

(i) A division of joint venture or partnership assets among the members or partners in exchange for a proportional reduction of the transferee's interest in the joint venture or partnership;

(ii) The formation of a partnership or joint venture by the transfer of assets to the partnership or joint venture or transfers to a partnership or joint venture in exchange for proportionate interests in the partnership or joint venture;

(iii) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for stock in proportion to assets contributed;

(iv) The transfer of assets of shareholders in the formation or dissolution of a corporation;

(v) The transfer of capital assets by a corporation to its stockholders in exchange for surrender of capital stock;

(vi) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty per cent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary

corporation;

(vii) The transfer of assets from a subsidiary corporation which is owned at least eighty per cent (80%) by the parent corporation to a parent corporation or another subsidiary which is owned at least eighty per cent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.

(4) The sale, ~~but not the~~ lease or rental~~,~~ of a capital asset in substantially the same form as acquired by the transferor and on which the initial transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.

(5) The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expense attributable to such "separate division, branch, or identifiable segment" could be separately ascertained from the books of accounts and records.

(6) Sales by persons who are not defined as "retailers" in section 63-3610, Idaho Code.

(7) Sales of animals by any 4-H club or FFA club held in conjunction with a fair or the western Idaho spring lamb sale.

(c) As used in this section, the term "occasional sale,"~~;~~ when applied to the sale of a self-propelled motor vehicle, means only:

(1) Sales of motor vehicles between members of a family related within the second degree of consanguinity, unless a sales or use tax was not imposed on the sale of that motor vehicle at the time of purchase, in which situation the sale is taxable.

(2) Sales of motor vehicles that fall within the scope of the transactions detailed in subsection (b)(2) through (b)(5) of this section.

(d) The exemption provided by subsections (b)(1), (b)(4) or (b)(6) of this section shall not apply to the sale, purchase or use of aircraft, as defined in section 21-201, Idaho Code, nor shall it apply to the sale, purchase or use of boats or vessels, as defined in section 67-7003, Idaho Code, nor shall it apply to the sale, purchase or use of snowmobiles, recreational vehicles or off-highway motorbikes, as defined in section 63-3622HH, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved March 6, 1996.

CHAPTER 112
(H.B. No. 425)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO IMPLEMENT THE COMPENSATION CAP IMPOSED ON TAX QUALIFIED PLANS BY THE INTERNAL REVENUE CODE SECTION 401(a)(17) FOR PERSONS BECOMING MEMBERS OF THE SYSTEM ON OR AFTER JULY 1, 1996.

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

SECTION 1. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5B) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Workers' compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and nonmedical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing

from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer; or

(b) Elected officials or appointed officials of an employer who receive a salary; or

(c) A person who is separated from service with less than five (5) months of employment and who is reemployed or reinstated by the same employer within thirty (30) days.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or vocational-technical program at and employed by a state college, university, community college or vocational-technical center when such employment is predicated on student status; or

(f) A person making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board, or;

(g) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city when the city has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather and the growing season, including parks and golf course positions.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations

who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, and military service which occurs after the commencement of such contributions.

(23) "Military service" means active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code. Provided, however, for the purposes of this chapter, military service SHALL NOT include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted;

(b) Any period which commences more than ninety (90) days after the person ceases to be an employee or ends more than ninety (90) days before the person again becomes an employee unless such ninety (90) day requirements are waived by the board due to circumstances beyond the employee's control; or

(c) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active

member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) (a) "Salary" means the total salary or wages paid to a person who meets the definition of employee by an employer for personal services currently performed, including the cash value of all remuneration in any medium other than cash in the amount reported by the employer for income tax purposes and also including the amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(b) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. Service of fifteen (15) days or more during any calendar month shall be credited as one (1) month of service. Service of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested retirement allowance" means the periodic payment becoming payable upon an inactive member's becoming eligible for vested retirement.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

Approved March 6, 1996.

CHAPTER 113
(S.B. No. 1515)

AN ACT

RELATING TO THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF ENVIRONMENTAL QUALITY; AMENDING THE APPROPRIATION MADE IN SECTION 1, CHAPTER 344, LAWS OF 1995, AUTHORIZING AN INCREASE IN THE LIMIT ON THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 344, Laws of 1995, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Health and Welfare the following amounts to be expended for the designated programs according to the designated standard classifications from the various funds listed for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INEL OVERSIGHT:					
FROM:					
Hazardous Waste Training, Emergency and Monitoring Fund	$ 207,000	$ 17,400			$ 224,400
Cooperative Welfare Fund (Federal)	1,647,100	924,400		$ 1,046,400	3,617,900
TOTAL	$ 1,854,100	$ 941,800		$ 1,046,400	$ 3,842,300
II. DIVISION OF ENVIRONMENTAL QUALITY:					
A. PLANNING AND SUPPORT SERVICES:					
FROM:					
General Fund	$ 122,800	$ 141,000			$ 263,800
Air Quality Permitting Fund	123,400	197,400			320,800
Cooperative Welfare Fund (Other)	88,500	26,000			114,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Water Pollution Control Fund	509,100	566,400			1,075,500
Hazardous Waste Training, Emergency and Monitoring Fund	374,500	407,000			781,500
Cooperative Welfare Fund (Federal)	1,184,900	584,700			1,769,600
TOTAL	$ 2,403,200	$1,922,500			$ 4,325,700
B. PERMITS AND ENFORCEMENT:					
FROM:					
General Fund	$ 425,800	$ 78,700			$ 504,500
Cooperative Welfare Fund (Other)	389,600	14,300			403,900
Water Pollution Control Fund	441,800	57,300			499,100
Hazardous Waste Training, Emergency and Monitoring Fund	596,400	152,800			749,200
Air Quality Permitting Fund	872,800	232,600			1,105,400
Cooperative Welfare Fund (Federal)	747,100	82,000			829,100
TOTAL	$ 3,473,500	$ 617,700			$ 4,091,200
C. COMMUNITY PROGRAMS:					
FROM:					
General Fund	$ 278,300	$ 102,600			$ 380,900
Cooperative Welfare Fund (Other)	827,700	300,400	$ 32,000	$ 11,000	1,171,100
Water Pollution Control Fund	~~2,933,800~~	~~2,049,800~~	~~118,200~~	~~13,348,600~~	~~18,450,400~~
	3,194,800	2,128,800	679,200	12,538,500	18,541,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Hazardous Waste Training, Emergency and Monitoring Fund	751,500	204,600	18,000		974,100
Air Quality Permitting Fund	241,100	98,200	13,700	189,000	542,000
State Agricultural Smoke Management Fund		30,400			30,400
Cooperative Welfare Fund (Federal)	~~3,973,400~~	~~1,171,600~~			~~6,213,400~~
	3,894,500	1,159,600	64,700	1,003,700	6,122,500
TOTAL	$ ~~9,005,800~~	$~~3,957,600~~	$~~246,600~~	$~~14,552,300~~	$27,762,300
	9,187,900	4,024,600	807,600	13,742,200	
DIVISION TOTAL	$~~14,882,500~~	$~~6,497,800~~	$~~246,600~~	$~~14,552,300~~	$36,179,200
	15,064,600	6,564,800	807,600	13,742,200	
GRAND TOTAL	$~~16,736,600~~	$~~7,439,600~~	$~~246,600~~	$~~15,598,700~~	$40,021,500
	16,918,700	7,506,600	807,600	14,788,600	

SECTION 2. In addition to the full-time equivalent positions authorized in Section 7, Chapter 346, Laws of 1995, the Department of Health and Welfare is authorized ten (10) full-time equivalent positions for Community Programs within the Division of Environmental Quality in accordance with Section 67-3519, Idaho Code, and no more than three thousand eight hundred seventy-six and sixty-six hundredths (3,876.66) full-time equivalent positions at any point during the period July 1, 1995, through June 30, 1996.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 114
(H.B. No. 657)

AN ACT
RELATING TO THE DIVISION OF PURCHASING; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5718A, IDAHO CODE,

TO PROVIDE FOR THE ACQUISITION OF INFORMATION TECHNOLOGY PROPERTY BY MEANS OF A CONTRACT WITH MULTIPLE BIDDERS, TO PROVIDE STANDARDS FOR THE AWARD OF SUCH A CONTRACT TO MULTIPLE BIDDERS, TO DEFINE INFORMATION TECHNOLOGY PROPERTY AND TELECOMMUNICATIONS, TO REQUIRE PRIOR REVIEW AND APPROVAL OF SUCH MULTIPLE AWARDS BY THE ADMINISTRATOR OF THE DIVISION OF PURCHASING AND TO PROVIDE THAT A MULTIPLE AWARD SHALL NOT BE APPROPRIATE WHEN A SINGLE BIDDER CAN SATISFACTORILY PERFORM THE CONTRACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 57, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5718A, Idaho Code, and to read as follows:

67-5718A. ACQUISITION OF INFORMATION TECHNOLOGY PROPERTY BY CONTRACT -- AWARD TO MORE THAN ONE BIDDER -- STANDARDS FOR MULTIPLE AWARDS -- APPROVAL BY ADMINISTRATOR. (1) Notwithstanding any provision of this chapter to the contrary, the administrator of the division of purchasing may make an award of a contract to two (2) or more bidders to furnish the same or similar information technology property where more than one (1) contractor is necessary:

(a) To furnish the types of property and quantities required by state agencies;

(b) To provide expeditious and cost-efficient acquisition of property for state agencies; or

(c) To enable state agencies to acquire property which is compatible with property previously acquired.

(2) As used in this section:

(a) "Information technology property" includes, but is not limited to, all present and future forms of computer hardware, computer software, or services used or required for automated data processing, computer related office automation or telecommunications.

(b) "Telecommunications" includes, but is not limited to, all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

(3) No award of a contract to multiple bidders shall be made under this section unless the administrator of the division of purchasing makes a written determination showing that multiple awards satisfies one (1) or more of the criteria set forth in this section.

(4) Where a contract for information technology property has been awarded to two (2) or more bidders in accordance with this section, a state agency shall make purchases from the contractor whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency.

(5) A multiple award of a contract for information technology property under this section shall not be made when a single bidder can reasonably serve the acquisition needs of state agencies. A multiple award of a contract shall only be made to the number of bidders necessary to serve the acquisition needs of state agencies.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 115
(H.B. No. 661)

AN ACT

RELATING TO THE INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL; REPEALING SECTION 67-5745, IDAHO CODE, RELATING TO ADVISORY COUNCILS; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 67-5745, 67-5745A, 67-5745B AND 67-5745C, IDAHO CODE, TO PROVIDE FOR THE CREATION OF THE INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL, TO DEFINE THE PURPOSE OF THE COUNCIL, TO DEFINE TERMS, TO IDENTIFY THE MEMBERSHIP OF THE COUNCIL, PROVIDE FOR THE APPOINTMENT AND TERM OF OFFICE FOR MEMBERS OF THE COUNCIL AND ESTABLISH A RATE OF COMPENSATION FOR THE MEMBERS OF THE COUNCIL, AND TO ESTABLISH THE RESPONSIBILITIES AND DUTIES OF THE COUNCIL; AMENDING SECTION 67-5748, IDAHO CODE, TO AUTHORIZE THE BOARD OF EXAMINERS TO MAKE TRANSFERS REGARDING INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-5745, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 57, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 67-5745, 67-5745A, 67-5745B and 67-5745C, Idaho Code, and to read as follows:

67-5745. DECLARATION OF PURPOSE. The legislature finds that advances in information technology and telecommunications present significant opportunities for the state of Idaho to improve the efficiency and productivity of state and local government, to promote, develop and diversify its economy, to encourage public access to government information and to enhance lifelong educational and training opportunities. The implications of these information technology and telecommunications advances require a centralized and coordinated strategic planning process involving the expertise and participation of experienced persons from both state and local government and the private sector. The establishment of the information technology resource management council will facilitate a centralized approach to the acquisition and evaluation of necessary technical information and the informed development of a statewide strategic plan to ensure a coordinated approach to the design, procurement and implementation of

information technology and telecommunications systems for both state government and the public.

67-5745A. DEFINITIONS. As used in this chapter:

(1) "Information technology" means all present and future forms of computer hardware, computer software and services used or required for automated data processing, computer-related office automation or telecommunications.

(2) "State agencies" means all state agencies or departments, boards, commissions, councils and institutions of higher education, but shall not include the elected constitutional officers and their staffs, the legislature and its staffs or the judiciary.

(3) "Telecommunications" means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

67-5745B. INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL -- COMPOSITION -- APPOINTMENT AND TERM OF OFFICE -- REIMBURSEMENT -- CONTRACTING FOR NECESSARY SERVICES. (1) An information technology resource management council is hereby created within the department of administration. The council shall consist of sixteen (16) members who shall each serve a term of office of two (2) years. For purposes of the initial appointments, the eight (8) members of the council to be appointed by the governor shall be appointed for a one (1) year term. The governor shall appoint eight (8) members of the council as follows: a chairman, two (2) executive agency officers, an information technology executive from private industry, a public safety official, a state information systems manager, a representative from local government and a representative for rural interests. The remaining membership of the council shall be comprised of the following: two (2) persons appointed by the president pro tempore of the senate and two (2) persons appointed by the speaker of the house of representatives, one (1) from each of the two (2) largest parties, to represent the legislative branch of state government; one (1) person appointed by the chief justice of the supreme court to represent the judicial branch of state government; the state controller; the state superintendent of public instruction; and the executive officer of the state board of education. All appointed members of the council shall serve at the pleasure of the appointing authority.

(2) The council shall hold no fewer than four (4) regular meetings annually at such time and place as may be directed by its chairman. The council may meet more frequently at the call of the chairman or if requested by a majority of the council's members. Members of the council shall serve with no salary or benefits, but are entitled to reimbursement as provided in section 59-509(b), Idaho Code.

(3) The council may contract for professional services or assistance when necessary or desirable to carry out its powers and duties.

67-5745C. GENERAL POWERS AND DUTIES OF THE COUNCIL. The council shall:

(1) Review and evaluate the information technology and telecommunications systems presently in use by state agencies;

(2) Recommend policies and prepare statewide short-range and

long-range information technology and telecommunications systems plans to meet the needs of state agencies;

(3) Within the context of its strategic plans, establish statewide information technology and telecommunications standards, guidelines and conventions that will assure uniformity and compatibility of such systems within state agencies;

(4) Recommend and coordinate the use and application of state agencies' information technology and telecommunications resources;

(5) Review and approve large-scale information technology and telecommunications projects for state agencies;

(6) Review state agencies' compliance with statewide information technology and telecommunications systems plans;

(7) Recommend cost-efficient procedures for state agencies' acquisition and procurement of information technology and telecommunications systems;

(8) Upon request, provide technical expertise to state government and any other governmental entity;

(9) Maintain a continuous and comprehensive inventory of information technology and telecommunications systems within state agencies;

(10) In accordance with statutes governing the availability or confidentiality of public records and information, establish guidelines for the accessing of public information by the public;

(11) On an annual basis, publish a report of the activities of the council for provision to the governor and the legislature;

(12) Recommend the enactment or promulgation of any statutes or rules necessary to carry out the statewide information technology and telecommunications systems plans;

(13) Enter into contracts for professional services and assistance not otherwise available in state government;

(14) Encourage and promote the development and growth of the information technology industry in the state in accordance with sound business principles and practices;

(15) Encourage and promote cooperative information technology efforts and activities between the state, private enterprise and the public;

(16) Encourage and support education and training opportunities relating to information technology and telecommunications; and

(17) Perform any additional functions consistent with the purpose of this act which are necessary and appropriate for the proper conduct of the council.

SECTION 3. That Section 67-5748, Idaho Code, be, and the same is hereby amended to read as follows:

67-5748. TRANSFER OF FUNDS, EQUIPMENT, FACILITIES, AND EMPLOYEES. In order to provide for the orderly implementation of this chapter and to provide an economical, efficient, and effective system of <u>information technology and telecommunications</u> for the state, the board of examiners may order such transfer of appropriated funds, custody and control of equipment and facilities, and employees to the department of administration as may be necessary to carry out the purposes of this act.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 116
(H.B. No. 641)

AN ACT

RELATING TO AREAS OF CITY IMPACT AND ANNEXATION; AMENDING SECTION 50-222, IDAHO CODE, TO CLARIFY THAT IF A CITY DID NOT ADOPT AN AREA OF CITY IMPACT PRIOR TO JANUARY 1, 1995, IT IS NOT PROHIBITED FROM ANNEXING ADJACENT TERRITORY IF THE AREA OF CITY IMPACT IS ADOPTED BEFORE THE CITY ANNEXES ADJACENT TERRITORY AND ALL OTHER ANNEXATION REQUIREMENTS ARE MET; AMENDING SECTION 67-6526, IDAHO CODE, TO CLARIFY THAT AN AREA OF CITY IMPACT MUST BE ESTABLISHED BEFORE THE CITY MAY ANNEX ADJACENT TERRITORY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 50-222, Idaho Code, be, and the same is hereby amended to read as follows:

50-222. ANNEXATION OF ADJACENT TERRITORY. (1) On and after January 1, 1995, any land lying contiguous or adjacent to any city in the state of Idaho, or to any addition or extension thereof may be annexed by the city only if the land is lying in the area of city impact as determined by procedures contained in section 67-6526, Idaho Code, and the land is laid off into blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority, has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres. <u>If a city has not adopted an area of city impact prior to January 1, 1995, the city shall not be prohibited from annexing adjacent territory if an area of city impact has been adopted in accordance with the provisions of section 67-6526, Idaho Code, prior to annexation and all other requirements for annexation have been met.</u> An owner of land of any size may request that the tract of land be annexed by the city whether the land is or is not contained in the city's area of impact by submitting such request in writing to the city council. If the tract of land is surrounded by or borders the city, the council may, by ordinance, declare the land by proper legal description thereof to be a part of such city. In any annexation of adjacent territory, the annexation shall include all portions of highways lying wholly or partially within the annexed area.

(2) Railroad right of way property may be annexed when property within the city adjoins both sides of the right of way notwithstanding

any other provision of this section. Provided, that the city may annex only those areas which can be reasonably assumed to be used for orderly development of the city. Provided further, that said council shall not have the power to declare such land, lots or blocks a part of said city, if they will be connected to such city only by a shoestring or strip of land upon a public highway.

(3) Notwithstanding any other provision of law, no city council shall have authority to annex property owned by a county or any entity within the county which property is used as a fairgrounds area under the provisions of chapter 8, title 31, or chapter 2, title 22, Idaho Code, without the consent of a majority of the board of county commissioners of the county in which said property lies.

(4) Notwithstanding any other provision of law, no city council shall have authority to annex property owned by a nongovernmental entity used to provide outdoor recreational activities to the public which has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services without the express written permission of the nongovernmental entity whose property is subject to annexation.

SECTION 2. That Section 67-6526, Idaho Code, be, and the same is hereby amended to read as follows:

67-6526. AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE. (a) The governing board of each county and each city therein shall~~,--prior--to October--1,--1994,~~ adopt by ordinance following the notice and hearing procedures provided in section 67-6509, Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. ~~By-mutual-agreement,-this-date-may-be-extended-to-November-1,-1994.~~ A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted ~~no-later-than-January--1, 1995~~. Subject to the provisions of section 50-222, Idaho Code, an area of city impact must be established before a city may annex adjacent territory. This separate ordinance shall provide for one of the following:

(1) Application of the city plan and ordinances adopted under this chapter to the area of city impact; or

(2) Application of the county plan and ordinances adopted under this chapter to the area of city impact; or

(3) Application of any mutually agreed upon plan and ordinances adopted under this chapter to the area of city impact.

Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.

(b) If the requirements of section 67-6526(a), Idaho Code, are not met, the county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days after the city officials have been confirmed by the council, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county governing boards an area of city impact together with plan and ordinance requirements. The

recommendations shall be acted upon by the governing boards within sixty (60) days of receipt. If the city or county fails to enact ordinances providing for an area of city impact, plan, and ordinance requirements, the city or county may seek a declaratory judgment from the district court identifying the area of city impact, and plan and ordinance requirements. In defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future.

(c) If areas of city impact overlap, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners shall, upon a request from either city, within thirty (30) days, recommend adjustments to the areas of city impact which shall be adopted by ordinance by the cities following the notice and hearing procedures provided in section 67-6509, Idaho Code. If any city objects to the recommendation of the board of county commissioners, the county shall conduct an election, subject to the provisions of section 34-106, Idaho Code, and establish polling places for the purpose of submitting to the qualified electors residing in the overlapping impact area, the question of which area of city impact the electors wish to reside. The results of the election shall be conclusive and binding, and no further proceedings shall be entertained by the board of county commissioners, and the decision shall not be appealable by either city involved. The clerk of the board of county commissioners shall by abstract of the results of the election, certify that fact, record the same and transmit copies of the original abstract of the result of the election to the clerk of the involved cities.

(d) Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. In the event the city and county cannot agree, the judicial review process of subsection (b) shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section.

(e) Prior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation. Each commission shall have a reasonable time fixed by the governing board to make its recommendations to the governing board.

(f) This section shall not preclude growth and development in areas of any county within the state of Idaho which are not within the areas of city impact provided for herein.

(g) If the area of impact has been delimited pursuant to the provisions of subsection (a) (1) of this section, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission, may exceed twelve (12) per-

sons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code. In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of city impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 6, 1996.

CHAPTER 117
(S.B. No. 1537)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE FOR FISCAL YEAR 1997; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Commerce the following amounts from the listed funds to be expended according to designated standard classifications for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$1,607,400	$1,033,700	$27,000		$ 2,668,100
Tourism Promotion Fund	411,400	2,034,200	13,500	$ 2,450,600	4,909,700
Seminars and Publications Fund		356,100			356,100
Miscellaneous Revenue Fund		86,000			86,000
Federal Grant Fund	362,000	128,700	10,000	14,720,200	15,220,900
TOTAL	$2,380,800	$3,638,700	$50,500	$17,170,800	$23,240,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the

Department of Commerce is authorized no more than fifty-two (52) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 7, 1996.

CHAPTER 118
(S.B. No. 1540)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DEPARTMENT OF REVENUE AND TAXATION FOR FISCAL YEAR 1997; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. It is legislative intent that the expenditures for the Department of Revenue and Taxation not exceed the following amounts for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$13,900,600	$4,367,900	$599,400	$18,867,900
Dedicated Funds	1,796,600	790,100	24,800	2,611,500
Federal Funds	25,800			25,800
Other Funds		124,900		124,900
TOTAL	$15,723,000	$5,282,900	$624,200	$21,630,100

SECTION 2. There is hereby appropriated to the Department of Revenue and Taxation the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. MANAGEMENT SERVICES:				
FROM:				
General Fund	$ 2,641,800	$1,402,400	$255,700	$ 4,299,900
Seminars and Publications Fund		30,000		30,000
Administration and Accounting Fund		35,800		35,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Administration and Accounting - Services to Transportation Fund	292,800	90,200	21,600	404,600
TOTAL	$ 2,934,600	$1,558,400	$277,300	$ 4,770,300
B. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	$ 7,037,000	$1,126,300	$191,000	$ 8,354,300
Multi-State Tax Compact Fund		183,100		183,100
Federal Grant Fund	25,800			25,800
Administration and Accounting Fund		9,300		9,300
Administration and Accounting - Services to Transportation Fund	919,000	219,700		1,138,700
Abandoned Property Trust - Unclaimed Property Fund	294,800	65,000	600	360,400
TOTAL	$ 8,276,600	$1,603,400	$191,600	$10,071,600
C. REVENUE OPERATIONS:				
FROM:				
General Fund	$ 2,225,000	$1,173,700	$ 37,500	$ 3,436,200
Seminars and Publications Fund		17,500		17,500
Administration and Accounting Fund		25,800		25,800
Administration and Accounting - Services to Transportation Fund	290,000	161,200	2,600	453,800
TOTAL	$ 2,515,000	$1,378,200	$ 40,100	$ 3,933,300
D. COUNTY SUPPORT:				
FROM:				
General Fund	$ 1,873,400	$ 640,300	$106,600	$ 2,620,300
Seminars and Publications Fund		77,400		77,400
TOTAL	$ 1,873,400	$ 717,700	$106,600	$ 2,697,700
E. BOARD OF TAX APPEALS:				
FROM:				
General Fund	$ 123,400	$ 25,200	$ 8,600	$ 157,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
GRAND TOTAL	$15,723,000	$5,282,900	$624,200	$21,630,100

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Department of Revenue and Taxation is authorized no more than three hundred seventy-seven and five-tenths (377.50) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 2 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 7, 1996.

CHAPTER 119
(S.B. No. 1295)

AN ACT

RELATING TO THE OFFICE OF RULES COORDINATOR; AMENDING SECTION 67-5202, IDAHO CODE, TO TRANSFER THE OFFICE OF ADMINISTRATIVE RULES COORDINATOR FROM THE OFFICE OF THE STATE CONTROLLER TO THE DEPARTMENT OF ADMINISTRATION, TO ELIMINATE THE REQUIREMENT OF SENATE CONFIRMATION FOR THE RULES COORDINATOR, AND TO PROVIDE THAT ALL OTHER EMPLOYEES OF THE OFFICE OF ADMINISTRATIVE RULES EMPLOYED ON JULY 1, 1996 SHALL BE CLASSIFIED EMPLOYEES BUT THAT UPON TERMINATION THEIR POSITIONS AND ANY VACANT POSITIONS SHALL BE NONCLASSIFIED.

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

SECTION 1. That Section 67-5202, Idaho Code, be, and the same is hereby amended to read as follows:

67-5202. OFFICE OF ADMINISTRATIVE RULES COORDINATOR. There is hereby established the office of administrative rules coordinator in the ~~office--of-the-state-controller~~ department of administration. The coordinator shall be a nonclassified employee and shall be appointed by and serve at the pleasure of the ~~state-controller-with-the-advice and-consent-of-the-senate~~ director of the department of administration. All other employees of the office of administrative rules employed on July 1, 1996, shall be classified employees, but upon their termination their positions and any positions vacant upon July 1, 1996 shall be nonclassified positions and any persons employed to fill positions in the office of administrative rules thereafter shall be exempt from the provisions of chapter 53, title 67, Idaho Code. The coordinator shall receive all notices and rules required in this chapter to be published in the bulletin or the administrative code. The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all agencies. The

coordinator shall review all submitted rules for style, form, and numbering, and may return a rule that is not in proper style, form, or number.

Approved March 7, 1996.

CHAPTER 120
(S.B. No. 1319)

AN ACT

RELATING TO OVERTIME WORK FOR NONCLASSIFIED EMPLOYEES OF STATE GOVERNMENT; AMENDING SECTION 59-1607, IDAHO CODE, TO CLARIFY THAT ASSISTANT ATTORNEYS GENERAL ATTACHED TO THE OFFICE OF THE ATTORNEY GENERAL ARE ELIGIBLE FOR CASH COMPENSATION OR COMPENSATORY TIME FOR OVERTIME WORK.

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

SECTION 1. That Section 59-1607, Idaho Code, be, and the same is hereby amended to read as follows:

59-1607. HOURS OF WORK -- OVERTIME. (1) It is the policy of the legislature of the state of Idaho that all nonclassified officers and employees of state government shall be treated equally with reference to hours of employment, holidays and vacation leave in the same manner as classified employees, except as provided in this chapter. The policy of this state shall not restrict the extension of regular work hour schedules on an overtime basis, which shall be the same as for classified employees, in those activities and duties where such extension is necessary and authorized by the appointing authority.

(2) The appointing authority of any department shall determine the necessity for overtime work and shall provide for cash compensation or compensatory time off for such overtime work for eligible nonclassified officers and employees.

(3) Nonclassified officers and employees who fall within one (1) or more of the following categories are ineligible for cash compensation or compensatory time for overtime work:

(a) Elected officials;

(b) Holders of an office or position for which confirmation by the senate is required;

(c) Departmental directors, or equivalent;

(d) Division administrators, or equivalent;

(e) Those included in the definition of section 67-5303(~~i~~j), Idaho Code.

(4) Nonclassified officers and employees who are designated as executive, administrative or professional as provided in section 67-5302, Idaho Code, or who are designated as exempt under any other complete exemption in federal law, and who are not included in the definition of subsection (3) above, shall be ineligible for cash compensation for overtime work unless cash payment is authorized by the state board of examiners for overtime accumulated during unusual or

emergency situations, but such nonclassified officers and employees shall be allowed compensatory time off from duty for overtime work. Such compensatory time shall be earned and allowed on a one (1) hour for one (1) hour basis, shall not be transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service.

(5) Nonclassified officers and employees who are not designated as executive, administrative or professional as provided in section 67-5302, Idaho Code, who are not designated as exempt under any other complete exemption in federal law, and who are not included in the definition of subsection (3) above, shall be eligible for cash compensation or compensatory time off from duty for overtime work, subject to the restrictions of applicable federal law. Compensatory time off may be provided in lieu of cash compensation at the discretion of the appointing authority after consultation, in advance, with the employee. Compensatory time off shall be paid at the rate of one and one-half (1 1/2) hours for each overtime hour worked. Compensatory time off which has been earned during any one-half (1/2) fiscal year but not taken by the end of the succeeding one-half (1/2) fiscal year, shall be paid in cash on the first payroll following the close of such succeeding one-half (1/2) fiscal year. Compensatory time not taken at the time of transfer to another appointing authority or upon separation from state service shall be liquidated at the time of such transfer or separation by payment in cash.

Approved March 7, 1996.

CHAPTER 121
(S.B. No. 1370)

AN ACT

RELATING TO THE SCHOOL DISTRICT BUILDING ACCOUNT; AMENDING SECTION 33-905, IDAHO CODE, TO PROVIDE THAT EACH SCHOOL DISTRICT SHALL REPORT TO THE STATE DEPARTMENT OF EDUCATION THE PROJECTS ON WHICH MONEYS RECEIVED FROM THE SCHOOL DISTRICT BUILDING ACCOUNT WERE EXPENDED AND THE PLANNED USES FOR THE MONEYS RECEIVED FROM THE SCHOOL DISTRICT BUILDING ACCOUNT AND TO PROVIDE FOR REPORTS TO THE LEGISLATURE.

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

SECTION 1. That Section 33-905, Idaho Code, be, and the same is hereby amended to read as follows:

33-905. SCHOOL DISTRICT BUILDING ACCOUNT -- PAYMENTS TO ACCOUNT -- MONEYS APPROPRIATED TO STATE BOARD -- APPLICATION FOR MONEYS -- PAYMENTS TO DISTRICTS -- REPORTS ON APPLICATIONS -- USES OF MONEYS. 1. The state of Idaho, recognizing its responsibility to establish and maintain a general, uniform and thorough system of public, free common schools, in an effort to partially fulfill this responsibility, hereby creates and establishes the school district building account in the

state treasury. The school district building account shall have paid into it such appropriations or revenues as may be provided by law.

2. Moneys in the school district building account are hereby appropriated to and may be expended by the state board of education at any time for the purposes provided in this section, any provision of chapter 35, title 67, Idaho Code, or chapter 36, title 67, Idaho Code, notwithstanding.

3. (a) As to any moneys in the account other than lottery dividends distributed pursuant to subsection 4. of this section, the board of trustees of any school district may apply to the state board of education to receive a payment or payments from the school district building account; provided, a district demonstrates to the state board of education that it has a substantial and serious need based upon the district's classroom student-teacher ratios, past efforts to levy for such construction, physical condition of existing structures, and the total assessed market value of the district, all of which shall be further defined by actual need criteria established by the state board of education.

(b) When an application for moneys from the account is approved by the state board of education, the state board shall inform the school district that the application has been approved, citing the amount approved for payment and an estimate of the time when the payment can actually be made to the school district.

4. By not later than August 31, moneys in the account pursuant to distribution from section 67-7434, Idaho Code, the lottery dividends and interest earned thereon, shall be distributed to each of the several school districts, in the proportion that the average daily attendance of that district for the previous school year bears to the total average daily attendance of the state during the previous school year. Average daily attendance shall be calculated as provided in section 33-1002 4., Idaho Code.

5. All payments from the school district building account shall be paid out directly to the school district in warrants drawn by the state controller upon presentation of proper vouchers from the state board of education. Pending payments out of the school district building account, the moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other idle moneys in the state treasury. Interest earned on the investments shall be returned to the school district building account.

6. Payments from the school district building account received by a school district may be used by the school district for the purposes authorized in section 33-1102, Idaho Code.

7. (a) By not later than December 1, each school district shall report to the state department of education the projects on which moneys received from the school district building account were expended. The state department of education shall transmit a summary of such reports to the legislature by not later than January 15 of the following year.

(b) By not later than December 1, each school district shall report to the state department of education the planned uses for the moneys received from the school district building account.

The state department of education shall transmit a summary of the reports to the legislature by not later than January 15 of the following year.

Approved March 7, 1996.

CHAPTER 122
(S.B. No. 1343)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-349, IDAHO CODE, TO REQUIRE THAT STATUTORY LANGUAGE PROVIDING FOR THE CONFIDENTIALITY OR CLOSURE OF ANY PUBLIC RECORD OR CLASS OF PUBLIC RECORDS SHALL BE PLACED IN THE PUBLIC RECORDS ACT AND TO PROVIDE THE EFFECT OF A STATUTE PROVIDING FOR THE CONFIDENTIALITY OR CLOSURE OF ANY PUBLIC RECORD OR CLASS OF PUBLIC RECORDS NOT PLACED IN THE PUBLIC RECORDS ACT; AMENDING SECTION 9-349, IDAHO CODE, TO REDESIGNATE THE SECTION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-349, Idaho Code, and to read as follows:

9-349. CONFIDENTIALITY LANGUAGE REQUIRED IN THIS CHAPTER. On and after January 1, 1996, any statute which is added to the Idaho Code and provides for the confidentiality or closure of any public record or class of public records shall be placed in this chapter. Any statute which is added to the Idaho Code on and after January 1, 1996, and which provides for confidentiality or closure of a public record or class of public records and is located at a place other than this chapter shall be null, void and of no force and effect regarding the confidentiality or closure of the public record and such public record shall be open and available to the public for inspection as provided in this chapter.

SECTION 2. That Section 9-349, Idaho Code, be, and the same is hereby amended to read as follows:

9-3495~~0~~. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force on and after its passage and approval and retroactively to January 1, 1996.

Approved March 7, 1996.

CHAPTER 123
(S.B. No. 1374)

AN ACT

RELATING TO DAY'S WORK; REPEALING CHAPTER 11, TITLE 44, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 11, Title 44, Idaho Code, be, and the same is hereby repealed.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 8, 1996.

CHAPTER 124
(S.B. No. 1383)

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING CHAPTER 22, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-2210D, IDAHO CODE, TO PROVIDE THAT A LARGE GROUP CARRIER THAT DOES NOT HAVE AN INDIVIDUAL PRODUCT ON FILE WITH THE DEPARTMENT OF INSURANCE SHALL PROVIDE A CONVERSION PLAN TO ALL GROUP INSUREDS AND TO SPECIFY THE BENEFITS TO BE PROVIDED; AND AMENDING CHAPTER 47, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-4708B, IDAHO CODE, TO PROVIDE THAT A SMALL EMPLOYER GROUP CARRIER THAT DOES NOT HAVE AN INDIVIDUAL PRODUCT ON FILE WITH THE DEPARTMENT OF INSURANCE SHALL PROVIDE A CONVERSION PLAN TO ALL GROUP INSUREDS AND TO SPECIFY THE BENEFITS TO BE PROVIDED.

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

SECTION 1. That Chapter 22, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-2210D, Idaho Code, and to read as follows:

41-2210D. CONVERSION PLAN -- WHEN REQUIRED. Any group carrier doing business in the state of Idaho that does not have an individual

product on file with the department of insurance shall provide a conversion plan to all group insureds. The conversion plan shall provide benefits at least equal to the standard health benefit plan developed pursuant to section 41-4712, Idaho Code. The premium under the plan shall not exceed one hundred twenty-five percent (125%) of the index rate for groups.

SECTION 2. That Chapter 47, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-4708B, Idaho Code, and to read as follows:

41-4708B. CONVERSION PLAN -- WHEN REQUIRED. Any group carrier doing business in the state of Idaho that does not have an individual product on file with the department of insurance shall provide a conversion plan to all group insureds. The conversion plan shall provide benefits at least equal to the standard health benefit plan developed pursuant to section 41-4712, Idaho Code. The premium under the plan shall not exceed one hundred twenty-five percent (125%) of the index rate for groups.

Approved March 8, 1996.

CHAPTER 125
(S.B. No. 1398)

AN ACT

RELATING TO HAZARDOUS WASTE MANAGEMENT; AMENDING SECTION 39-4411, IDAHO CODE, TO PROVIDE FOR ANNUAL REPORTING FOR GENERATORS, TO PROVIDE FOR ANNUAL REPORTING FOR COMMERCIAL HAZARDOUS WASTE DISPOSAL FACILITIES OR SITES, TO PROVIDE FOR SUBMISSION OF REPORTS TO THE GOVERNOR AND LEGISLATURE AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 39-4411, Idaho Code, be, and the same is hereby amended to read as follows:

39-4411. RECORDS -- REPORTING -- MONITORING. (1) Pursuant to the provisions of section 39-4405, Idaho Code, the board shall adopt, and amend as necessary, such rules ~~and regulations~~ relating to records, reporting, and monitoring as may be needed to achieve the purposes of this chapter. These rules may include, but shall not be limited to, prescribing procedures and requirements for:

(a) The establishment, maintenance, and format of records and reports;

(b) The submittal of records and reports;

(c) The taking of samples and the performing of tests and of analyses;

(d) The use of approved monitoring methods and techniques;

(e) The installation, calibration, use, and maintenance of monitoring equipment; and

(f) The provision of relevant information to the department.

(2) Sixty (60) days after promulgation of the criteria and lists specified under section 39-4407, Idaho Code, and the rules ~~and regulations~~ required under section 39-4405, Idaho Code, and subsection (1) of this section, the generation, transportation, treatment, storage, or disposal of a hazardous waste in this state by any person without reporting such activity to the department as required by the ~~regulations~~ rules issued pursuant to subsection (1) of this section shall be unlawful.

(3) Information obtained by the department or by agents, contractors, or other representatives of the department, under any provisions of this chapter, shall be available to the public, unless the information, or parts thereof, if made public, would divulge methods, processes, or activities constituting trade secrets, in which case the information shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Nothing in this subsection shall be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the state or the United States, as necessary to carry out the provisions of this chapter or the provisions of RCRA. The provisions of this section shall not limit the department's authority to release confidential information during an emergency involving hazardous waste, if the director determines that release of the information is necessary to safeguard the public health and safety.

(4) Effective January 1, 1996, e~~E~~ach generator shall, at the discretion of the director, no later than thirty (30) days after the end of each calendar ~~quarter~~ year submit a written annual report to the department including the following information:

(a) The types and quantities of hazardous wastes generated;

(b) The types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal;

(c) The types and quantities of such wastes remaining in storage at the end of the reporting period;

(d) Whether such wastes are destined for disposal or treatment in this state or whether such wastes are destined for disposal or treatment outside this state.

(5) Effective January 1, 1996, t~~T~~he operator of each commercial hazardous waste disposal facility or site in the state shall, no later than thirty (30) days after the end of each calendar ~~quarter~~ year, submit a written annual report to the department providing information on the types and quantities of wastes received which were generated in Idaho, and information on the types and quantities of wastes received which were generated in other states.

(6) Prior to ~~December 31~~ March 1 of each year the department shall submit a report to the governor and the legislature detailing the types and quantities of hazardous wastes generated in this state, the types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal, the types and quantities of such wastes remaining in storage at the end of the most recent reporting period and the types and quantities of hazardous waste gen-

erated outside this state and shipped into this state for storage or disposal.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved March 8, 1996.

CHAPTER 126
(S.B. No. 1524)

AN ACT

APPROPRIATING MONEYS FOR GENERAL EDUCATION PROGRAMS AT BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE, THE UNIVERSITY OF IDAHO AND FOR THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 1997; LIMITING THE AMOUNT TO BE USED BY THE OFFICE OF THE STATE BOARD OF EDUCATION; ESTABLISHING AN AMOUNT OF THE GENERAL FUND APPROPRIATION THAT IS TO BE EXPENDED FOR RESEARCH; LIMITING THE AMOUNT OF THE GENERAL FUND APPROPRIATION TO BE EXPENDED FOR COMPETITIVE TECHNOLOGY GRANTS, VIRTUAL UNIVERSITY PARTICIPATION AND LEARNING TECHNOLOGY OFFICER SERVICES; MAKING CERTAIN CODE PROVISIONS SPECIFICALLY AVAILABLE TO THE STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED BALANCES; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the State Board of Education and the Board of Regents of the University of Idaho for Boise State University, Idaho State University, Lewis-Clark State College, the University of Idaho, and the Office of the State Board of Education the following amount, to be expended for the designated program from the listed funds for the period July 1, 1996, through June 30, 1997:

FOR:	
General Education Programs	$230,267,300
FROM:	
General Fund	$178,046,700
Agricultural College Endowment Fund	725,400
Charitable Institutions Endowment Fund	684,500
Normal School Endowment Fund	2,444,000
Science School Endowment Fund	2,566,900
University Endowment Fund	2,194,600
Unrestricted Current Fund	20,908,400
Restricted Current Fund	22,696,800
TOTAL	$230,267,300

SECTION 2. Of the amount appropriated from the General Fund in Section 1 of this act, an amount not to exceed $75,000 shall be used by the Office of the State Board of Education for system-wide needs.

SECTION 3. Of the amount appropriated from the General Fund in Section 1 of this act, $2,100,000 shall be used for specific research funding, matching awards, research centers and infrastructure, with commercial application as a goal.

SECTION 4. Of the amount appropriated from the General Fund in Section 1 of this act, an amount not to exceed $1,750,000 shall be used for a competitive grant program to foster innovative learning approaches using technology, for Idaho's participation in the Western Governor's Association Virtual University, and for the services of a learning technology officer in the Office of the State Board of Education. It is legislative intent that these funds be expended in coordination with the State Council for Technology in Learning.

SECTION 5. The provisions of Sections 67-3608, 67-3609, 67-3610 and 67-3611, Idaho Code, are hereby made available to the State Board of Education and the Board of Regents of the University of Idaho for the period July 1, 1996, through June 30, 1997, the provisions of Section 67-3516(1), (3) and (4), Idaho Code, notwithstanding.

SECTION 6. There is hereby reappropriated to the State Board of Education and the Board of Regents of the University of Idaho for Boise State University, Idaho State University, Lewis-Clark State College, the University of Idaho and the Office of the State Board of Education, subject to the provisions of Section 7 of this act, the unexpended and unencumbered balance of any appropriation contained in Section 1, Chapter 239, Laws of 1995, to be used for nonrecurring expenditures, for the period July 1, 1996, through June 30, 1997.

SECTION 7. The reappropriation for the General Fund granted in Section 6 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1996, is zero, the reappropriation for the General Fund in Section 6 is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1996, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 6 of this act shall be in the proportion that the reappropriation for Boise State University, Idaho State University, Lewis-Clark State College, the University of Idaho and the Office of the State Board of Education bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 8, 1996.

CHAPTER 127
(S.B. No. 1538)

AN ACT

APPROPRIATING MONEYS TO THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 1997; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO EXPENDITURE OF FUNDS.

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

SECTION 1. There is hereby appropriated to the State Board of Education, the Board of Regents of the University of Idaho, and the State Board of Vocational Education for the designated agencies, the following amounts for technology in learning projects, to be expended for the period July 1, 1996, through June 30, 1997:

A. UNIVERSITY OF IDAHO, BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE, COLLEGE OF SOUTHERN IDAHO AND NORTH IDAHO COLLEGE:
FROM:
General Fund $1,000,000

B. DIVISION OF VOCATIONAL EDUCATION FOR LEWIS-CLARK STATE COLLEGE:
FROM:
General Fund $ 600,000

C. DIVISION OF VOCATIONAL EDUCATION FOR NORTH IDAHO COLLEGE:
FROM:
General Fund $ 650,000

D. IDAHO STATE UNIVERSITY:
FROM:
General Fund $ 225,000

E. STATE LIBRARY BOARD:
FROM:
General Fund $ 25,000

TOTAL $2,500,000

SECTION 2. It is legislative intent that the expenditure of funds appropriated in Section 1 of this act be expended at the direction of the State Council for Technology in Learning as approved by the State Board of Education.

Approved March 8, 1996.

CHAPTER 128
(S.B. No. 1539)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF ENVIRONMENTAL QUALITY FOR FISCAL YEAR 1997; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM VARIOUS FUNDS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED;

EXEMPTING THE DEPARTMENT FROM APPROPRIATION TRANSFER LIMITATIONS; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; SUPERSEDING THE PROVISIONS OF SECTION 39-3606, IDAHO CODE; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS TO THE ENVIRONMENTAL REMEDIATION FUND; AND EXPRESSING LEGISLATIVE INTENT REGARDING THE ENVIRONMENTAL REMEDIATION FUND AND REQUIRING AN ANNUAL REPORT.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for the Division of Environmental Quality the following amounts to be expended for the designated programs according to the designated expense classes from the various funds listed for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DIVISION OF ENVIRONMENTAL QUALITY:					
A. INEL OVERSIGHT:					
FROM:					
Hazardous Waste Training, Emergency and Monitoring Fund	$ 161,500	$ 17,400	$ 10,800	$ 50,000	$ 239,700
Cooperative Welfare Fund - DEQ (Federal)	1,090,500	934,500	54,200	1,046,400	3,125,600
TOTAL	$ 1,252,000	$ 951,900	$ 65,000	$ 1,096,400	$ 3,365,300
B. PLANNING AND SUPPORT SERVICES:					
FROM:					
General Fund	$ 120,000	$ 133,800			$ 253,800
Air Quality Permitting Fund	120,600	187,400			308,000
Cooperative Welfare Fund - DEQ (Other)	86,400	24,700			111,100
Water Pollution Control Fund	453,400	528,100	$ 22,100		1,003,600
Hazardous Waste Training, Emergency and Monitoring Fund	365,800	386,300	8,800		760,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund - DEQ (Federal)	1,229,000	961,200	4,400		2,194,600
TOTAL	$ 2,375,200	$2,221,500	$ 35,300		$ 4,632,000
C. PERMITS AND ENFORCEMENT:					
FROM:					
General Fund	$ 405,100	$ 62,900			$ 468,000
Cooperative Welfare Fund - DEQ (Other)	131,100	11,500			142,600
Water Pollution Control Fund	432,000	45,900	$ 5,600		483,500
Hazardous Waste Training, Emergency and Monitoring Fund	567,400	122,200	13,900		703,500
Air Quality Permitting Fund	749,500	186,000	36,200		971,700
Cooperative Welfare Fund - DEQ (Federal)	1,295,100	88,000			1,383,100
TOTAL	$ 3,580,200	$ 516,500	$ 55,700		$ 4,152,400
D. COMMUNITY PROGRAMS:					
FROM:					
General Fund	$ 275,700	$ 73,000			$ 348,700
Cooperative Welfare Fund - DEQ (Other)	1,139,700	376,500		$ 11,000	1,527,200
Water Pollution Control Fund	3,698,200	1,634,400	$225,900	6,735,200	12,293,700
Hazardous Waste Training, Emergency and Monitoring Fund	822,500	237,400	28,000		1,087,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Air Quality Permitting Fund	326,200	88,400	28,000	189,000	631,600
Environmental Remediation Fund	118,900	1,007,000		1,200,000	2,325,900
State Agricultural Smoke Management Fund		28,900			28,900
Cooperative Welfare Fund - DEQ (Federal)	3,497,200	1,342,600	25,000	1,153,700	6,018,500
TOTAL	$ 9,878,400	$4,788,200	$306,900	$ 9,288,900	$24,262,400
DIVISION TOTAL	$15,833,800	$7,526,200	$397,900	$ 9,288,900	$33,046,800
GRAND TOTAL	$17,085,800	$8,478,100	$462,900	$10,385,300	$36,412,100

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund, the Water Pollution Control Fund, and the Hazardous Waste Training, Emergency and Monitoring Fund to the Cooperative Welfare Fund - DEQ, periodically, as requested by the Administrator of the Division of Environmental Quality and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare for the Division of Environmental Quality any unexpended and unencumbered balances of the Cooperative Welfare Fund - DEQ as appropriated for the Division of Environmental Quality for fiscal year 1996, to be used for nonrecurring expenditures only for the period July 1, 1996, through June 30, 1997.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare for the Division of Environmental Quality is hereby authorized to expend all receipts collected in the Division of Environmental Quality as noncognizable funds for the period July 1, 1996, through June 30, 1997.

SECTION 5. To provide maximum flexibility, the Division of Environmental Quality is hereby exempted from the provisions of Section 67-3511(1) and (2), Idaho Code, for all moneys appropriated to it for the period July 1, 1996, through June 30, 1997. Transfers of moneys between programs in the same appropriation bill are still subject to the approval of the Division of Financial Management.

SECTION 6. In accordance with Section 67-3519, Idaho Code, the

Department of Health and Welfare is authorized no more than three hundred forty-six and fifty-five hundredths (346.55) full-time equivalent positions in the Division of Environmental Quality at any point during the period July 1, 1996, through June 30, 1997, unless specifically authorized by the Governor. The Joint Committee will be notified promptly of any increased positions so authorized.

SECTION 7. It is legislative intent that the appropriation of moneys from the Water Pollution Control Fund specifically supersedes the provisions of Section 39-3606, Idaho Code.

SECTION 8. Of the appropriation contained in Section 1 of this act for the Bunker Hill Superfund Site, the State Controller is hereby directed to transfer $2,325,900 from the Water Pollution Control Fund to the Environmental Remediation Fund for the period July 1, 1996, through June 30, 1997.

SECTION 9. It is legislative intent that moneys deposited into the Environmental Remediation Fund are to be used solely for Bunker Hill remediation within the site and that in accordance with the Bunker Hill Remedial Action Management Plan an annual report shall be filed no later than January 1 of each year with the Governor, the Legislature, and the Bunker Hill Superfund Task Force on the remediation progress and the expenditures involved.

Approved March 8, 1996.

CHAPTER 129
(H.B. No. 447)

AN ACT

RELATING TO OPTIONAL FORMS OF COUNTY GOVERNMENT; AMENDING TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 58, TITLE 31, IDAHO CODE, TO PROVIDE FOR A CHARTER FORM OF COUNTY GOVERNMENT, TO DEFINE CHARTER FORM OF GOVERNMENT, TO PROVIDE FOR THE ELECTION OF A CHARTER COMMISSION, TO PROVIDE FOR THE SUBMISSION OF THE CHARTER TO THE ELECTORS AND TO PROVIDE FOR THE DISSOLUTION OF THE CHARTER COMMISSION, TO PROVIDE FOR THE SIZE OF A CHARTER COMMISSION AND THE QUALIFICATIONS AND ELECTION OF ITS MEMBERS, TO PROVIDE THE TERMS OF MEMBERS AND THE MANNER OF FILLING VACANCIES, TO PROVIDE FOR THE ORGANIZATION OF THE COMMISSION AFTER ITS ELECTION, TO PROVIDE FOR MEETINGS AND THE CONDUCT OF BUSINESS, TO PROVIDE FOR PUBLICATION OF THE PROPOSED CHARTER AND DISSOLUTION OF THE CHARTER COMMISSION, TO PROVIDE THE POWERS OF THE COUNTY UNDER A CHARTER, TO PRESCRIBE CERTAIN CHARTER PROVISIONS AND TO AUTHORIZE OTHER CHARTER PROVISIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and des-

ignated as Chapter 58, Title 31, Idaho Code, and to read as follows:

CHAPTER 58
CHARTER FORM OF COUNTY GOVERNMENT

31-5801. CHARTER FORM. The form of government provided in this chapter shall be known as the "charter" form. A charter form of government shall be established by a written charter approved by a majority of the electors of the county as provided in this chapter. The charter form as provided in this chapter shall be an authorized optional form of county government within the meaning of article XVIII, section 12 of the Idaho Constitution, and shall be authorized in addition to those optional forms provided in chapters 50 through 57, title 31, Idaho Code. Unless provided otherwise in this chapter, the provisions of the optional forms of county government act shall apply to this chapter.

31-5802. ELECTION OF CHARTER COMMISSION -- CHARTER SUBMITTED TO ELECTORS. (1) The charter to be submitted to the electors shall be drafted by a charter commission to be elected upon the approval of a petition or resolution to elect a charter commission as provided in subsection (2) of this section.

(2) The question of whether a charter commission shall be elected shall be submitted to the voters upon a petition or resolution initiated as provided in section 31-5004(1), Idaho Code. The petition or resolution to elect a charter commission shall contain a statement of the anticipated costs and expenditures of the charter commission and a description of the revenue sources intended to meet those costs and expenditures.

(3) The question of electing a charter commission shall be submitted as follows:

Shall a charter commission, comprised of (state number) commissioners, be elected to draft a charter for (name county)?

(4) Any county approving the election of a charter commission shall continue to operate under its existing form of government until a charter has been approved by the electors. If a charter has not been adopted by the electors within four (4) years of the election of a charter commission, the charter commission shall be deemed dissolved by operation of law. Any subsequent question of whether a charter commission should be elected to draft a proposed charter for the county must be resubmitted to the electors as provided in this chapter.

(5) The charter commission shall submit a proposed charter to the electors at a general election. If the charter commission submits a charter to the electors, the question shall be submitted as follows:

Vote for one:

In favor of retaining the (name current form of government) form of county government.

In favor of adopting the charter proposed for (name county).

(6) Any amendment to a charter must be approved by a majority of the electors of the county voting at a general election. Amendments may be submitted upon a majority vote of the governing body, or upon a petition to amend the charter, the requirements for which shall be specified in the charter.

31-5803. CHARTER COMMISSION -- QUALIFICATIONS -- ELECTION. (1) The petition or resolution to elect a charter commission shall specify the number of commissioners to be elected, which shall be an odd number of not less than five (5) nor more than nine (9) members. Members of the commission shall be elected on a nonpartisan basis.

(2) The question to elect a charter commission shall be submitted at the primary election. If the question receives a majority vote, the members of the commission shall be elected at the following general election.

(3) Each member of the charter commission shall be a qualified elector of the county and shall have resided in the county one (1) year preceding his election. Elected officials of the county shall not be eligible.

31-5804. CHARTER COMMISSION TERMS -- VACANCIES. (1) The term of office of a member of a charter commission begins when a certificate of his election has been issued and concludes thirty (30) days after the election to adopt the charter proposed by the commission, or four (4) years after his election, whichever is earlier.

(2) Vacancies on the commission shall be filled by appointment of the governing body within thirty (30) days after the vacancy occurs.

(3) Members shall serve without compensation, but shall be reimbursed for expenses lawfully incurred in the performance of their duties.

31-5805. CHARTER COMMISSION -- ORGANIZATION -- MEETINGS -- CONDUCT OF BUSINESS. A charter commission shall meet within thirty (30) days of its election and shall organize by electing from its members a chairman, a vice-chairman, and clerk-secretary. The provisions of section 31-5104, Idaho Code, shall apply to a charter commission, except as otherwise specified in this chapter.

31-5806. CHARTER -- PUBLICATION -- DISSOLUTION OF CHARTER COMMISSION. (1) Upon the approval of the charter by a majority of the full membership of the charter commission, copies shall be prepared for public distribution and must be available not less than thirty (30) days prior to the election on adopting the charter. The text of the charter or a summary thereof shall be published in the official newspaper of the county once each week for two (2) successive weeks within thirty (30) days after its approval by the commission and again within not less than fourteen (14) days prior to the election on the charter.

(2) The charter commission shall be deemed dissolved by operation of law thirty (30) days after the charter is adopted or within four (4) years after its election if no charter is adopted within that time.

31-5807. POWERS OF COUNTY UNDER CHARTER. A county, by charter, may have and exercise all of the powers, duties, privileges and rights available to a county under the constitution and laws of the state of Idaho. The enumeration of powers in a charter shall not expand the county's powers granted by the constitution or laws of the state of Idaho, nor shall a charter limit or prohibit the performance of duties required to be performed by the county under the constitution or laws

of the state of Idaho. In the event of any conflict between the provisions of a charter and the provisions of the constitution or statutes of the state of Idaho, or the United States, the constitution and statutes shall prevail.

31-5808. CHARTER PROVISIONS -- ELECTED LEGISLATIVE BODY -- EXECUTIVE STRUCTURE -- TAX ADMINISTRATION. (1) The charter shall expressly provide for an elected legislative body to perform the legislative functions of the county government. The charter shall define the following:

(a) Name of the legislative body;
(b) Number of members;
(c) Terms of office;
(d) Qualifications of office;
(e) Manner of filling vacancies;
(f) Date and manner of election and whether at large or by districts;
(g) Whether the election shall be partisan or nonpartisan;
(h) The powers and duties of the legislative body; and
(i) Any other information necessary to give a complete description of the legislative structure of the county government.

(2) The charter shall expressly define the officers who will perform the executive functions of the county government, including, without limitation, the chief executive and administrative officer or officers, the chief financial officer, the chief law enforcement officer, and the officer responsible for performing the duties and functions of the prosecuting attorney. With respect to each officer performing executive functions the charter shall define the following:

(a) Whether appointed, hired on a contractual basis, or elected; and, if elected,
(b) The term of office;
(c) The qualifications for office;
(d) The manner of filling vacancies;
(e) The date of election;
(f) Whether the election shall be partisan or nonpartisan;
(g) The powers and duties of each officer;
(h) The departments or other organizational structures which will comprise the executive branch of the government; and
(i) Any other information necessary to provide a complete description of the executive structure of the government.

(3) The charter shall expressly define the officers responsible for the performance of the powers and duties of the county with respect to taxation, including, without limitation, all those duties required by law to be performed by the board of county commissioners, the county assessor, the county treasurer and the county auditor. The charter shall provide the duties and functions of each officer.

(4) Notwithstanding the foregoing, the charter may provide that executive and administrative functions will be performed by one (1) or more members of the legislative body.

31-5809. OTHER CHARTER PROVISIONS -- EFFECTIVE DATE OF CHARTER. The charter shall include such provisions as may be necessary to permit an orderly transition to the new form of government. The listing

of charter provisions in this chapter shall not be construed to prevent the inclusion of additional lawful provisions in charters. The charter shall specify the date on which the charter will take effect.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 8, 1996.

CHAPTER 130
(H.B. No. 573, As Amended in the Senate)

AN ACT

AMENDING THE CHARTER OF THE CITY OF BELLEVUE APPROVED FEBRUARY 9, 1883, AS AMENDED; AMENDING SECTION 1, TO PROVIDE FOR THE EXPANDED CORPORATE LIMITS OF THE CITY; AMENDING THE CHARTER BY THE ADDITION OF A NEW SECTION 33, TO PROVIDE THAT THE CITY OF BELLEVUE SHALL HAVE THE POWERS GRANTED BY LAW TO CITIES OF THE STATE OF IDAHO; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1 of the Charter of the City of Bellevue, be, and the same is hereby amended to read as follows:

Section 1. That the corporate limits of the City of Bellevue shall be as follows, to wit:

Commencing at a point ~~south-18°29'-east-one-half-mile distant-from-Post-No.-6-of-the-Townsite-of--Bellevue,--Blaine County,--Idaho,--as--established--by--the--survey--of--Morris McFarland,--U.S.--Deputy--Surveyor,--March--6th,-1882,-thence south-71°31'-west-1,000-feet;-thence-north--18°29'--west--two miles;-thence-north-71°31'-east-one-mile;-thence-south-18°29' east--two--miles;--thence-north-71°31'-west-4,288-feet-to-the place~~ at the Northwest corner of the NW1/4SW1/4 of Section 36, Township 2N, Range 18E, Blaine County, Idaho, as the True Point of Beginning; thence North 1,320 feet; thence East 244 feet; thence North 18°29' West 5,088.13 feet; thence North 71°31' East 632.05 feet; thence South 33°5' East 3,800 feet; thence North 71°31' East 3,680 feet; thence South 18°29' East 4,398.53 feet; thence South 71°31' West 930 feet; thence South 980 feet; thence West 420 feet; thence North 830 feet; thence South 71°31' West 2,280 feet; thence South 23°0' East 1,792.09 feet; thence East 392.46 feet; thence South 31°28' East 604.53 feet; thence South 71°31' West 496.02 feet; thence South 31°06'53" East 1,030 feet; thence South 58°53'07" West 317.16 feet; thence North 53°46' West 12.8 feet; thence North 79°18' West 462.59 feet; thence North 18°47' West 838.65 feet; thence South 71°31' West 1,264.09 feet; thence North 18°29' West 4,103.75 feet; thence West

688.58 feet to the True Point of Beginning. Provided however, the owner or adjoining owner of any platted on unplatted tract or tracts of land containing not less than five acres, included within the said corporate limits, and used exclusively for agricultural purposes, may petition the district court of the county in which said tract or tracts are situated for a judgment and decree of the court detaching such tract or tracts of land from the said municipality.

Upon the filing of such petition with the clerk of such court and paying a fee of $100.00 which fee shall be in full for all clerk's fees, except the regular fees provided by law on appeals, the said court shall fix a time for the hearing thereon, which shall not be less than thirty days from the date of filing the petition, and the petitioners shall serve or cause to be served a notice of hearing upon the mayor or clerk of said city at least twenty days before the time fixed for said hearing.

The said petitioner or petitioners shall also cause notices to be posted in at least three conspicuous places in said city, said notices stating the time and place of such hearing and that any person desiring to protest or object to the granting of the prayer of said petition may do so by filing with the clerk of said court, at least two days before the date set for the hearing of said petition, his objections or protest in writing. Such notice shall state generally the purpose of the petition and the location and description of the land sought to be detached from the corporate limits of said city.

The petitioner or petitioners may, after any such protests or objections are filed with the clerk, at any time before the time set for the hearing, file an answer or answers to such protests or objections. Neither petition, protests, objections, or reply need be verified.

The hearing herein provided may be held either during term time or at chambers and must be by the court or a judge thereof without the intervention of a jury and the testimony reduced to writing as in ordinary civil actions in such court. The judge of such court, either before or after such hearing, may view the lands and premises sought to be detached, as well as other lands or property within the corporate limits, which might in any way be affected by the granting of such petitions, and also the lands on the outside of said corporate limits in the same vicinity or locality, in which the lands sought to be detached are situated, and may consider such conditions as he finds in connection with the evidence introduced on the hearing, in making his final decision in the matter.

If, upon the hearing, the court shall find that such tract or tracts of land are tracts containing at least five acres and are included within the said corporate limits and the lands included within such tract or tracts are used exclusively for agricultural purposes; that such lands do not receive sufficient special benefits to justify the retention

of said lands within the said corporate limits, and that by the detachment of said lands the symmetry of the municipality would not be materially marred, then the judge of said court shall grant the prayer of said petition and shall enter judgment and decree accordingly: Provided, however, that if such petition prays for detaching several tracts of land the court may enter judgment granting the prayer of the petition as to such tract or tracts as come within its finding as aforesaid and may deny such petition as to such tract or tracts which do not come within his findings as aforesaid.

And said tract or tracts of land sought to be detached and for which the said judgment is entered detaching the same shall, upon the entering of said judgment, become detached from said corporate limits and the corporate boundary line or limits shall be deemed changed accordingly, and said tract or tracts so detached shall be free from the government of the said City of Bellevue from the date of said judgment.

Such separation shall not relieve any such tract or land from its liability on account of any outstanding bonded indebtedness of said City of Bellevue existing at the time of such separation therefrom.

The detaching of any lands from said corporate limits as herein provided shall not affect or change the status of any public streets or highways as the same are laid out or constructed or dedicated at the time of such detachment.

The said City of Bellevue or any person aggrieved by the judgment of the court as herein provided may appeal from such decision to the Supreme Court. The procedure of such appeal shall be the same as upon appeal from final judgment in civil actions.

SECTION 2. That the Charter of the City of Bellevue, be, and the same is hereby amended by the addition thereto of a NEW SECTION, known and designated as Section 33, and to read as follows:

Section 33. All powers and authority granted to cities under any general law of the state of Idaho are hereby granted to the City of Bellevue. The City of Bellevue may pass and publish ordinances as provided by the general laws of the state of Idaho.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 8, 1996.

CHAPTER 131
(H.B. No. 593)

AN ACT

RELATING TO EMPLOYER DUTIES; AMENDING TITLE 44, IDAHO CODE, BY THE

ADDITION OF A NEW CHAPTER 2, TITLE 44, IDAHO CODE, TO PROVIDE EMPLOYER DUTIES CONCERNING CURRENT OR FORMER EMPLOYEES, AND TO PROVIDE THAT REFERENCES SHALL BE EXEMPT FROM CIVIL LIABILITY UNDER CONDITIONS SPECIFIED.

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

SECTION 1. That Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 2, Title 44, Idaho Code, and to read as follows:

CHAPTER 2
EMPLOYER DUTIES

44-201. EMPLOYER DUTIES. (1) It is unlawful for any employer to maintain a blacklist, or to notify any other employer that any current or former employee has been blacklisted by such employer, for the purpose of preventing such employee from receiving employment.

(2) An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, or at the request of the current or former employee, may not be held civilly liable for the disclosure or the consequences of providing the information.

There is a rebuttable presumption that an employer is acting in good faith when the employer provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee or at the request of the current or former employee.

The presumption of good faith is rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead.

For the purposes of this section, "actual malice" means knowledge that the information was false or given with reckless disregard of whether the information was false.

Approved March 8, 1996.

CHAPTER 132
(H.B. No. 605)

AN ACT
RELATING TO COLLECTION OF YIELD TAX ON APPLICABLE FOREST PRODUCTS; AMENDING SECTION 63-1706, IDAHO CODE, TO CLARIFY COLLECTION PROCEDURES IN THE EVENT OF NONPAYMENT OF YIELD TAX.

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

SECTION 1. That Section 63-1706, Idaho Code, be, and the same is

hereby amended to read as follows:

63-1706. YIELD TAX ON APPLICABLE FOREST PRODUCTS. (1) All forest lands designated by the owner to be subject to the provisions of section 63-1703(b), Idaho Code, shall be appraised, assessed and taxed according to the provisions of this section.

(2) Forest lands held in private ownership and designated by the owner to be subject to the provisions of this section for ad valorem taxation shall be valued by the county assessor as real property at rates which reflect only bare forest land value as determined under rules of the state tax commission.

(3) All timber severed from lands subject to the provisions of this section and delivered to a point of utilization as logs or semiprocessed forest products, shall be subject to a forest products yield tax. This tax is in lieu of and replacement for, and not in addition to, ad valorem taxes on timber.

(4) The yield tax rate shall be three percent (3%) of stumpage value as determined by the state tax commission. In establishing stumpage values, the state tax commission shall:

(a) Divide the state into appropriate stumpage value zones, with each zone designated so as to recognize the uniqueness of timber marketing areas.

(b) By November 1, set stumpage values by zone for each species and/or product, for use in the reporting and payment of yield taxes for timber severed during the following calendar year. Stumpage values shall be based on a five (5) year rolling average value of comparable timber harvested from state timber sales within the stumpage value zone and/or the best available data for the same five (5) year period.

(5) Report and payment of yield taxes ~~is~~ become the direct liability and responsibility of the landowner at the time of severance. ~~In--the--event-of-nonpayment,~~ At the time of severance the yield taxes ~~due-shall-constitute~~ become a lien on the ~~assets~~ real and personal property of the landowner. Yield tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Yield tax amounts shall be supplied by the county assessor to the county treasurer on or before November 15 for timber that was severed from January 1 through June 30, with payments due and payable on or before December 20. If the taxes due for said period are not paid on or before December 20, the payment becomes delinquent and subject to a penalty and interest in the amount provided in section 63-1102 or 63-1302, Idaho Code, calculated from the following January 1. Yield tax amounts shall be supplied by the county assessor to the county treasurer on or before May 15 for timber severed from July 1 through December 31 in the year following severance with payments due on or before June 20 in the year following severance. If the taxes due for said period are not paid on or before June 20, the payment becomes delinquent and subject to a penalty and interest in the amount provided in section 63-1102 or 63-1302, Idaho Code, calculated from the following July 1. If December 20 or June 20 falls on a Saturday, Sunday or holiday, any payment required in the provisions of this section shall be payable on the next regular workday following December 20 or June 20. Delinquent yield taxes shall remain a lien against the land

from which the timber was harvested and against any other real and personal property of the landowner who owned the land at the time of severance. To collect delinquent yield taxes, the treasurer may use either the personal or real property collection procedures provided in title 63, Idaho Code.

(6) All yield tax revenues and any penalty or interest thereon shall be apportioned among the several county funds and taxing districts as provided for the apportionment of ad valorem taxes.

(7) The party utilizing logs or semiprocessed forest products as raw materials shall be required to report the quantity, species and source of all such materials to the Idaho department of lands. Such report shall be structured to comply with and act as a simultaneous report of data already required under the provisions of section 38-122, Idaho Code. The report format shall include the identification of the forest landowner at the source, legal description of the source, timber or product owner at time of severance, harvester and volume of forest products severed. The Idaho department of lands shall deliver to the various county assessors without fee, copies of these reports as they are available. In the event the point of utilization lies out of the state or a report is not required under the provisions of section 38-122, Idaho Code, the timber owner at time of severance shall be responsible for the reporting of the above-stated data to the department of lands.

(8) If reports required by this section are found to be intentionally false or when appropriate reports are not made, the assessor shall value the forest crop harvested, based on the best available estimates.

(9) Not reporting timber or forest products delivery or receipt as required by this section shall be deemed a misdemeanor.

(10) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable laws and rules.

Approved March 8, 1996.

CHAPTER 133
(H.B. No. 606)

AN ACT

RELATING TO PUPIL TUITION-EQUIVALENCY ALLOWANCES AND EXCEPTIONAL CHILD APPROVED CONTRACTS; AMENDING SECTION 33-1002B, IDAHO CODE, TO PROVIDE FOR STATE REIMBURSEMENT TO SCHOOL DISTRICTS FOR SPECIFIED COSTS OF EDUCATING SPECIAL EDUCATION STUDENTS RESIDING IN RESIDENTIAL FACILITIES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 33-2004, IDAHO CODE, TO LIMIT THE AMOUNT OF STATE SUPPORT THAT CAN BE APPROVED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR DISTRICTS WHICH CONTRACT FOR THE EDUCATION OF EXCEPTIONAL STUDENTS IN NONSCHOOL SETTINGS AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING CHAPTER 20, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2005, IDAHO CODE, TO PROVIDE AN ADDITIONAL DISBURSEMENT FOR DISTRICTS WITH A HIGH INCIDENCE OF CERTAIN EXCEPTIONAL CHILDREN.

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

SECTION 1. That Section 33-1002B, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002B. PUPIL TUITION-EQUIVALENCY ALLOWANCES. 1. Districts which educate pupils placed by Idaho court order in licensed group homes, agencies, institutions or juvenile detention facilities shall be eligible for an allowance equivalent to the previous year's certified local annual tuition rate per pupil. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state ~~department of education~~ superintendent of public instruction.

2. Districts which educate school age ~~exceptional children~~ special education students who, due to the nature and severity of their disabilities are residing in ~~state institutions, licensed and certified intermediate care facilities, or~~ licensed public or private ~~non-profit~~ residential facilities or homes, and whose parents are not patrons of the district, shall be eligible for an allowance equivalent to the previous year's certified local annual tuition rate per child plus the excess cost rate that is annually determined by the state superintendent of public instruction. This district allowance shall be in addition to exceptional ~~child~~ education support unit funding and included in district apportionment payments, subject to approval of district applications by the state ~~department--of--education~~ superintendent of public instruction.

SECTION 2. That Section 33-2004, Idaho Code, be, and the same is hereby amended to read as follows:

33-2004. CONTRACTING BY APPROVED FORM FOR EDUCATION BY ANOTHER SCHOOL DISTRICT, APPROVED REHABILITATION CENTER OR HOSPITAL, OR A CORPORATION. The trustees of a school district may contract on a form adopted by the state superintendent of public instruction for the education of exceptional children by another school district or by any private or public rehabilitation center, hospital, corporation, or state agency approved by the state ~~board~~ department of education and when the students are transferred from the school district to the institution, corporation or district, said school district shall agree to pay therefor to the institution, corporation or district contracting to educate the students, amounts computed as follows:

1. For each resident student educated by another school district, the amount of the tuition rate certified for the receiving district under the provisions of section 33-1405, Idaho Code;

When public school districts contract for the education of exceptional children residing within the several districts, one (1) district shall be designated as the educating district for the purpose herein.

2. For each resident student educated by contract by a rehabilitation center, hospital, corporation or state agency, the ~~amount--of the--tuition--rate-certified-for-the-sending-district-under-the-provisions-of-section-33-1405, Idaho Code, and sufficient state and--county~~

~~funds--to--pay--the--balance--of--the--obligations--of-the-contract-as approved-by-the-state-department-of-education.-Total-allowance-for--an approved~~ contract amount cannot be greater than the educational costs of the student.

~~Should-any-corporation-provide-a-program-of-education--for--exceptional--children,--contracts--and-payments-as-herein-authorized-may-be made-to-the-corporation-upon-approval-of-the-state-department-of--education.~~

When any rehabilitation center, hospital, corporation or state agency shall have contracted for the education of any exceptional children as defined in this chapter all such children shall be enrolled in the district of their residence; and the institution, hospital or corporation shall certify to the home school district the daily record of attendance of each such pupil. The home district shall be eligible for reimbursement of ~~the-state-and-county-amounts-of-the~~ costs approved ~~contracts~~ by the state superintendent of public instruction as provided in this subsection and in section 33-1002, Idaho Code.

Reimbursement of approved costs shall be part of the district's exceptional child contract allowance and cannot exceed the amount of state support contracted students would generate if they were enrolled in an educational program for which average daily attendance is computed.

SECTION 3. That Chapter 20, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2005, Idaho Code, and to read as follows:

33-2005. ADDITIONAL DISBURSEMENT. School districts which identify and provide appropriate services to students with serious emotional disturbances at a high incidence level shall be eligible for an additional disbursement from state general funds. The state department of education shall determine the eligibility of school districts and the amount of additional disbursements. This determination shall be made in an equitable fashion and shall be limited by legislative appropriations.

Approved March 8, 1996.

CHAPTER 134
(H.B. No. 623)

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; AMENDING SECTION 28-42-301, IDAHO CODE, TO INCREASE THE AMOUNT WHICH THE PARTIES TO A CONSUMER CREDIT TRANSACTION MAY CONTRACT FOR A DELINQUENCY CHARGE.

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

SECTION 1. That Section 28-42-301, Idaho Code, be, and the same

is hereby amended to read as follows:

28-42-301. DELINQUENCY CHARGES. (1) With respect to a precomputed regulated consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its due date, as originally scheduled or as deferred, in an amount which is not more than five percent (5%) of the unpaid amount of the installment, or five dollars ($5.00), whichever is greater.

(2) With respect to a regulated consumer loan secured by a security interest in real property which is used or expected to be used as the residence of the debtor which is not a precomputed regulated consumer loan, the parties may contract for a delinquency charge on any installment not paid in full within fifteen (15) days after its scheduled due date in an amount not exceeding five percent (5%) of the unpaid amount of the installment, or five dollars ($5.00), whichever is greater.

(3) With respect to all other regulated consumer credit transactions, whether secured or unsecured, and whether such credit transactions are classified as open-end credit or closed-end credit, the parties may contract for a delinquency charge on any installment or scheduled payment not paid in full within fifteen (15) days after its scheduled due date in an amount not exceeding five percent (5%) of the unpaid amount of the installment or scheduled payment, or ~~five~~ ten dollars ($~~5~~10.00), whichever is greater.

(4) A delinquency charge under subsection (1), subsection (2) or subsection (3) of this section may be collected only once on an installment or scheduled payment, however long it remains in default. No delinquency charge may be collected if the installment or scheduled payment has been deferred and a deferral charge, section 28-42-302, Idaho Code, has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(5) No delinquency charge may be collected on an installment or payment which is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment or scheduled payment or a delinquency charge on an earlier installment or scheduled payment may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or scheduled payments and then to delinquent installments or scheduled payments.

(6) If two (2) installments or parts thereof of a precomputed regulated consumer credit transaction are in default for ten (10) days or more, the creditor may elect to convert the credit transaction from a precomputed regulated consumer credit transaction to one in which the finance charge is based on unpaid balances. In this event, he shall make a rebate pursuant to the provisions on rebate upon prepayment, section 28-42-307, Idaho Code, as of the maturity date of the first delinquent installment, and thereafter may make a finance charge as authorized by the provisions on finance charge for regulated consumer credit transactions. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge, section 28-42-307, Idaho Code.

Approved March 8, 1996.

CHAPTER 135
(H.B. No. 687)

AN ACT

RELATING TO THE MOTOR VEHICLE DEALER ADVISORY BOARD; AMENDING SECTION 49-1603, IDAHO CODE, TO INCREASE THE MEMBERSHIP OF THE BOARD TO EIGHT MEMBERS TO INCLUDE A REPRESENTATIVE FROM THE LICENSED RECREATIONAL VEHICLE DEALERS ASSOCIATION.

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

SECTION 1. That Section 49-1603, Idaho Code, be, and the same is hereby amended to read as follows:

49-1603. DEALER ADVISORY BOARD. (1) There shall be a dealer advisory board to consist of ~~seven~~ eight (~~7~~8) members to assist and advise the department in the administration of the provisions of this chapter. Five (5) members shall be appointed from licensed dealers selling new vehicles, ~~and~~ two (2) members appointed from licensed dealers selling used vehicles and one (1) member shall be appointed from licensed dealers selling new recreational vehicles. The governor shall appoint the board with consideration to recommendations of the board of directors of the Idaho Automobile Dealers Association, recommendations of the board of directors of the Recreational Vehicle Dealers Association of Idaho and recommendations of the Independent Dealer Association representing used vehicle dealers. The term of office of each member shall be three (3) years. Vacancies occurring on the board other than by expiration of the term shall be filled for the unexpired term only, and each member of the board shall serve until his successor is appointed and qualified. Members of the advisory board shall be compensated as provided by section 59-509(b), Idaho Code, and payments of compensation shall be paid from the state highway account as part of the expenses of administering the provisions of this chapter. A majority of the members of the advisory board shall constitute a quorum, the presence of which at any meeting duly called by the department shall have full and complete power to act upon and resolve in the name of the advisory board any matter, thing or question referred to it by the department, or which by reason of any provisions of this chapter, it has power to determine.

(2) The advisory board on the first day of each July, or as soon thereafter as practicable, shall elect a chairman, vice-chairman and secretary from among its members, who shall hold office until their successors are elected. As soon as the board has elected its officers, the secretary shall certify the results of the election to the department. The chairman shall preside at all meetings of the advisory board and the secretary shall make a record of their proceedings. All members of the advisory board shall be entitled to vote on any question, matter, or thing which properly comes before it.

Approved March 8, 1996.

CHAPTER 136
(H.B. No. 692)

AN ACT
RELATING TO ANATOMICAL GIFTS; AMENDING SECTION 39-3403, IDAHO CODE, TO CLARIFY THE SUFFICIENCY OF A NOTATION OF INTENT TO MAKE AN ANATOMICAL GIFT.

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

SECTION 1. That Section 39-3403, Idaho Code, be, and the same is hereby amended to read as follows:

39-3403. MAKING, AMENDING, REVOKING, AND REFUSING TO MAKE ANATOMICAL GIFTS BY INDIVIDUAL. (1) An individual who is at least eighteen (18) years of age may (i) make an anatomical gift for any of the purposes stated in section 39-3407 (1), Idaho Code, (ii) limit an anatomical gift to one (1) or more of those purposes, or (iii) refuse to make an anatomical gift.

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two (2) witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(3) An individual may attach to his driver's license or identification card a document and the document of gift must comply with subsection (2) of this section. A notation on an individual's driver's license or identification card that he intends to make an anatomical gift shall be sufficient to satisfy all requirements for consent to organ or tissue donation. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift, not made by will, only by:

(a) A signed statement;

(b) An oral statement made in the presence of two (2) individuals;

(c) Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of

wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (i) a writing signed in the same manner as a document of gift, (ii) attaching a statement on his driver's license or identification card, or (iii) any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift or a part is neither a refusal to give other parts nor a limitation on an anatomical gift under section 39-3404, Idaho Code, or on a removal or release of other parts under section 39-3405, Idaho Code.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not refusal to make another anatomical gift. If the donor intends a revocation to be refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

Approved March 8, 1996.

CHAPTER 137
(H.B. No. 733)

AN ACT

RELATING TO REAL ESTATE APPRAISERS; AMENDING SECTION 54-4105, IDAHO CODE, TO EXEMPT TRANSPORTATION DEPARTMENT EMPLOYEES AND AGENTS FROM LICENSURE WHEN APPRAISING TRANSPORTATION DEPARTMENT PROPERTY THAT HAS A FAIR MARKET VALUE OF TEN THOUSAND DOLLARS OR LESS.

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

SECTION 1. That Section 54-4105, Idaho Code, be, and the same is hereby amended to read as follows:

54-4105. EXCEPTIONS. (1) The provisions of this chapter do not apply to any person who does not hold himself out as, or offer to perform services as, a real estate appraiser.

(2) The provisions of this chapter do not restrict the right to use the term "certified evaluator for ad valorem tax purposes," provided that such term is not used in a manner that creates the impression of certification by the state of Idaho to perform real estate appraisals other than ad valorem tax appraisals. However, nothing in this chapter shall entitle a state licensed or state certified real estate appraiser to appraise real estate for ad valorem tax purposes unless he has first been certified by the Idaho state tax commission pursuant to section 63-513(24), Idaho Code.

(3) The provisions of this chapter shall not apply to a licensed

real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser.

(4) Any person who is not licensed or certified under the provisions of this chapter may assist a state licensed or certified real estate appraiser in the performance of an appraisal, provided that he is actively and personally supervised by the state licensed or certified appraiser and provided further that any appraisal report rendered in connection with the appraisal is reviewed and signed by the state licensed or certified real estate appraiser.

(5) ~~For a period of two (2) years after the enactment of this act only, t~~The provisions of this chapter requiring mandatory licensure or certification shall not apply to employees or agents of the Idaho transportation department when appraising transportation department property with a fair market value of ten thousand dollars ($10,000) or less.

Approved March 8, 1996.

CHAPTER 138
(H.B. No. 753)

AN ACT

RELATING TO POWERS OF THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT; AMENDING SECTION 33-603, IDAHO CODE, TO PROVIDE THAT THE BOARD MAY REQUIRE PAYMENT OF FEES OR RETURN OF PROPERTY AS A CONDITION FOR ISSUANCE OF A TRANSCRIPT.

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

SECTION 1. That Section 33-603, Idaho Code, be, and the same is hereby amended to read as follows:

33-603. PAYMENT OF FEES OR RETURNING OF PROPERTY. The board of trustees of each school district shall have the power and the ability to require as a condition of graduation, as a condition of issuance of a diploma or certificate, or as a condition for issuance of a transcript, that any or all indebtedness incurred by the person when he was a student be satisfied, or that all books or other instructional material, uniforms, athletic equipment, advances on loans, or other personal property of the school district borrowed by the person when he was a student of the district be returned. Provided, the board of trustees of a school district or its designated employees may excuse the requirements of this section upon an adequate showing of financial need or other exigency and shall not delay transfer of school records to another school district or enrollment of the student in any other school.

Approved March 8, 1996.

CHAPTER 139
(H.B. No. 795)

AN ACT

RELATING TO THE APPROPRIATIONS FOR THE DEPARTMENT OF JUVENILE CORRECTIONS AND THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING SECTION 1, CHAPTER 336, LAWS OF 1995; PROVIDING DIRECTION FOR CERTAIN FUNDS APPROPRIATED IN SECTION 1 FOR JUVENILE DETENTION CENTERS IN THE SEVENTH JUDICIAL DISTRICT; AMENDING SECTION 1, CHAPTER 337, LAWS OF 1995; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 336, Laws of 1995, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Juvenile Corrections the following amounts from the listed funds for the period July 1, 1995, through June 30, 1996:

FROM:	
General Fund	~~$15,500,000~~
	19,218,100
Juvenile Corrections Fund	140,000
State Juvenile Corrections Center Fund	774,200
Federal Grant Fund	2,100,000
Miscellaneous Revenue Fund	502,100
TOTAL	~~$19,016,300~~
	22,734,400

SECTION 2. Of the General Fund appropriation contained in Section 1 of this act, $1,700,000 shall be used for the purpose of making allocations to a county or a series of counties for the construction, remodeling, or renovation of detention facilities for juveniles in the seventh judicial district comprising the following counties: Bonneville, Bingham, Butte, Fremont, Jefferson, Madison, Teton, Clark, Lemhi and Custer. The counties in the seventh judicial district shall be eligible for funding of a base amount of $59,500, and an additional allocation based on the percentage the population of the county bears to the total population of the ten counties in the seventh judicial district.

The Department of Juvenile Corrections may withhold funding from any or all counties if the following conditions are not met: (1) Lemhi and Custer counties shall cooperate to build one facility; and (2) The remaining eight counties shall cooperate to build no more than two facilities. Proposed projects must meet the requirements contained in Section 20-518, Idaho Code, and include written assurances that all current life safety codes will be met in the facility.

SECTION 3. That Section 1, Chapter 337, Laws of 1995, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for the Division of Family and Community Services

and the Division of Community Rehabilitation the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1995, through June 30, 1996:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DIVISION OF FAMILY AND COMMUNITY SERVICES:					
A. CHILDREN'S SERVICES:					
FROM:					
General Fund	$ 7,056,700	$ 3,558,300		$ 2,087,100	$ 12,702,100
Cooperative Welfare Fund (Other)	368,200	1,394,000		977,200	2,739,400
Cooperative Welfare Fund (Federal)	10,001,000	1,544,400		4,088,900	15,634,300
TOTAL	$17,425,900	$ 6,496,700		$ 7,153,200	$ 31,075,800
B. SUBSTANCE ABUSE:					
FROM:					
General Fund	$ 62,100	$ 52,000		$ 805,300	$ 919,400
Cooperative Welfare Fund (Other)		9,000			9,000
Alcoholism Treatment Fund	180,700	149,000	$ 31,200	1,413,100	1,774,000
Substance Abuse Treatment Fund				218,000	218,000
Cooperative Welfare Fund (Federal)	475,100	1,136,800		2,299,600	3,911,500
TOTAL	$ 717,900	$ 1,346,800	$ 31,200	$ 4,736,000	$ 6,831,900
C. JUVENILE JUSTICE:					
FROM:					
General Fund	$ 308,800	$ ~~386,300~~ 177,700		$ ~~966,100~~ 619,300	$ ~~1,661,200~~ 1,105,800
Cooperative Welfare Fund (Other)		13,200			13,200
Idaho Youth Corrections Fund		46,200			46,200
Cooperative Welfare Fund (Federal)		89,100		468,600	557,700
TOTAL	$ 308,800	$ ~~534,800~~ 326,200		$ ~~1,434,700~~ 1,087,900	$ ~~2,278,300~~ 1,722,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
D. FAMILY SELF-SUPPORT:					
FROM:					
General Fund	$ 1,128,200	$ 891,900		$ 2,575,000	$ 4,595,100
Cooperative Welfare Fund (Other)		1,700		96,800	98,500
Cooperative Welfare Fund (Federal)	1,795,300	1,617,300		19,843,400	23,256,000
TOTAL	$ 2,923,500	$ 2,510,900		$22,515,200	$ 27,949,600
DIVISION TOTAL	$21,376,100	~~$10,889,200~~ 10,680,600	$ 31,200	~~$35,839,100~~ 35,492,300	~~$ 68,135,600~~ 67,580,200
II. DIVISION OF COMMUNITY REHABILITATION:					
A. COMMUNITY DEVELOPMENTAL DISABILITIES:					
FROM:					
General Fund	$ 6,665,000	$ 1,432,600		$ 1,746,400	$ 9,844,000
Cooperative Welfare Fund (Other)	1,828,000	24,900		31,400	1,884,300
Cooperative Welfare Fund (Federal)	1,119,000	653,200		1,785,900	3,558,100
TOTAL	$ 9,612,000	$ 2,110,700		$ 3,563,700	$ 15,286,400
B. IDAHO STATE SCHOOL AND HOSPITAL:					
FROM:					
General Fund	$ 4,888,300	$ 796,700	$130,000	$ 90,800	$ 5,905,800
Cooperative Welfare Fund (Other)	111,200	364,600		10,100	485,900
Medical Assistance Fund		3,500			3,500
Cooperative Welfare Fund (Federal)	12,085,000	751,500		173,600	13,010,100
TOTAL	$17,084,500	$ 1,916,300	$130,000	$ 274,500	$ 19,405,300
C. COMMUNITY MENTAL HEALTH SERVICES:					
FROM:					
General Fund	$ 7,456,300	$ 1,362,600	$ 50,100	$ 590,900	$ 9,459,900
Cooperative Welfare Fund (Other)	3,802,100	534,800		7,400	4,344,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Federal)	127,000	988,900		93,400	1,209,300
TOTAL	$11,385,400	$ 2,886,300	$ 50,100	$ 691,700	$ 15,013,500
D. STATE HOSPITAL NORTH:					
FROM:					
General Fund	$ 3,728,700				$ 3,728,700
Cooperative Welfare Fund (Other)	276,500				276,500
Alcoholism Treatment Fund	319,900				319,900
State Hospital North Income Fund	165,400	$ 518,500	$ 38,400	$ 20,000	742,300
Cooperative Welfare Fund (Federal)	72,700				72,700
TOTAL	$ 4,563,200	$ 518,500	$ 38,400	$ 20,000	$ 5,140,100
E. STATE HOSPITAL SOUTH:					
FROM:					
General Fund	$ 8,375,300				$ 8,375,300
Cooperative Welfare Fund (Other)	2,441,200	$ 804,000		$ 10,800	3,256,000
State Hospital South Income Fund	827,700	792,400	$ 91,400	62,400	1,773,900
TOTAL	$11,644,200	$ 1,596,400	$ 91,400	$ 73,200	$ 13,405,200
F. ADULT SERVICES:					
FROM:					
General Fund	$ 1,216,800	$ 151,300		$ 71,000	$ 1,439,100
Cooperative Welfare Fund (Other)		5,900			5,900
TOTAL	$ 1,216,800	$ 157,200		$ 71,000	$ 1,445,000
DIVISION TOTAL	$55,506,100	$ 9,185,400	$309,900	$ 4,694,100	$ 69,695,500
GRAND TOTAL	$76,882,200	~~$20,074,600~~ 19,866,000	$341,100	~~$40,533,200~~ 40,186,400	~~$137,831,100~~ 137,275,700

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 8, 1996.

CHAPTER 140
(H.B. No. 815)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR INDIRECT SUPPORT SERVICES, VETERANS SERVICES, AND INDEPENDENT COMMISSIONS AND COUNCILS FOR FISCAL YEAR 1997; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; EXEMPTING THE DEPARTMENT FROM APPROPRIATION TRANSFER LIMITATIONS; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for Indirect Support Services, Veterans Services, and the Independent Commissions and Councils the following amounts to be expended for the designated programs according to the designated expense classes from the various funds listed for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INDIRECT SUPPORT SERVICES:				
FROM:				
General Fund	$ 6,142,100	$ 4,827,000		$10,969,100
Cooperative Welfare Fund (Other)	168,400	544,600		713,000
Cooperative Welfare Fund (Federal)	4,279,600	4,007,600		8,287,200
TOTAL	$10,590,100	$ 9,379,200		$19,969,300
II. VETERANS SERVICES:				
FROM:				
General Fund	$ 1,911,000	$ 199,800	$ 50,700	$ 2,161,500
Cooperative Welfare Fund (Other)	4,280,100	1,155,700		5,435,800
Idaho Veterans Home Income Fund	206,800	497,000	1,000	704,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Federal)	2,771,700	587,300		3,359,000
TOTAL	$ 9,169,600	$ 2,439,800	$ 51,700	$11,661,100
III. INDEPENDENT COMMISSIONS AND COUNCILS:				
A. DOMESTIC VIOLENCE COUNCIL:				
FROM:				
Domestic Violence Fund	$ 92,600	$ 61,900	$ 344,300	$ 498,800
Cooperative Welfare Fund (Federal)	10,300	10,000	688,900	709,200
Cooperative Welfare Fund (Other)		10,000		10,000
TOTAL	$ 102,900	$ 81,900	$1,033,200	$ 1,218,000
B. DEVELOPMENTAL DISABILITIES COUNCIL:				
FROM:				
General Fund	$ 54,000	$ 20,600	$ 11,200	$ 85,800
Cooperative Welfare Fund (Federal)	228,400	102,100	136,100	466,600
Cooperative Welfare Fund (Other)		1,000		1,000
TOTAL	$ 282,400	$ 123,700	$ 147,300	$ 553,400
C. COUNCIL FOR THE DEAF AND HEARING-IMPAIRED:				
FROM:				
General Fund	$ 63,300	$ 31,300		$ 94,600
DIVISION TOTAL	$ 448,600	$ 236,900	$1,180,500	$ 1,866,000
GRAND TOTAL	$20,208,300	$12,055,900	$1,232,200	$33,496,400

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare for Indirect Support Services, Veterans Services, and the Independent Commissions and Councils any unexpended and unencumbered balances of the Cooperative Welfare Fund as appropriated for Indirect Support Services, Veterans Services, and the Independent Com-

missions and Councils for fiscal year 1996, to be used for nonrecurring expenditures only for the period July 1, 1996, through June 30, 1997. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare for Indirect Support Services, Veterans Services, and the Independent Commissions and Councils is hereby authorized to expend all receipts collected in Indirect Support Services, Veterans Services, and the Independent Commissions and Councils as noncognizable funds for the period July 1, 1996, through June 30, 1997.

SECTION 5. To provide maximum flexibility in dealing with Medicaid and Welfare Reform issues along with other federal funding impacts, the Department of Health and Welfare is hereby exempted from the provisions of Section 67-3511(1) and (2), Idaho Code, for all moneys appropriated to it for the period July 1, 1996, through June 30, 1997. Transfers of moneys between programs in the same appropriation bill and transfers of moneys between programs in different appropriation bills are still subject to the approval of the Division of Financial Management.

SECTION 6. In accordance with Section 67-3519, Idaho Code, the Department of Health and Welfare, less the Division of Environmental Quality, is authorized no more than three thousand three hundred nine and thirty-five hundredths (3,309.35) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 8, 1996.

CHAPTER 141
(H.B. No. 820)

AN ACT

APPROPRIATING MONEYS FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 1997; AND LIMITING THE NUMBER OF FULL-TIME POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Endowment Fund Investment Board the following amounts, to be expended according to designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$207,400	$114,300	$3,200	$324,900
Miscellaneous Revenue Fund	120,100	51,300	1,800	173,200
TOTAL	$327,500	$165,600	$5,000	$498,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Endowment Fund Investment Board is authorized no more than five (5) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 8, 1996.

CHAPTER 142
(H.B. No. 820)

AN ACT
APPROPRIATING MONEYS FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 1997; AND LIMITING THE NUMBER OF FULL-TIME POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Human Rights Commission the following amounts, to be expended according to the standard classifications from the listed funds, for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$321,700	$ 99,800	$ 500	$422,000
Federal Grant Fund	111,100	70,300	500	181,900
Miscellaneous Revenue Fund		6,500		6,500
TOTAL	$432,800	$176,600	$1,000	$610,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Human Rights Commission is authorized no more than nine (9) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 8, 1996.

CHAPTER 143
(H.B. No. 526)

AN ACT

RELATING TO CERTIFICATED SCHOOL EMPLOYEES; AMENDING CHAPTER 10, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1004G, IDAHO CODE, TO PROVIDE AN EARLY RETIREMENT INCENTIVE, TO SPECIFY CONDITIONS OF ELIGIBILITY, TO SPECIFY THE AMOUNT OF THE INCENTIVE AND TO PROVIDE TERMS GOVERNING THE RECEIPT OF THE INCENTIVE.

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

SECTION 1. That Chapter 10, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-1004G, Idaho Code, and to read as follows:

33-1004G. EARLY RETIREMENT INCENTIVE. (1) Each certificated employee of an Idaho school district is eligible for an early retirement incentive, provided they meet the following criteria:

(a) The employee has completed a minimum of ten (10) years of continuous full-time employment in Idaho public school districts at the time of application.

(b) The employee is not eligible for unreduced service, early or disability retirement from the public employee retirement system of Idaho at the time of application.

(c) The employee is fifty-five (55) years old by August 15 of the year during which application is made.

(d) The employee submits his/her application to the state superintendent of public instruction on or before April 1 of the year of application.

(e) The employee was contracted with an Idaho public school district during the year of application and has not been terminated for the upcoming school year.

(2) Qualifying applicants shall receive as a one (1) time incentive the following amount of the employee's qualifying salary allocation as provided in section 33-1004E, Idaho Code:

at 55 years of age	55% of allocation
at 56 years of age	50% of allocation
at 57 years of age	45% of allocation
at 58 years of age	40% of allocation
at 59 years of age	30% of allocation
at 60 years of age	30% of allocation
at 61 years of age	20% of allocation
at 62 years of age	20% of allocation

(3) Incentives shall be paid directly from the state department of education to the employee on or before September 1 of the year of application and acceptance.

(4) Incentives shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(5) Any employee receiving an early retirement incentive as provided in this section shall not be eligible for future employment with

an Idaho school district where such employment would again qualify him/her for participation in the state retirement system.

Law Without Signature.

CHAPTER 144
(S.B. No. 1522)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 1997; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; AND PROVIDING FOR AN ADDITIONAL TRANSFER FROM THE FISH AND GAME FUND TO THE ANIMAL DAMAGE CONTROL FUND.

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

SECTION 1. There is hereby appropriated to the Department of Fish and Game the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
Fish and Game Fund	$ 1,908,000	$ 2,098,700	$ 299,800	$340,000	$ 4,646,500
Fish and Game Set-aside Fund	16,500	14,700			31,200
Fish and Game Depredation Claim Fund		900			900
Fish and Game Expendable Trust Fund		1,000			1,000
Fish and Game Nonexpendable Trust Fund		100			100
Fish and Game Federal Fund	2,059,800	1,867,900	172,400		4,100,100
TOTAL	$ 3,984,300	$ 3,983,300	$ 472,200	$340,000	$ 8,779,800
B. ENFORCEMENT:					
FROM:					
Fish and Game Fund	$ 5,368,400	$ 1,007,800	$ 350,000		$ 6,726,200
Fish and Game Set-aside Fund		35,000			35,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Expendable Trust Fund		20,000			20,000
Fish and Game Federal Fund	308,000	163,000	100,000		571,000
TOTAL	$ 5,676,400	$ 1,225,800	$ 450,000		$ 7,352,200
C. FISHERIES:					
FROM:					
Fish and Game Fund	$ 3,199,900	$ 1,922,100	$ 518,000		$ 5,640,000
Fish and Game Set-aside Fund	109,500	250,100	200,000		559,600
Fish and Game Expendable Trust Fund	182,700	43,400	15,000		241,100
Fish and Game Nonexpendable Trust Fund		31,400			31,400
Fish and Game Federal Fund	7,136,900	5,904,800	2,631,800		15,673,500
TOTAL	$10,629,000	$ 8,151,800	$3,364,800		$22,145,600
D. WILDLIFE:					
FROM:					
Fish and Game Fund	$ 2,702,000	$ 1,583,100	$ 269,800		$ 4,554,900
Fish and Game Set-aside Fund	224,200	98,600			322,800
Fish and Game Expendable Trust Fund	62,400	123,200	1,000		186,600
Fish and Game Nonexpendable Trust Fund	4,900	1,900			6,800
Fish and Game Federal Fund	2,623,700	1,253,000	180,500		4,057,200
TOTAL	$ 5,617,200	$ 3,059,800	$ 451,300		$ 9,128,300
E. INFORMATION AND EDUCATION:					
FROM:					
Fish and Game Fund	$ 1,109,400	$ 609,800	$ 55,800		$ 1,775,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Expendable Trust Fund		10,000			10,000
Fish and Game Federal Fund	340,100	250,100	71,400		661,600
TOTAL	$ 1,449,500	$ 869,900	$ 127,200		$ 2,446,600
F. ENGINEERING:					
FROM:					
Fish and Game Fund	$ 689,100	$ 50,400	$ 179,000		$ 918,500
Fish and Game Federal Fund		18,800			18,800
TOTAL	$ 689,100	$ 69,200	$ 179,000		$ 937,300
G. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund	$ 555,000	$ 70,200	$ 200		$ 625,400
Fish and Game Federal Fund	970,200	295,100	3,900		1,269,200
TOTAL	$ 1,525,200	$ 365,300	$ 4,100		$ 1,894,600
H. WINTER FEEDING, DEPREDATION CONTROL, AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund	$ 348,600	$ 50,000		$ 50,000	$ 448,600
Fish and Game Set-aside Fund	32,700	1,710,300	$ 895,400		2,638,400
Fish and Game Depredation Claim Fund				300,000	300,000
TOTAL	$ 381,300	$ 1,760,300	$ 895,400	$350,000	$ 3,387,000
GRAND TOTAL	$29,952,000	$19,485,400	$5,944,000	$690,000	$56,071,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Fish and Game is authorized no more than five hundred twenty-three and four one-hundredths (523.04) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. In addition to the transfer provided for in Section 36-112, Idaho Code, the State Controller shall transfer an additional

$50,000 from the Fish and Game Fund to the Animal Damage Control Fund by August 1, 1996. This additional transfer is a one-time transfer for fiscal year 1997 only. The Fish and Game Commission shall advise the Animal Damage Control Board of commission priorities for the funds to best accomplish the protection of upland game and big game animals from coyote depredation in the expenditure of these funds.

Approved March 11, 1996.

CHAPTER 145
(S.B. No. 1322)

AN ACT

RELATING TO INSURANCE; AMENDING CHAPTER 22, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-2221, IDAHO CODE, TO PROVIDE FOR CREDITING OF PREEXISTING CONDITION WAITING PERIODS IN HEALTH BENEFIT PLANS OF LARGE EMPLOYERS UNDER CERTAIN CONDITIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 22, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-2221, Idaho Code, and to read as follows:

41-2221. CREDITING OF PREEXISTING CONDITION WAITING PERIOD. (1) Health benefit plans covering large employers shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than:

(i) A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;

(ii) A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage; or

(iii) A pregnancy existing on the effective date of coverage.

(b) A health benefit plan shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than thirty (30) days prior to the effective date of the new cov-

erage. This paragraph does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan. In the case of replacement coverage from the same carrier, a preexisting condition will be covered for the first twelve (12) months for the lesser of:

(i) The benefits payable under the new policy; or

(ii) The benefits which would have been payable under the prior policy.

(c) A health benefit plan may exclude coverage for late enrollees for the greater of twelve (12) months or for a twelve (12) month preexisting condition exclusion; provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed twelve (12) months from the date the individual enrolls for coverage under the health benefit plan.

(2) As used in this section:

(a) "Health benefit plan" means any group hospital or medical policy or certificate, any group subscriber contract provided by a hospital or professional service corporation, or group health maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits-only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(b) "Large employer" means any person, firm, corporation, partnership or association that is actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no less than fifty (50) eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one (1) employer.

(c) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a large employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty (30) days. However, an eligible employee or dependent shall not be considered a late enrollee if:

(i) The individual meets each of the following:

a. The individual was covered under qualifying previous coverage at the time of the initial enrollment;

b. The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse or divorce; and

c. The individual requests enrollment within thirty (30) days after termination of the qualifying previous

coverage.

(ii) The individual is employed by a large employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(iii) A court has ordered coverage be provided for a spouse or a minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order.

(d) "Qualifying previous coverage" and "qualifying existing coverage" means benefits or coverage provided under:

(i) Medicare or medicaid; or

(ii) Any other group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a health maintenance organization, hospital or professional service corporation, or a fraternal benefit society.

SECTION 2. This act shall be in full force and effect on and after January 1, 1997.

Approved March 11, 1996.

CHAPTER 146
(S.B. No. 1372)

AN ACT

RELATING TO EDUCATIONAL SUPPORT UNITS; AMENDING SECTION 33-1002, IDAHO CODE, TO PROVIDE THAT CALCULATION OF ALTERNATIVE SCHOOL SUPPORT UNITS SHALL BE APPLICABLE TO ALTERNATIVE SCHOOLS AT THE SECONDARY LEVEL; AMENDING SECTION 33-1002C, IDAHO CODE, TO PROVIDE THAT ALTERNATIVE SCHOOL SUMMER SCHOOL PROGRAM SUPPORT UNITS SHALL BE APPLICABLE TO ALTERNATIVE SCHOOLS AT THE SECONDARY LEVEL; AND AMENDING SECTION 33-1002D, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 108, LAWS OF 1995, TO REDESIGNATE THE SECTION AND TO PROVIDE THAT THE ALTERNATIVE SCHOOL REPORT SHALL DETAIL ALTERNATIVE SECONDARY SCHOOL PROGRAMS.

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

SECTION 1. That Section 33-1002, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002. EDUCATIONAL SUPPORT PROGRAM. The educational support program is calculated as follows:

1. State Educational Support Funds. Add the state appropriation, including the moneys available in the public school income fund, together with all miscellaneous revenues to determine the total state funds.

2. From the total state funds subtract the following amounts needed for state support of special programs provided by a school district:

a. Pupil tuition-equivalency allowances as provided in section 33-1002B, Idaho Code;
b. Transportation support program as provided in section 33-1006, Idaho Code;
c. Feasibility studies allowance as provided in section 33-1007A, Idaho Code;
d. The approved costs for border district allowance, provided in section 33-1403, Idaho Code, as determined by the state superintendent of public instruction;
e. The approved costs for exceptional child approved contract allowance, provided in subsection 2. of section 33-2004, Idaho Code, as determined by the state superintendent of public instruction;
f. Certain expectant and delivered mothers allowance as provided in section 33-2006, Idaho Code;
g. Salary based apportionment calculated as provided in sections 33-1004 through 33-1004F, Idaho Code;
h. Unemployment insurance benefit payments according to the provisions of section 72-1349C, Idaho Code;
i. For programs to provide basic curricula necessary to enable students to enter academic or vocational post-secondary education programs, an allocation of $300 per support unit for the 1994-95 school year only;
j. For provision of teacher supplies to facilitate classroom instruction, an allocation of $200 per support unit for the 1994-95 school year only;
k. For expenditure as provided by the public school technology program, $10,400,000 for the 1994-95 school year;
l. For additional school innovation pilot project grants based on recommendations of the Idaho school reform committee, $2,000,000 for the 1994-95 school year; and
m. For the support of provisions that provide a safe environment conducive to student learning and maintain classroom discipline, an allocation of $300 per support unit;
n. Any additional amounts as required by statute to effect administrative adjustments or as specifically required by the provisions of any bill of appropriation;

to secure the state educational support funds.

3. Local Districts' Contribution Calculation. Without including any allowance as a credit for prepaid taxes as provided by section 63-1607, Idaho Code, the local districts' contribution shall be four-tenths percent (.4%) during fiscal year 1994-95 and each year thereafter, of the total state adjusted market value for assessment purposes for the previous year with such value being determined by the provisions of section 63-222, Idaho Code, and four-tenths percent (.4%) during fiscal year 1994-95 and each year thereafter, of the cooperative electrical associations' property values that have been derived from the taxes paid in lieu of ad valorem taxes for the previous year as provided in section 63-3502, Idaho Code.

4. Educational Support Program Distribution Funds. Add the local districts' contribution, subsection 3. of this section, and the state educational support program funds, subsection 1. of this section, together to secure the total educational support program distribution

funds.

5. Average Daily Attendance. The total state average daily attendance shall be the sum of the average daily attendance of all of the school districts of the state. The state board of education shall establish rules setting forth the procedure to determine average daily attendance and the time for, and method of, submission of such report. Average daily attendance calculation shall be carried out to the nearest hundredth. Computation of average daily attendance shall also be governed by the provisions of section 33-1003A, Idaho Code.

6. Support Units. The total state support units shall be determined by using the tables set out hereafter called computation of kindergarten support units, computation of elementary support units, computation of secondary support units, computation of exceptional education support units, and computation of alternative ~~high~~ school secondary support units. The sum of all of the total support units of all school districts of the state shall be the total state support units.

COMPUTATION OF KINDERGARTEN SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Units Allowed
41 or more	40.....	1 or more as computed
31 - 40.99 ADA....	-.....	1
26 - 30.99 ADA....	-.....	.85
21 - 25.99 ADA....	-.....	.75
16 - 20.99 ADA....	-.....	.6
8 - 15.99 ADA....	-.....	.5
1 - 7.99 ADA....	-.....	count as elementary

COMPUTATION OF ELEMENTARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
300 or more ADA.....		15
	..23...grades 4,5 & 6....	
	..22...grades 1,2 & 3....1994-95	
	..21...grades 1,2 & 3....1995-96	
	..20...grades 1,2 & 3....1996-97 and each year thereafter.	
160 to 299.99 ADA..	20.....	8.4
110 to 159.99 ADA..	19.....	6.8
71.1 to 109.99 ADA..	16.....	4.7
51.7 to 71.0 ADA..	15.....	4.0
33.6 to 51.6 ADA..	13.....	2.8
16.6 to 33.5 ADA..	12.....	1.4
1.0 to 16.5 ADA..	n/a.....	1.0

COMPUTATION OF SECONDARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
750 or more	18.5.....	47
400 - 749.99 ADA....	16.....	28
300 - 399.99 ADA....	14.5.....	22
200 - 299.99 ADA....	13.5.....	17
100 - 199.99 ADA....	12.....	9

99.99 or fewer	Units allowed as follows:	
Grades 7-12	.....	8
Grades 9-12	.....	6
Grades 7- 9	.....	1 per 14 ADA
Grades 7- 8	.....	1 per 16 ADA

COMPUTATION OF EXCEPTIONAL EDUCATION SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
14 or more	14.5.....	1 or more as computed
12 - 13.99....	-.....	1
8 - 11.99....	-.....	.75
4 - 7.99....	-.....	.5
1 - 3.99....	-.....	.25

COMPUTATION OF ALTERNATIVE ~~HIGH~~ SCHOOL SECONDARY SUPPORT UNITS

Pupils in Attendance	Attendance Divisor	Minimum Units Allowed
12 or more.....	12.....	1 or more as computed

In applying these tables to any given separate attendance unit, no school district shall receive less total money than it would receive if it had a lesser average daily attendance in such separate attendance unit. In applying the kindergarten table to a kindergarten program of less days than a full school year, the support unit allowance shall be in ratio to the number of days of a full school year. The tables for exceptional education and alternative ~~high~~ school secondary support units shall be applicable only for programs approved by the state department of education following rules established by the state board of education.

7. State Distribution Factor per Support Unit. Divide educational support program distribution funds, after subtracting the amounts necessary to pay the obligations specified in subsection 2. of this section, by the total state support units to secure the state distribution factor per support unit.

8. District Share of State Funds for Educational Support Program. Ascertain a district's share of state funds for the educational support program as follows:

a. District Contribution Calculation. Without including any allowance as a credit for prepaid taxes, as provided in section 63-1607, Idaho Code, the district contribution calculation shall be the rate determined under subsection 3. of this section.

b. District Support Units. The number of support units for each school district in the state shall be determined as follows:

(1) Divide the actual average daily attendance, excluding students approved for inclusion in the exceptional child educational program, for the administrative schools and each of the separate schools by the appropriate divisor from the tables of support units in this section, then add the quotients to obtain the district's support units allowance for regular students, kindergarten through grade 12 including alternative ~~high~~ school secondary students. Calculations in application of this subsection shall be carried out to the nearest tenth.

(2) Divide the combined totals of the average daily attendance of all preschool, handicapped, kindergarten, elementary, secondary and juvenile detention center students approved for inclusion in the exceptional child program of the district by the appropriate divisor from the table for computation of exceptional education support units to obtain the number of support units allowed for the district's approved exceptional child program. Calculations for this subsection shall be carried out to the nearest tenth when more than one (1) unit is allowed.

(3) The total number of support units of the district shall be the sum of the total support units for regular students, subsection 8.b.(1) of this section, and the support units allowance for the approved exceptional child program, subsection 8.b.(2) of this section.

c. Total District Allowance Educational Program. Multiply the district's total number of support units, carried out to the nearest tenth, by the state distribution factor per support unit and to this product add the approved amount of programs of the district provided in subsection 2. of this section to secure the district's total allowance for the educational support program.

d. District Share. To secure the district's share of state apportionment, subtract the amount of the local district contribution calculation, subsection 3. of this section, from the amount of the total district allowance, subsection 8.c. of this section.

e. Adjustment of District Share. The contract salary of every noncertificated teacher shall be subtracted from the district's share as calculated from the provisions of subsection 8.d. of this section.

SECTION 2. That Section 33-1002C, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002C. ALTERNATIVE ~~HIGH~~ SECONDARY SCHOOL SUMMER SCHOOL PROGRAM SUPPORT UNITS. Alternative ~~high~~ secondary schools approved by the state board of education may establish a summer school program of not less than two hundred twenty-five (225) hours of instruction which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the alternative ~~high~~ school secondary support units calculated for the school district for the succeeding school term.

SECTION 3. That Section 33-1002D, Idaho Code, as added by Section 1, Chapter 108, Laws of 1995, be, and the same is hereby amended to read as follows:

33-1002~~D~~F. ALTERNATIVE SCHOOL REPORT. Annually, prior to the tenth legislative day, the department of education shall file with the legislature a report detailing the alternative ~~high~~ secondary school programs within the state. On July 1 of each year, or as soon thereafter as feasible, each school district receiving moneys pursuant to the

alternative ~~high~~ school secondary support units factor in section 33-1002, Idaho Code, or section 33-1002C, Idaho Code, shall file with the state department a comprehensive report of the amount of money received in the district, the expenditure on alternative school programs, and the programs provided. This information shall be compiled by the department for transmission to the legislature.

Approved March 11, 1996.

CHAPTER 147
(S.B. No. 1439)

AN ACT

RELATING TO A POISON CONTROL CENTER; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 39-166, 39-167, 39-168, 39-169 AND 39-170, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO ESTABLISH A STATEWIDE POISON CONTROL CENTER AND DEFINE THE SERVICES IT SHALL PROVIDE, TO REQUIRE COORDINATION BETWEEN THE POISON CONTROL CENTER AND OTHER APPROPRIATE STATE AGENCIES, TO AUTHORIZE THE DIRECTOR TO ACCEPT FEDERAL FUNDS, GIFTS AND DONATIONS ON BEHALF OF, AND FOR THE PURPOSES OF, THE POISON CONTROL CENTER AND TO PROVIDE RULEMAKING AUTHORITY.

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

SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 39-166, 39-167, 39-168, 39-169 and 39-170, Idaho Code, and to read as follows:

39-166. LEGISLATIVE INTENT. (1) The legislature finds that accidental poisoning is a serious public health problem in the state of Idaho and is a problem that disproportionately affects Idaho's children. It further finds that a significant reduction in the morbidity and mortality resulting from such accidental poisonings has occurred as a result of the services provided by the poison control center.

(2) The purpose of this act is to declare legislative support for the important work of the poison control center and to assure, by statute, the continued existence of the poison control center.

(3) The legislature finds that the poison control center has saved lives and reduced suffering associated with poisoning by providing emergency telephone assistance and treatment referral to victims of such incidents, by providing immediate treatment information to health care professionals, and by providing public education and prevention programs.

(4) The legislature recognizes that enhanced cooperation between the emergency medical system and poison control centers will aid in responding to emergencies resulting from exposure to poisons and that, by providing telephone assistance to individuals with possible exposure to poisons, the need for emergency room and professional office visits will be reduced. As a result, the cost of health care to those

who may have been poisoned will be avoided or reduced and appropriate treatment will be assured.

39-167. POISON CONTROL CENTER ESTABLISHED -- SERVICES OFFERED. The director of the department of health and welfare (for purposes of this act, "director") shall establish, and provide support in a manner consistent with this act, a statewide poison control center. The poison control center shall offer the following services:

(1) Provide twenty-four (24) hour emergency telephone management and treatment referral of victims of poisoning to include determining whether treatment can be accomplished at the scene of the incident or transport to an emergency treatment or other facility is required, and carrying out telephone follow-up to families and other individuals to assure that adequate care is provided;

(2) Provide information to health professionals involved in management of poisoning and overdose victims; and

(3) Provide coordination and development of community education programs designed to inform the public and members of the health professions of poison prevention and treatment methods and to improve awareness of poisoning problems, occupational risks and environmental exposures.

39-168. COORDINATION WITH OTHER AGENCIES. The director shall establish a system for consulting with other state agency programs concerned with poisons and poisonings, incidents involving exposures to potentially poisonous substances, and other toxicological matters to develop the most coordinated and consistent response to such situations as is reasonably possible.

39-169. POWER TO ACCEPT FEDERAL FUNDS AND GIFTS. The director may accept federal funds granted by congress or executive order, as well as gifts, grants, endowments and/or donations from individuals and private organizations or foundations for all or any of the purposes of the poison control center.

39-170. RULEMAKING AUTHORITY. The director shall adopt rules necessary to administer the provisions of this act, pursuant to chapter 52, title 67, Idaho Code.

Approved March 11, 1996.

CHAPTER 148
(H.B. No. 523)

AN ACT

RELATING TO PUBLIC WORKS PROJECTS; AMENDING SECTION 67-5710A, IDAHO CODE, TO INCREASE THE MAXIMUM AMOUNT OF DELEGATION ON PROJECTS THE ADMINISTRATOR OF THE DIVISION OF PUBLIC WORKS MAY DELEGATE TO STATE AGENCIES; AND AMENDING SECTION 67-5711, IDAHO CODE, TO INCREASE THE DOLLAR LIMIT FOR PUBLIC WORKS TO THIRTY THOUSAND DOLLARS.

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

SECTION 1. That Section 67-5710A, Idaho Code, be, and the same is hereby amended to read as follows:

67-5710A. REQUIREMENT OF PLANS AND SPECIFICATION APPROVAL BY PERMANENT BUILDING FUND ADVISORY COUNCIL AND DELEGATION OF PROJECT OVERSIGHT BY THE ADMINISTRATOR FOR THE DIVISION OF PUBLIC WORKS.

(1) (a) Unless an emergency exists as defined in section 67-5711B, Idaho Code, an existing public works may not be altered, repaired, constructed or improved on property owned or occupied by any state institution, department, commission, board or agency, if the estimated cost of work exceeds the limit established in section 67-5711, Idaho Code, and except for those institutions and agency exemptions listed in section 67-5711, Idaho Code, without regard to source of funding, until the location, design, plans and specifications are approved by the permanent building fund advisory council and the project supervised by the division of public works or its designee.

(b) Facilities to be built with funds under the control of a nonstate entity, and owned or occupied by state entities, must have plans and specifications prepared, and all plans and specifications must be reviewed and approved by the permanent building fund advisory council prior to the advertising, bidding, construction and/or negotiation for construction of the facilities.

(2) (a) The administrator for the division of public works may delegate control over design, construction and all other aspects of a public works or maintenance project which costs less than one hundred <u>fifty</u> thousand dollars ($1<u>5</u>00,000), to agencies of state government on a project-by-project basis, if a responsible party of the state agency requests that delegation in writing and the permanent building fund advisory council approves the delegation.

(i) The state agency to whom control is delegated shall assume all responsibility for project budgets and shall receive funds appropriated for the project upon application and approval by the permanent building fund advisory council.

(ii) Delegation of project control does not exempt the state agency from complying with public works statutes, life safety and building codes or other applicable codes and regulations. The state agency also must comply with any guidelines or procedures for design and construction adopted by the division of public works and the permanent building fund advisory council.

(iii) State agencies that receive delegated projects may not have access to permanent building fund advisory council contingency funds unless approved by the permanent building fund advisory council or authorized by appropriation.

(iv) Prior, written approval from the administrator must be granted for any public works utilizing sole source or limited competition. No agency will be delegated the ability to declare an emergency as defined in section 67-5711B, Idaho Code.

(v) The permanent building fund advisory council may elect

to audit any project for compliance with applicable codes and policies.

(vi) The delegated state agency will use standard documents for professional services contracts and for construction contracts as adopted by the division of public works.

(vii) Delegation is subject to cancellation by the administrator for the division of public works with the concurrence of the permanent building fund advisory council.

SECTION 2. That Section 67-5711, Idaho Code, be, and the same is hereby amended to read as follows:

67-5711. CONSTRUCTION, ALTERATION, EQUIPPING, FURNISHING AND REPAIR OF PUBLIC BUILDINGS AND WORKS. The director of the department of administration, or his designee, of the state of Idaho, is authorized and empowered, subject to the approval of the permanent building fund advisory council, to provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision of the construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance of any and all buildings, improvements of public works of the state of Idaho, the cost of which construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance exceeds the sum of ~~fifteen~~ thirty thousand dollars ($~~15~~30,000) for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses, provided, that the director or his designee, and permanent building fund advisory council shall, in the letting of contracts under this section, comply with the procedure for the calling of bids provided in section 67-5711C, Idaho Code; provided, however, that this section shall not apply to the construction, alteration, equipping or furnishing or repair or maintenance other than preventive maintenance of public buildings under the jurisdiction and control of the board of regents of the University of Idaho; provided further, that public works for the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands, except for administrative office buildings and all associated improvements, are exempt from the provisions of this section that relate to the administration and review of such projects by the director of the department of administration or his designee and by the permanent building fund advisory council. This exemption shall not relieve the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands in the letting of contracts for public works, from complying with the procedures of section 67-5711C, Idaho Code, related to the advertising and bidding for contracts. The permanent building fund advisory council may adopt rules ~~and regulations~~ consistent with existing law including rules ~~and regulations~~ for a program of inspection and maintenance, to carry out the provisions of this act.

Approved March 11, 1996.

CHAPTER 149
(H.B. No. 559, As Amended in the Senate)

AN ACT

RELATING TO THE RECORDING OF WATER RIGHTS; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-248, IDAHO CODE, TO PROVIDE THAT OWNERS OF WATER RIGHTS SHALL PROVIDE NOTICE TO THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES OF ANY CHANGE IN ADDRESS OF THE WATER RIGHT OWNER OR OF ANY CHANGE IN OWNERSHIP OF A WATER RIGHT, TO PROVIDE FOR A LATE FILING FEE AND TO PROVIDE THAT NOTICE OF ACTIONS AFFECTING WATER RIGHTS ARE TO BE MAILED TO THE OWNER OF RECORD AT THE OWNER OF RECORD'S ADDRESS OF RECORD.

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

SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-248, Idaho Code, and to read as follows:

42-248. NOTIFICATION OF CHANGE OF OWNERSHIP OF A WATER RIGHT OR CHANGE OF ADDRESS OF A WATER RIGHT HOLDER -- NOTICE OF ACTION AFFECTING A WATER RIGHT. (1) All persons owning or claiming ownership of a right to use the water of this state, whether the right is represented by decree of the court, by claim to a water right filed with the department of water resources or by permit or license issued by the director of the department of water resources, shall provide notice to the department of water resources of any change in ownership of any part of the water right or of any change in the owner's mailing address, either of which occurs after July 1, 1996. Notice shall be provided within one hundred twenty (120) days of any change using forms acceptable to the director. Any notice received by the department of water resources more than one hundred twenty (120) days after the change in ownership or mailing address has occurred shall be accompanied by a late filing fee. The late filing fee shall be one hundred dollars ($100). The director may waive the late filing fee or a portion thereof for good cause.

(2) All persons owning or claiming ownership of a right to use the water of this state that is evidenced by a water right recorded with the department of water resources prior to July 1, 1996, and for which a claim to water right, with current ownership and mailing address, is not on file with the department of water resources in the Snake River Basin Adjudication, Twin Falls Civil Case No. 39576, shall verify with the department that the ownership and mailing address information in the department's records is correct. Any incorrect ownership or mailing address shall be corrected by the owner or claimant of the water right by June 30, 1998, using forms acceptable to the director. Any mailing address or ownership corrections required by this subsection received by the department of water resources after June 30, 1998, shall be subject to the late filing fee described in subsection (1) of this section.

(3) The director of the department of water resources will be

deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice.

(4) Subsections (1) and (2) of this section shall apply only in areas of the state for which a general adjudication pursuant to chapter 14, title 42, Idaho Code, is commenced or completed on or after January 1, 1980. Compliance with section 42-1409(6), Idaho Code, shall be deemed to be compliance with this section.

Approved March 11, 1996.

CHAPTER 150
(H.B. No. 575)

AN ACT

RELATING TO PROCEDURES GOVERNING LOCAL LAND USE PLANNING; AMENDING SECTION 67-6520, IDAHO CODE, TO PROVIDE THAT A HEARING EXAMINER SHALL MAKE A DECISION AND NOTIFY THE GOVERNING BODY OR ZONING OR PLANNING AND ZONING COMMISSION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-6520, Idaho Code, be, and the same is hereby amended to read as follows:

67-6520. HEARING EXAMINERS. Hearing examiners include professionally trained or licensed staff planners, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivision, special use and variance permits and requests for zoning district boundary changes which are in accordance with the plan. Notice, hearing, and records before the examiner shall be as provided in this chapter for the zoning or planning and zoning commission. Whenever a hearing examiner hears an application, he shall ~~recommend~~ grant or deny the application and submit to the governing board or zoning or planning and zoning commission ~~that--the--application--be granted-or-denied-and~~ his decision, which shall specify:

(a) the ordinance and standards used in evaluating the application;

(b) the reasons for recommendation; and

(c) the actions, if any, that the applicant could take to obtain a permit or zoning district boundary change in accordance with the plan.

An applicant denied a permit or aggrieved by a decision may within twenty-eight (28) days after all appellate remedies have been exhausted under local ordinance seek judicial review as provided by chapter 52, title 67, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 11, 1996.

CHAPTER 151
(H.B. No. 632, As Amended)

AN ACT

RELATING TO NONCONSENSUAL COMMON LAW LIENS; AMENDING TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 17, TITLE 45, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE THAT THERE SHALL BE NO DUTY TO ACCEPT CERTAIN NONCONSENSUAL LIENS AND TO PROVIDE FOR NOTICE OF INVALID LIENS, TO PROVIDE FOR PETITION TO THE DISTRICT COURT FOR RELEASE OF LIEN, TO PROHIBIT CERTAIN LIENS AGAINST PUBLIC OFFICERS AND EMPLOYEES AND TO PROVIDE PENALTIES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 17, Title 45, Idaho Code, and to read as follows:

CHAPTER 17
NONCONSENSUAL COMMON LAW LIENS

45-1701. DEFINITIONS. As used in this chapter:

(1) "Federal official or employee" means an employee of the federal government and federal agency as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671;

(2) "Lien" means an encumbrance on property as security for the payment of a debt;

(3) "Nonconsensual common law lien" is a lien that:

(a) Is not provided for by a specific state or federal statute;

(b) Does not depend upon the consent of the owner of the property affected for its existence;

(c) Is not a court-imposed equitable or constructive lien; and

(d) Is not of a kind commonly utilized in legitimate commercial transactions.

(4) "State or local official or employee" means an appointed or elected official or any employee of a state agency, board, commission, department in any branch of state government, or institution of higher education or of a school district, political subdivision, or unit of local government of this state.

45-1702. NO DUTY TO ACCEPT NONCONSENSUAL COMMON LAW LIENS -- NOTICE OF INVALID LIEN. (1) No person has a duty to accept for filing or recording any claim of nonconsensual common law lien unless the lien is authorized by contract, lease, statute or imposed by a court having jurisdiction over property affected by the lien, nor does any

person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section.

(2) No person shall be obligated to accept for filing any claim of nonconsensual common law lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

(3) If a claim of lien as described in subsection (2) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee; the deputy attorney general representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last known address. No recording officer or county shall be liable for the acceptance for filing of a claim of lien as described in subsection (2) of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection.

45-1703. PETITION TO DISTRICT COURT FOR RELEASE OF NONCONSENSUAL COMMON LAW LIEN. (1) Any person whose real or personal property is subject to a recorded claim of nonconsensual common law lien who believes the claim of lien is invalid, may petition the district court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six (6) nor later than twenty-one (21) days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen (18) years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two (2) copies shall be mailed, postage prepaid, one (1) by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of nonconsensual common law lien shall be stricken and released and that the lien claimant

shall be ordered to pay the costs incurred by the petitioner, including reasonable attorney's fees.

(3) The clerk of the court shall assign a case number to the petition and obtain from the petitioner a filing fee of thirty-five dollars ($35.00).

(4) If, following a hearing on the matter, the court determines that the claim of nonconsensual common law lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorney's fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorney's fees to the lien claimant to be paid by the petitioner.

45-1704. LIENS AGAINST PUBLIC OFFICERS AND EMPLOYEES. Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien.

45-1705. PENALTIES. Any person who offers to have recorded or filed in the office of the county clerk and recorder any document purporting to create a nonconsensual common law lien against real property, knowing or having reason to know that such document is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, shall be liable to the owner of such real property for the sum of not less than five thousand dollars ($5,000) or for actual damages caused thereby, whichever is greater, together with reasonable attorney's fees. Any grantee or other person purportedly benefited by a recorded document which creates a nonconsensual common law lien against real property and is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, who willfully refuses to release such document or record upon request of the owner of the real property affected shall be liable to such owner for the damages and attorney's fees provided in this section.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 11, 1996.

CHAPTER 152
(H.B. No. 746)

AN ACT

RELATING TO AMBULANCE SERVICE AND AMBULANCE DISTRICTS; AMENDING CHAPTER 39, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-3908A, IDAHO CODE, TO PROVIDE FOR CERTAIN EXEMPTIONS FROM TAXES AUTHORIZED TO BE LEVIED BY THE BOARD OF COUNTY COMMISSIONERS FOR

AMBULANCE SERVICE OR AN AMBULANCE DISTRICT.

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

SECTION 1. That Chapter 39, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-3908A, Idaho Code, and to read as follows:

31-3908A. EXEMPTIONS FROM TAXATION. The board of county commissioners, upon application, may, by an ordinance enacted by not later than the second Monday of July, exempt all or a portion of the unimproved real property within the district from taxation, and may exempt all or a portion of the taxable personal property within the district from taxation. Any ordinance of the board of county commissioners granting an exemption from taxation under the provisions of this section must provide that each category of property is treated uniformly. Notice of intent to adopt an ordinance which exempts unimproved real property shall be provided to property owners of record in substantially the same manner as required in section 67-6511(b), Idaho Code, as if the ordinance were making a zoning district boundary change.

Approved March 11, 1996.

CHAPTER 153
(H.B. No. 819)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF HEALTH, THE DIVISION OF WELFARE, AND THE DIVISION OF MEDICAL ASSISTANCE FOR FISCAL YEAR 1997; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE VARIOUS FUNDS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; EXEMPTING THE DEPARTMENT FROM APPROPRIATION TRANSFER LIMITATIONS; AND SUPERSEDING THE PROVISIONS OF SECTION 57-1702, IDAHO CODE.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for the Division of Health, the Division of Welfare, and the Division of Medical Assistance the following amounts to be expended for the designated programs according to the designated expense classes from the various funds listed for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DIVISION OF HEALTH SERVICES:					
A. PHYSICAL HEALTH SERVICES:					
FROM:					
General Fund	$ 776,200	$ 1,290,500		$ 1,394,800	$ 3,461,500
Cooperative Welfare Fund (Other)	614,000	467,200		2,511,200	3,592,400
Cancer Control Fund	20,400	122,400		347,700	490,500
Central Tumor Registry Fund				141,000	141,000
Cooperative Welfare Fund (Federal)	2,681,200	3,163,500		20,337,100	26,181,800
TOTAL	$ 4,091,800	$ 5,043,600		$ 24,731,800	$ 33,867,200
B. EMERGENCY MEDICAL SERVICES:					
FROM:					
General Fund		$ 7,100			$ 7,100
Cooperative Welfare Fund (Other)		103,100			103,100
Emergency Medical Services Fund I & II	$ 1,138,600	477,500		$ 315,000	1,931,100
Cooperative Welfare Fund (Federal)	10,000	190,100			200,100
TOTAL	$ 1,148,600	$ 777,800		$ 315,000	$ 2,241,400
C. LABORATORY SERVICES:					
FROM:					
General Fund	$ 1,395,600	$ 299,400		$ 201,000	$ 1,896,000
Cooperative Welfare Fund (Other)	952,100	570,500		37,000	1,559,600
Cooperative Welfare Fund (Federal)	208,800	93,000		13,100	314,900
TOTAL	$ 2,556,500	$ 962,900		$ 251,100	$ 3,770,500
DIVISION TOTAL	$ 7,796,900	$ 6,784,300		$ 25,297,900	$ 39,879,100
II. DIVISION OF WELFARE:					
A. ELIGIBILITY SERVICES:					
FROM:					
General Fund	$ 9,416,300	$ 3,312,400			$ 12,728,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Other)	60,000	14,700			74,700
Cooperative Welfare Fund (Federal)	8,929,700	3,141,000	$ 1,100		12,071,800
TOTAL	$18,406,000	$ 6,468,100	$ 1,100		$ 24,875,200
B. ADULT AND ADC ASSISTANCE PAYMENTS:					
FROM:					
General Fund				$ 20,566,200	$ 20,566,200
Cooperative Welfare Fund (Other)				9,900,000	9,900,000
Cooperative Welfare Fund (Federal)				15,897,100	15,897,100
TOTAL				$ 46,363,300	$ 46,363,300
C. CHILD SUPPORT SERVICES:					
FROM:					
General Fund	$ 893,200	$ 1,214,600	$ 17,200		$ 2,125,000
Cooperative Welfare Fund (Other)	588,500	122,100			710,600
Cooperative Welfare Fund (Federal)	4,475,900	7,013,800	154,800		11,644,500
TOTAL	$ 5,957,600	$ 8,350,500	$172,000		$ 14,480,100
DIVISION TOTAL	$24,363,600	$14,818,600	$173,100	$ 46,363,300	$ 85,718,600
III. DIVISION OF MEDICAL ASSISTANCE:					
FROM:					
General Fund	$ 2,477,000	$ 2,797,800		$122,865,300	$128,140,100
Cooperative Welfare Fund (Other)	1,004,200	122,800		17,057,800	18,184,800
Medical Assistance Fund				15,000	15,000
Liquor Fund				650,000	650,000
Cooperative Welfare Fund (Federal)	3,353,400	4,229,200	$ 20,000	265,809,000	273,411,600
TOTAL	$ 6,834,600	$ 7,149,800	$ 20,000	$406,397,100	$420,401,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
GRAND TOTAL	$38,995,100	$28,752,700	$193,100	$478,058,300	$545,999,200

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare for the Division of Health, the Division of Welfare, and the Division of Medical Assistance any unexpended and unencumbered balances of the Cooperative Welfare Fund as appropriated for the Division of Health, the Division of Welfare, and the Division of Medical Assistance for fiscal year 1996, to be used for nonrecurring expenditures only for the period July 1, 1996, through June 30, 1997. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare for the Division of Health, the Division of Welfare, and the Division of Medical Assistance is hereby authorized to expend all receipts collected in the Division of Health, the Division of Welfare, and the Division of Medical Assistance as noncognizable funds for the period July 1, 1996, through June 30, 1997.

SECTION 5. To provide maximum flexibility in dealing with Medicaid and Welfare Reform issues along with other federal funding impacts, the Department of Health and Welfare is hereby exempted from the provisions of Section 67-3511(1) and (2), Idaho Code, for all moneys appropriated to it for the period of July 1, 1996, through June 30, 1997. Transfers of moneys between programs in the same appropriation bill and transfers of moneys between programs in different appropriation bills are still subject to the approval of the Division of Financial Management.

SECTION 6. It is legislative intent that the appropriation of moneys from the Cancer Control Fund specifically supersedes the provisions of Section 57-1702, Idaho Code.

Approved March 11, 1996.

CHAPTER 154
(H.B. No. 828)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 1997; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS;

EXPRESSING LEGISLATIVE INTENT AS TO PAYMENTS FOR HOUSING STATE PRISONERS; EXPRESSING LEGISLATIVE INTENT AS TO STUDYING THE FEASIBILITY OF PRIVATIZING CORRECTIONAL FACILITIES; AND EXEMPTING THE DIVISION OF PRISONS FROM THE PROVISIONS OF SECTION 67-3511(2), IDAHO CODE.

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

SECTION 1. There is hereby appropriated to the Department of Correction the following amounts, to be expended for designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	$ 2,231,600	$1,677,300	$ 54,700	$4,078,800	$ 8,042,400
Parolee Supervision Fund	48,400	14,300	400		63,100
Miscellaneous Revenue Fund	800	7,000			7,800
TOTAL	$ 2,280,800	$ 1,698,600	$ 55,100	$4,078,800	$ 8,113,300
B. PRISONS DIVISION:					
(1) INSTITUTIONAL SUPPORT:					
FROM:					
General Fund	$ 1,313,900	$ 3,720,000	$ 11,200		$ 5,045,100
Federal Grant Fund	132,100	79,800			211,900
Inmate Labor Fund	71,900	3,200			75,100
Miscellaneous Revenue Fund		175,000			175,000
TOTAL	$ 1,517,900	$ 3,978,000	$ 11,200		$ 5,507,100
(2) IDAHO STATE CORRECTIONAL INSTITUTION - BOISE					
FROM:					
General Fund	$ 8,992,700	$ 1,106,600	$ 300,000		$10,399,300
Penitentiary Endowment Fund		1,087,600			1,087,600
Miscellaneous Revenue Fund	283,200	22,100			305,300
TOTAL	$ 9,275,900	$ 2,216,300	$ 300,000		$11,792,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
(3) IDAHO CORRECTIONAL INSTITUTION - OROFINO:					
FROM:					
General Fund	$ 3,943,900	$ 1,275,100	$ 129,800	$ 49,700	$ 5,398,500
Inmate Labor Fund	251,500	238,500			490,000
Miscellaneous Revenue Fund	75,200	5,400			80,600
TOTAL	$ 4,270,600	$ 1,519,000	$ 129,800	$ 49,700	$ 5,969,100
(4) NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:					
FROM:					
General Fund	$ 1,927,400	$ 757,600	$ 74,600	$ 145,000	$ 2,904,600
Inmate Labor Fund	59,400	94,200			153,600
Miscellaneous Revenue Fund	34,200	4,900			39,100
TOTAL	$ 2,021,000	$ 856,700	$ 74,600	$ 145,000	$ 3,097,300
(5) SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$ 3,645,300	$ 1,121,900	$ 129,000		$ 4,896,200
Inmate Labor Fund	642,300	390,100	25,000		1,057,400
TOTAL	$ 4,287,600	$ 1,512,000	$ 154,000		$ 5,953,600
(6) IDAHO MAXIMUM SECURITY INSTITUTION - BOISE:					
FROM:					
General Fund	$ 6,792,800	$ 1,792,400	$ 66,900		$ 8,652,100
Miscellaneous Revenue Fund	34,200	2,100			36,300
TOTAL	$ 6,827,000	$1,794,500	$ 66,900		$ 8,688,400
(7) ST. ANTHONY WORK CAMP:					
FROM:					
General Fund	$ 1,286,100	$ 302,600	$ 21,200		$ 1,609,900
Inmate Labor Fund	302,600	352,500	12,400		667,500
TOTAL	$ 1,588,700	$ 655,100	$ 33,600		$ 2,277,400
(8) POCATELLO WOMENS CORRECTIONAL CENTER:					
FROM:					
General Fund	$ 2,473,200	$ 1,057,100	43,400		$ 3,573,700
Inmate Labor Fund	31,600	9,200			40,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	114,700	8,700			123,400
TOTAL	$ 2,619,500	$ 1,075,000	$ 43,400		$ 3,737,900
C. FIELD AND COMMUNITY SERVICES DIVISION:					
FROM:					
General Fund	$ 7,926,700	$ 1,362,100	$ 358,800		$ 9,647,600
Parolee Supervision Fund	1,121,700	190,100			1,311,800
Federal Grant Fund	224,600	182,600			407,200
Inmate Labor Fund		297,700			297,700
Miscellaneous Revenue Fund	13,600	36,800			50,400
TOTAL	$ 9,286,600	$ 2,069,300	$ 358,800		$11,714,700
D. COMMISSION FOR PARDONS AND PAROLE:					
FROM:					
General Fund	$ 478,300	$ 144,300	$ 7,000		$ 629,600
GRAND TOTAL	$44,453,900	$17,518,800	$1,234,400	$4,273,500	$67,480,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Correction is authorized no more than one thousand one hundred fifty-seven and eighty one-hundredths (1,157.80) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that the Department of Correction shall pay all bills for housing state prisoners in county jails and other facilities from its operating budget in the event funds appropriated to the department for this purpose are expended prior to the time the legislature can act on a supplemental appropriation request.

SECTION 4. It is legislative intent that the Department of Correction study the feasibility of privatizing the construction and/or operation of the 1,000 bed correctional facility anticipated in the department's FY 1998 construction plan, and that the department report back its findings to the Joint Finance-Appropriations Committee prior to the beginning of the 1997 legislative session.

SECTION 5. To provide flexibility in dealing with increasing prison populations and the accompanying conditions created, the Department of Correction's Prisons Division is hereby exempted from the provisions of Section 67-3511(2), Idaho Code, for all moneys appropriated to it for the period of July 1, 1996, through June 30, 1997. Transfers of moneys between programs in the Prisons Division are still subject to the approval of the Division of Financial Management.

Approved March 11, 1996.

CHAPTER 155
(H.B. No. 829)

AN ACT
APPROPRIATING MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 1997; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission on Aging the following amounts, to be expended according to the designated standard classifications from the listed funds, for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$374,000	$ 45,200	$15,400	$3,279,300	$3,713,900
Miscellaneous Revenue Fund		16,000			16,000
Federal Grant Fund	351,300	125,100		5,120,900	5,597,300
TOTAL	$725,300	$186,300	$15,400	$8,400,200	$9,327,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on Aging is authorized no more than fourteen and seventy-four one hundredths (14.74) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 11, 1996.

CHAPTER 156
(H.B. No. 833)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 1997; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Finance the following amount, to be expended according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
State Regulatory Fund	$2,054,800	$589,900	$46,300	$2,691,000
Miscellaneous Revenue Fund	50,000			50,000
TOTAL	$2,104,800	$589,900	$46,300	$2,741,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than forty-one (41) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 11, 1996.

CHAPTER 157
(H.B. No. 834)

AN ACT

APPROPRIATING MONEYS FOR THE STATE INSURANCE FUND FOR FISCAL YEAR 1997; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND SPECIFYING THE SCOPE OF THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the administration of the State Insurance Fund the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds, for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. WORKER'S COMPENSATION:				
FROM:				
State Insurance Fund	$6,830,400	$2,172,600	$35,000	$ 9,038,000
II. PETROLEUM STORAGE TANKS:				
FROM:				
Petroleum Clean Water Trust Fund	$ 643,600	$ 406,300		$ 1,049,900
TOTAL	$7,474,000	$2,578,900	$35,000	$10,087,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Insurance Fund is authorized no more than one hundred eighty-nine (189) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. Moneys appropriated in Section 1 of this act for the Petroleum Storage Tanks Program are pursuant to Section 41-4904(5)(a), Idaho Code. Amounts necessary to pay all other expenses, losses and claims incurred related to insuring governmental or private entities against legal liability due to petroleum product releases shall be perpetually appropriated to the manager of the State Insurance Fund as trustee, under the provisions of Section 41-4914, Idaho Code.

Approved March 11, 1996.

CHAPTER 158
(H.B. No. 651, As Amended)

AN ACT

RELATING TO A VACANCY IN THE OFFICE OF PROSECUTING ATTORNEY; AMENDING SECTION 59-907, IDAHO CODE, TO PROVIDE THAT IN THE EVENT A VACANCY EXISTS IN THE OFFICE OF PROSECUTING ATTORNEY AND THERE ARE FIVE OR FEWER RESIDENT ATTORNEYS IN THE COUNTY WHO ARE WILLING AND QUALIFIED TO PERFORM THE FUNCTIONS OF THE OFFICE, THE BOARD OF COUNTY COMMISSIONERS MAY APPOINT AND/OR CONTRACT WITH AN ATTORNEY FROM OUTSIDE THE COUNTY TO PERFORM THE DUTIES OF PROSECUTING ATTORNEY FOR THE BALANCE OF THE UNEXPIRED TERM OR SUCH SHORTER PERIOD AS THE BOARD OF COUNTY COMMISSIONERS MAY DETERMINE.

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

SECTION 1. That Section 59-907, Idaho Code, be, and the same is hereby amended to read as follows:

59-907. PROSECUTING ATTORNEY -- VACANCY -- RESIDENCY. In the event a vacancy exists and there ~~is no~~ are three (3) or fewer resident

attorneys in the county who ~~is~~ are willing ~~or~~ and qualified to perform the functions of prosecuting attorney as set forth in chapter 26, title 31, Idaho Code, the board of county commissioners may appoint and/or contract with an attorney from outside the county to perform the duties of prosecuting attorney for the balance of the unexpired term or such shorter period as the board of county commissioners shall determine.

Approved March 11, 1996.

CHAPTER 159
(S.B. No. 1308)

AN ACT

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; AMENDING SECTION 67-428, IDAHO CODE, TO PROVIDE FOR THE APPOINTMENT OF A DIRECTOR OF LEGISLATIVE SERVICES BY THE LEGISLATIVE COUNCIL; AMENDING SECTION 67-429A, IDAHO CODE, TO AUTHORIZE THE DIRECTOR OF LEGISLATIVE SERVICES OR HIS DESIGNEE TO ATTEND STATE-TRIBAL GAMING COMPACT NEGOTIATIONS; AMENDING SECTION 67-430, IDAHO CODE, TO REVISE STATUTORY DUTIES OF THE LEGISLATIVE COUNCIL; AMENDING SECTION 67-433, IDAHO CODE, TO PROVIDE THAT THE JOINT FINANCE-APPROPRIATIONS COMMITTEE SHALL MEET UPON THE CALL OF THE COCHAIRS; AMENDING SECTION 67-454, IDAHO CODE, TO PROVIDE FOR A TRANSMISSION OF AN ANALYSIS OF ADMINISTRATIVE RULES FROM THE DIRECTOR OF LEGISLATIVE SERVICES; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE FOR AN EXEMPTION FROM DISCLOSURE OF CERTAIN RECORDS OR DOCUMENTS IN THE LEGISLATIVE SERVICES OFFICE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 22-1209, 22-2919, 22-3319, 22-3607, 22-3707, 22-4010 AND 25-3112, IDAHO CODE, TO PROVIDE FOR REPORTS TO BE FILED WITH THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 33-2114, IDAHO CODE, TO PROVIDE FOR AN AUDIT TO BE FILED WITH THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 36-414, IDAHO CODE, TO PROVIDE FOR AN AUDIT TO BE CONDUCTED BY THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 38-1517, IDAHO CODE, TO PROVIDE FOR A REPORT TO BE FILED WITH THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 42-3115, IDAHO CODE, TO PROVIDE FOR A STATEMENT OF FINANCIAL CONDITION TO BE PRESCRIBED BY THE LEGISLATIVE SERVICES OFFICE AND TO PROVIDE FOR FILING OF A FINANCIAL REPORT WITH THE LEGISLATIVE SERVICES OFFICE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 56-450, IDAHO CODE, TO PROVIDE FOR AN ACCOUNTING OF THE HEALTH AND WELFARE TRUST ACCOUNT TO BE PROVIDED TO THE LEGISLATIVE COUNCIL THROUGH THE DIRECTOR OF LEGISLATIVE SERVICES; AMENDING SECTION 67-450A, IDAHO CODE, TO PROVIDE FOR CHARGES FOR CERTAIN AUDITS CONDUCTED BY THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 67-1104, IDAHO CODE, TO PROVIDE FOR A REPORT TO BE DELIVERED TO THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 67-3508, IDAHO CODE, TO PROVIDE DUTIES OF THE LEGISLATIVE SERVICES OFFICE REGARDING STANDARD CLASSIFICATIONS; AMENDING SECTION 67-4129A, IDAHO CODE, TO PROVIDE FOR AN ACCOUNTING OF THE HISTORICAL SOCIETY TO BE SUPPLIED TO THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 67-5205, IDAHO CODE, TO

PROVIDE FOR FREE DISTRIBUTION TO THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 67-5223, IDAHO CODE, TO PROVIDE FOR SUBMISSION OF ADMINISTRATIVE RULES TO THE DIRECTOR OF LEGISLATIVE SERVICES AND TO PROVIDE FOR ANALYSIS AND REFERRAL OF RULES MATERIALS TO GERMANE JOINT LEGISLATIVE SUBCOMMITTEES BY THE DIRECTOR OF LEGISLATIVE SERVICES; AMENDING SECTION 67-6102, IDAHO CODE, TO PROVIDE MEMBERSHIP ON THE STATE EMPLOYEES INCENTIVE AWARDS COMMITTEE TO THE DIRECTOR OF THE LEGISLATIVE SERVICES OFFICE; AND AMENDING SECTION 67-7450, IDAHO CODE, TO PROVIDE FOR A REPORT TO BE FILED WITH THE LEGISLATIVE SERVICES OFFICE.

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

SECTION 1. That Section 67-428, Idaho Code, be, and the same is hereby amended to read as follows:

67-428. OFFICERS OF COUNCIL -- COMMITTEES -- ~~RESEARCH~~ DIRECTOR OF LEGISLATIVE SERVICES. The council shall select a chairman and a vice-chairman, one of whom shall be a senator and the other a representative and it shall adopt its own rules of procedure. The council shall appoint such committees as may be necessary for the proper and efficient performance of its duties. Committees shall consist of members of the council and other members of the legislature. The council shall appoint a ~~research~~ director of legislative services and it may employ such other employees and engage the services of such persons and agencies as may be necessary or desirable in the performance of its duties. The ~~research~~ director of legislative services and other employees shall serve at the pleasure of the council and each shall be paid a salary to be fixed by the council.

SECTION 2. That Section 67-429A, Idaho Code, be, and the same is hereby amended to read as follows:

67-429A. STATE-TRIBAL GAMING COMPACTS. (1) The governor or his designee may represent the state of Idaho in any gaming negotiations the state is requested to participate in pursuant to 25 U.S.C. section 2701 et seq. The director of ~~the~~ legislative ~~council~~ services or his designee may attend all negotiations pursuant to this section as an observer and shall brief the membership of the legislative council on the status of the negotiations.

(2) The state may enter into those gaming compacts negotiated with Indian tribes pursuant to this section provided:

(a) The compact only authorizes an Indian tribe to conduct those forms of gaming authorized by Idaho law;

(b) The compact does not obligate the state of Idaho to appropriate state funds; and

(c) The governor serves a copy of the compact on each member of the legislative council at least twenty-one (21) calendar days before the compact is signed.

(3) Any proposed gaming compact not complying with subsection (2) of this section shall be null and void unless ratified by both houses of the legislature by adoption of a concurrent resolution.

(4) No power, privilege or other authority shall be exercised

under the provisions of this section where otherwise prohibited by the constitution or laws of the state of Idaho or the United States.

(5) The provisions of this section shall not be construed as a waiver of any defenses or immunities to which the state of Idaho is entitled under either the constitution or the laws of the state of Idaho or the United States.

SECTION 3. That Section 67-430, Idaho Code, be, and the same is hereby amended to read as follows:

67-430. MEETINGS -- QUORUM -- NOTICE -- REPORT TO LEGISLATURE. The council shall meet as often as may be necessary for the proper performance of its duties; provided, however, that it shall meet at least ~~three~~ two (~~3~~2) times each year. Such meetings ~~shall~~ may be held at various places within the state of Idaho. Eight (8) members shall constitute a quorum and a majority thereof shall have authority to act on any matters within the jurisdiction of the council. All members of the legislature shall be notified in advance of the time, place and general purpose of all meetings and any member of the legislature shall have the right to attend any of the meetings of the council and to present his views on any subject which may be under consideration. The council shall keep minutes of its meetings and make periodic reports to members of the legislature. ~~Prior-to-each-regular-biennial session-the-council-shall-make-a-written-report-summarizing-its-activities,-findings-and-recommendations-and-furnish-such-report,--together with--copies--of-any-proposed-legislation-which-may-have-been-prepared under-its-direction,-to-all-members-of-the--legislature.~~ The council shall assist in making any necessary preparations for all regular and special sessions of the legislature. The services and facilities of the council shall be available to all members of the legislature at all times.

SECTION 4. That Section 67-433, Idaho Code, be, and the same is hereby amended to read as follows:

67-433. OFFICERS -- ADOPTION OF RULES OF PROCEDURE -- SUBCOMMITTEES -- MEETINGS. The committee shall have the same officers as the senate finance committee and the house appropriations committee and, during the interim when the legislature is not in session, it shall adopt its own rules of procedure. The committee may create such subcommittees, which may include other members of the legislature, as may be necessary for the performance of its duties. The committee shall function during legislative sessions and during the interim between sessions. The committee shall meet as often as may be necessary for the proper performance of its duties~~,-but-shall-meet-at-least-once every-three-(3)-months-during-the-interim-when-the-legislature-is--not in-session~~ upon the call of the cochairs.

SECTION 5. That Section 67-454, Idaho Code, be, and the same is hereby amended to read as follows:

67-454. SUBCOMMITTEES FOR REVIEW OF ADMINISTRATIVE RULES. For the purposes of review of proposed administrative rules pursuant to chap-

ter 52, title 67, Idaho Code, germane joint subcommittees are hereby authorized and created. The speaker of the house of representatives and the president pro tempore of the senate shall designate a subcommittee of each germane committee of each house for the consideration of proposed rules of the respective state agencies. The respective germane subcommittee of each house thus designated shall meet with the germane subcommittee of the other house and shall constitute the germane joint subcommittee. A subcommittee of each standing committee of each house shall be composed of the chairman of the committee, one (1) member of the majority party from the committee, appointed by the president pro tempore in the case of senate members, and by the speaker in the case of house members, and one (1) member of the minority party from the committee, appointed by the minority leader of the senate in the case of senate members, and by the minority leader of the house in the case of house members. If vacancies occur or exist in the majority party membership of the subcommittees of the senate, the president pro tempore shall appoint a replacement member; if vacancies occur or exist in the minority party membership of the subcommittees of the senate, the minority leader shall appoint a replacement member. If vacancies occur or exist in the majority party membership of the subcommittees of the house, the speaker shall appoint a replacement member; if vacancies occur or exist in the minority party membership of the subcommittees of the house, the minority leader shall appoint a replacement member. Meetings of a joint germane subcommittee shall be governed by the joint rules of the legislature; the chairmen shall sit as cochairmen.

Upon notice of intended action as provided in chapter 52, title 67, Idaho Code, and transmission of analysis from the director of ~~the~~ legislative ~~council~~ <u>services,</u> the cochairmen shall determine whether a meeting of the subcommittee shall be held. If no meeting is to be held, each member shall be notified of this decision within fifteen (15) days of receipt of the original notice. If two (2) or more members of the subcommittee object to the decision of the cochairmen within five (5) days, a meeting of the subcommittee shall be held within ten (10) days. Upon a finding of the same objection by a majority of the members of the subcommittee of each house voting separately, an objection to a rule shall be transmitted to the agency with a concise statement of the reasons for the objection. A report of the joint subcommittee on each rule transmitted to it, including a finding that there is no objection to the rule or that an objection has been filed, shall be filed with the agency, transmitted to the membership of the germane standing committees, and submitted to the next regular session of the legislature.

SECTION 6. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

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

(2) Trade secrets including those contained in response to public

agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

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

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

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

(e) Vital statistics records;

(f) Except as provided in this subsection, all information pro-

vided to a law enforcement agency for sex offender registration pursuant to the provisions of section 18-8306, Idaho Code:

(i) Such information shall be available upon request to a law enforcement agency; and

(ii) The information provided pursuant to the provisions of subsections (1) and (3) of section 18-8306, Idaho Code, shall be provided to any person upon written request. Such written request shall include the name, date of birth and social security number of the person for whom the information is requested.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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

(14) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

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

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

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

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

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

manually.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided

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

(27) Records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile. If the juvenile is fourteen (14) years or older and is adjudicated guilty of an offense which would be a felony if committed by an adult, the name, offense of which the juvenile was adjudicated and disposition of the court shall be subject to disclosure. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

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

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative ~~council~~ services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office ~~of the legislative council~~ prior to release of the related final audit and all other records or materials in the possession of the legislative services office ~~of the legislative council~~ that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public

interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

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

(38) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

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

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allow-

ing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(39) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

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

(41) Records of laboratory test results provided by or retained by the department of agriculture's quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

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

(43) Records of the sheriff or department of law enforcement received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(43~~4~~) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(43~~5~~) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

SECTION 7. That Section 22-1209, Idaho Code, be, and the same is

hereby amended to read as follows:

22-1209. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 8. That Section 22-2919, Idaho Code, be, and the same is hereby amended to read as follows:

22-2919. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall

file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 9. That Section 22-3319, Idaho Code, be, and the same is hereby amended to read as follows:

22-3319. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within

ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 10. That Section 22-3607, Idaho Code, be, and the same is hereby amended to read as follows:

22-3607. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 11. That Section 22-3707, Idaho Code, be, and the same is hereby amended to read as follows:

22-3707. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon

checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1990, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 12. That Section 22-4010, Idaho Code, be, and the same is hereby amended to read as follows:

22-4010. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift, and all of the revenues received under the provisions of section 22-4017, Idaho Code, shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income to the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. From and after January 15, 1989, the report shall also include a reconciliation

between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 13. That Section 25-3112, Idaho Code, be, and the same is hereby amended to read as follows:

25-3112. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 14. That Section 33-2114, Idaho Code, be, and the same is hereby amended to read as follows:

33-2114. REPORTS OF JUNIOR COLLEGE DISTRICTS. The board of trustees of each junior college district shall cause to be made, annu-

ally, a full and complete audit of the financial transactions of the district. Such audit shall be made by and under the direction of the board of trustees by an independent auditor in accordance with generally accepted auditing standards and procedures. The auditor shall be employed on written contract.

One (1) copy of the audit report shall be filed with the legislative ~~council~~ services office, and one (1) copy with the state board of education, not more than ten (10) days after its acceptance by the board of trustees.

The state board of education may at its discretion direct the board of trustees of any junior college district to cause to be made an examination of the books and accounts of their district, as provided for public school districts.

The board of trustees shall submit to the state board of education such other reports as the state board may from time to time require.

SECTION 15. That Section 36-414, Idaho Code, be, and the same is hereby amended to read as follows:

36-414. MIGRATORY WATERFOWL STAMP -- PRINTS -- MIGRATORY WATERFOWL ART COMMITTEE. (1) As used in this section:

(a) "Migratory waterfowl" means members of the family Anatidae, including brants, ducks and geese.

(b) "Migratory waterfowl art committee" means the committee created in subsection (5) of this section.

(c) "Migratory waterfowl stamp" means the stamp that is required pursuant to this section to be in the possession of persons over sixteen (16) years of age to hunt migratory waterfowl.

(d) "Prints and artwork" mean replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory waterfowl stamp that is required pursuant to this section. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications or any other kind of design.

(2) A state migratory waterfowl stamp is required to hunt migratory waterfowl. The fee for the stamp is five dollars ($5.00). The migratory waterfowl stamp shall be required in the hunting season starting not later than the fall of 1987. The stamp shall be sold pursuant to the procedures contained in chapter 3, title 36, Idaho Code.

(3) No person over sixteen (16) years of age shall hunt any migratory waterfowl without first obtaining a migratory waterfowl stamp as required in this section.

(4) The migratory waterfowl stamp to be produced by the department shall use the design as provided by the migratory waterfowl art committee. All revenue derived from the sale of the stamps by the department shall be deposited in the fish and game set-aside account and shall be used only for the cost of printing and production of the stamp and for those migratory waterfowl projects specified by the director of the department for the acquisition and development of migratory waterfowl habitat in the state. Acquisition shall include, but not be limited to, the acceptance of gifts of real property or any interest therein or the rental, lease or purchase of real property or any interest therein. If the department acquires any fee interest,

leasehold or rental interest in real property under this section, it shall allow the general public reasonable access to that property and shall, if appropriate, insure that the deed or other instrument creating the interest allows this access to the general public. If the department obtains a covenant in real property in its favor or an easement or any other interest in real property under this section, it shall exercise its best efforts to insure that the deed or other instrument creating the interest grants to the general public in the form of a covenant running with the land reasonable access to the property. The private landowner from whom the department obtains such a covenant or easement shall retain the right of granting access to the lands by written permission.

The department may produce migratory waterfowl stamps in any given year in excess of those necessary for sale in that year. The excess stamps may be sold to the migratory waterfowl art committee for sale to the public.

(5) There is hereby created a migratory waterfowl art committee which shall be composed of seven (7) members. The committee shall consist of one (1) member appointed by the governor, four (4) members appointed by the director of the department, one (1) member appointed by the Idaho commission on the arts, and one (1) member appointed by the director of the department of agriculture. The member appointed by the Idaho commission on the arts shall be knowledgeable in the area of fine art reproduction. The member appointed by the director of the department of agriculture shall represent statewide farming interest. The members appointed by the governor and the director of the department shall be knowledgeable about waterfowl and waterfowl management. The four (4) members appointed by the director of the department shall also represent respectively:

(a) A northern Idaho sports group;

(b) A southern Idaho sports group;

(c) A group with a major interest in the conservation and propagation of migratory waterfowl; and

(d) A statewide conservation organization.

(6) The members of the committee shall serve three (3) year staggered terms and at the expiration of their terms shall serve until qualified successors are appointed. Of the seven (7) members, two (2) shall serve initial terms of four (4) years, two (2) shall serve initial terms of three (3) years, and three (3) shall serve initial terms of two (2) years. The appointees of the governor and the director of the department of agriculture shall serve the initial terms of four (4) years. The appointees of the commission on the arts and one (1) of the appointees of the director of the department of fish and game shall serve the initial terms of two (2) years. Vacancies shall be filled for unexpired terms consistent with this subsection. A chairman shall be elected annually by the committee. The committee shall review the director's expenditures of the previous year of both the stamp money and the prints and related artwork money. Members of the committee shall be compensated as provided in section 59-509(a), Idaho Code.

(7) The committee is responsible for the selection of the annual migratory waterfowl stamp design and shall provide the design to the department. If the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the

stamps to license vendors, the director shall initiate the artwork selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

(8) The total amount of moneys brought in from the sale of prints, stamps, and related artwork shall be deposited in the fish and game set-aside account. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director shall be paid out of the total amount of moneys brought in from sale of those same items. Net funds derived from the sale of prints and related artwork shall be expended as follows:

(a) Twenty percent (20%) of the funds shall be provided by the director of the department to an appropriate nonprofit entity or wildlife conservation agency for the development of migratory waterfowl propagation projects within the provinces of Alberta and British Columbia in Canada.

(b) Eighty percent (80%) of the funds shall be used by the director of the department for the acquisition and development of waterfowl propagation projects within Idaho.

(c) The migratory waterfowl art committee shall have a periodic audit of its finances conducted by the legislative ~~council~~ services office or its successor agency and shall furnish a copy of the audit to the fish and game commission and the senate resources and environment committee and the house of representatives resources and conservation committee.

SECTION 16. That Section 38-1517, Idaho Code, be, and the same is hereby amended to read as follows:

38-1517. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission when the amount of such payments exceeds two thousand dollars ($2,000). Such designees may include the members of the staff of the commission.

(3) The right is reserved to the state of Idaho to audit the funds to the commission at anytime.

(4) On or before January 15 of each year, the commission shall file with the senate and house committees responsible for natural resources, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission for the preceding year. The report shall also include an estimate

of income of the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1994, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 17. That Section 42-3115, Idaho Code, be, and the same is hereby amended to read as follows:

42-3115. COMMISSIONERS -- POWERS AND DUTIES. The board of commissioners of flood control districts shall have the following powers and duties:

1. To annually fix and determine, the amount of money required to be raised by taxation to supply funds for costs of construction, costs of operation and maintenance of the work and equipment of the district, and to levy and cause to be collected assessments on real property within the district in an amount not to exceed six hundredths of one ~~per cent~~ percent (.06%) of the market value for assessment purposes on all taxable property within the district, provided however that a higher levy may be approved and ratified by the qualified voters at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose in the same manner as provided for the approval and ratification of contracts, in section 42-3117, Idaho Code, and said levy shall be certified by the board to the board of county commissioners of the county, or counties, in which said district is located, with directions that at the time and in the manner required by law for levying taxes for county purposes, such board, or boards, of county commissioners shall levy such tax upon the market value for assessment purposes of the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the flood control district to the board, or boards, of county commissioners on or before September 1 of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

2. To employ such personnel as may be necessary to carry out the purposes and objects of this act, with the full power to bind said district for the compensation of such personnel.

3. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute

contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules not consistent with the provisions of this chapter.

4. To manage and conduct the business and affairs of the district, both within and without the district.

5. To construct, operate and maintain structural works of improvement for the prevention of floodwater and sediment damages, and the conservation, development, utilization, and disposal of water, whether within or without the boundaries of the district, and to enter into contract for the purposes set forth above, provided however, that the board shall not enter into contracts that necessitate an expenditure in excess of fifteen thousand dollars ($15,000), without first advertising for sealed competitive bids as herein provided. However, where it is determined by order of the board that there is an existing emergency, or where it is determined that the district is in a flood fight resulting from unanticipated conditions, the requirement for sealed competitive bids shall not apply.

6. To prescribe the duties of officers, agents and employees as may be required.

7. To establish the fiscal year of the district and to keep records of all business transactions of the district.

8. To prepare a statement of the financial condition of the district at the end of each fiscal year, in a form to be prescribed by the director or by the legislative ~~council~~ services office, and publish in at least one (1) issue of some newspaper published, or in general circulation in, the county, or counties, in which such district is located and to file a certified copy of such financial report with the director and the legislative ~~council~~ services office on or before February 2 of each year.

9. To have an audit of the financial affairs of the district as required in section 67-45~~0~~0B, Idaho Code. A certified copy of said audit shall be filed with the director on or before February 2 following the audit.

10. To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; to lease any of its property or interest therein in furtherance of the purposes and provisions of this chapter, provided that no contract or agreement for the acquisition, purchase or repair of personal property involving expenditure in excess of one thousand dollars ($1,000), shall be entered into without first advertising for sealed competitive bids as herein provided.

11. To have the power of eminent domain for the use of the district in the construction, operation, maintenance and upkeep of its structures, waterways, dikes, dams, basins, or any other use necessary in the carrying out of the provisions of this chapter.

12. To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes, over district property, as shall be determined by the board to be in the best interests of the district.

13. To convey, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district, in any real or

personal property. Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the minutes of the board. The property may be sold at public auction or at a private sale by sealed competitive bids, as the board shall determine, to the highest cash bidder, provided that in no case shall any property of a district be sold for less than its appraised value. All sales by sealed competitive bids shall be advertised as herein provided.

14. To use natural streams and to improve the same for use as a flood control structure. However, in the event that the use of the natural stream involves alteration of the stream channel, no such alteration shall be made by the district until such alteration is approved by the director.

15. To enter into contracts or agreements with the United States or any of its officers, agents, or subdivisions, or with the state or any of its officers, agents or political subdivisions, and to cooperate with such governments, persons or agencies in effectuating, promoting and accomplishing the purposes of this chapter, provided that the district has sufficient moneys on hand, or in their budget for the year in which said contract is entered into, to defray the expenditure of funds called for in such contract without the creation of any indebtedness.

Whenever any such contract shall, by its terms, require the expenditure of funds by the district in excess of the moneys on hand or the funds to be realized from their budget for the year in which said contract is entered into, then such contract may not be entered into by the district until ratified by two-thirds (2/3) of the qualified voters voting at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, according to the provisions of this chapter.

16. To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

17. To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this act, any flood control project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

18. To accept donations, gifts and contributions in money, services, or materials, or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

19. To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of the chapter.

SECTION 18. That Section 56-450, Idaho Code, be, and the same is hereby amended to read as follows:

56-450. HEALTH AND WELFARE TRUST ACCOUNT. The director of the department of health and welfare may receive, on behalf of the department, any money or real or personal property donated, bequeathed, devised, or conditionally granted to the department. Such moneys

received directly or derived from the sale of such property shall be deposited by the state treasurer in a special account to be known as the "Health and Welfare Trust Account", which is hereby established, reserved, set aside, appropriated and made available until expended, used, and administered to carry out the terms or conditions of such donation, bequest, devise, or grant. Pending such expenditure or use, surplus moneys in the health and welfare trust account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the health and welfare trust account.

The director shall provide annually, to the legislative council through the director of legislative services, an accounting of the health and welfare trust account setting forth the sources, applications and balance of moneys within the account.

SECTION 19. That Section 67-450A, Idaho Code, be, and the same is hereby amended to read as follows:

67-450A. CHARGES FOR AUDIT. The annual appropriation to the office of legislative ~~council~~ services from the general fund shall provide for authorized audits and services to general fund departments, agencies, commissions, or institutions without charge to the unit receiving such services. The cost and expenses incurred by the legislative ~~council~~ services office in conducting audits or in carrying out other work authorized by law in dedicated funds, shall be paid from the appropriation to the office, department, board, commission, or institution and/or the dedicated funds under the control of the office, department, board, commission, or institution for whom the work is done. The audit fee or costs of work performed in such dedicated fund agencies shall be based on an hourly rate computed by the legislative ~~council~~ services office and shall be sufficient to defray all costs and expenses incurred, including but not limited to related salary, travel and office overhead expenses. The legislative ~~council~~ services office may require partial payments, during the course of the audit, for services rendered and expenses incurred. All charges shall be paid within thirty (30) days after billing is received.

All moneys received from the various dedicated fund agencies shall be added to the legislative ~~council's~~ services office's appropriation from the general fund and are hereby appropriated to the legislative ~~council~~ services office, providing that the legislative ~~council's~~ services office's expenditures shall not exceed the amount appropriated by the legislature.

SECTION 20. That Section 67-1104, Idaho Code, be, and the same is hereby amended to read as follows:

67-1104. ANNUAL REPORTS. The state controller shall prepare, annually on a fiscal year basis, exhibits showing the proper detailed classification of all receipts and warrant disbursements, respectively, of each office, department, bureau and institution of the state of Idaho, followed by a recapitulation of receipts from general sources and a recapitulation of disbursements.

One (1) of such exhibits shall be delivered to the division of financial management and one (1) to the legislative ~~council~~ services office, two (2) to the office, department or governing board referred to in the exhibit (one (1) of which shall be for the use of the executive head of the particular bureau, institution or other unit covered by such exhibit), and the fourth shall be permanently filed in the state controller's office.

SECTION 21. That Section 67-3508, Idaho Code, be, and the same is hereby amended to read as follows:

67-3508. EXPENDITURE OBJECT CODES. (1) Excepting where the legislature expressly departs from the classification set forth in any appropriation bill, all appropriations made by the legislature, and all estimates hereafter made for budget purposes, and all expenditures made from appropriations or funds received from other sources, shall be classified and standardized by items as follows:

(a) Personnel costs, which shall include the salaries or wage expenses of employees and officers, whether full-time, part-time, or other irregular or seasonal help and including compensation or honorarium of members of boards or commissions, and shall also include the employer's share of contributions related to other benefits provided to those employees and officers.

(b) Operating expenditures, which shall include all expenses for services, travel, consumable supplies, and minor items of equipment not otherwise classified under personnel costs, capital outlay, or trustee and benefit payments.

(c) Capital outlay, which, when used in an appropriation act, shall include all expenditures for land, highways, buildings including appurtenances, fixtures and fixed equipment, structures, which also includes additions, replacements, major repairs, and renovations to, which materially extends the capital assets' useful life or materially improves or increases its capacity, and shall include compensation for independent contractors. Automobiles, domestic animals, machinery, apparatus, equipment and furniture including additions thereto, which will have a useful life or service substantially more than two (2) years, shall also be included.

(d) Trustee and benefit payments, which shall include the cash payments of welfare or retirement benefits to individuals and payments to individuals, persons, or political entities, and not otherwise classified under personnel costs, operating expenditures or capital outlay.

(2) The state controller is hereby authorized and directed to implement such subclassifications of the standard classifications herein set forth which are necessary for preparation of the state budget, as supplied by the administrator of the division of financial management and the legislative ~~council~~ services office.

An annual review of the subclassifications shall be made by the administrator of the division and the legislative ~~council~~ services office.

The state controller shall be supplied the changes desired by the administrator and the legislative ~~council~~ services office in the

subclassifications which are necessary for the preparation of the state budget or the identification and distribution of expenditures from appropriations no later than sixty (60) days prior to the beginning of any fiscal year to be effective for that fiscal year.

SECTION 22. That Section 67-4129A, Idaho Code, be, and the same is hereby amended to read as follows:

67-4129A. HISTORICAL SOCIETY ACCOUNT. The director of the Idaho state historical society may receive, on behalf of the society, any money or real or personal property donated, bequeathed, devised, or conditionally granted to the society. "Donated," as used in this section, shall include moneys paid by the public for admission to historical facilities operated by the society, and shall include moneys derived from retail sales related to the society's programs.

Such moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in a special account in the agency asset fund to be known as the "Historical Society Account," which is hereby established, reserved, set aside and administered to carry out the terms or conditions of such donation, bequest, devise, or grant. Pending such expenditure or use, surplus moneys in the historical society account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the historical society account.

The director shall provide annually, to the legislative ~~council~~ services office, an accounting of the historical society account, setting forth the sources, applications and balance of moneys within the account.

SECTION 23. That Section 67-5205, Idaho Code, be, and the same is hereby amended to read as follows:

67-5205. FORMAT -- COSTS -- DISTRIBUTION -- FUNDS. (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual printed pamphlet copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, for reprints and bound volumes thereof and for pamphlet rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state, and the number of copies which shall be distributed free for official use, in addition to those free copies required to be as provided in this section, shall be set

by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state. Free copies shall be distributed by the coordinator, as follows:

(a) One (1) to each county clerk for the use of the county law library.

(b) One (1) each to the senate and the house of representatives.

(c) One (1) to the attorney general.

(d) One (1) to the legislative ~~council~~ services office.

(e) One (1) each to the state universities and colleges, and one (1) to each community college.

(f) One (1) to the state law library.

(g) One (1) to the state library.

(h) One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, Albertson College Library, Ricks College Library and Twin Falls Public Library.

In addition to those free copies required to be distributed by this section, the coordinator may distribute free copies for official use.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(4) There is hereby created in the state treasury the administrative code account. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and for providing electronic access, shall be deposited in the account. All agencies which have any material published in the bulletin, administrative code or supplements thereto, or newspapers, are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of publication and distribution of such material. All moneys placed in the account are perpetually appropriated to the coordinator for the administration of the provisions of this chapter, and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

The coordinator shall allocate costs of production, publication and distribution to each participating agency in the same proportion that the amount of the costs of production, publication and distribution for that agency bears to the total costs of production, publication and distribution for all agencies, with the costs to be determined on a per page basis. A cost per page may be imposed even though less than a full page of publication is required.

The cost allocations to each participating agency shall be made monthly by the coordinator, and each participating agency shall promptly pay into the administrative code account such costs.

SECTION 24. That Section 67-5223, Idaho Code, be, and the same is hereby amended to read as follows:

67-5223. INTERIM LEGISLATIVE REVIEW -- LEGISLATIVE HEARINGS -- STATEMENT OF ECONOMIC IMPACT. (1) At the same time that notice of proposed rulemaking is filed with the coordinator, the agency shall provide the same notice, accompanied by the full text of the rule under consideration in legislative format, as well as a statement of the substance of the intended action, to the director of ~~the~~ legislative ~~council~~ services. If the proposed rulemaking is based upon a requirement of federal law or regulation, a copy of that specific federal law or regulation shall accompany the submission to the director of ~~the~~ legislative ~~council~~ services. The director of ~~the~~ legislative ~~council~~ services shall analyze and refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code.

(2) If the germane joint subcommittee notifies the agency within fourteen (14) days of the date of publication of the notice of proposed rulemaking in the bulletin or within fourteen (14) days prior to the end of the comment period, whichever is later, that the subcommittee intends to hold a hearing on the proposed rulemaking within fourteen (14) days, the agency shall extend the comment period for such additional time as required to receive comments from the subcommittee. The notification from the germane joint subcommittee to the agency shall be sent to the agency and shall also be published in the bulletin.

(3) An agency shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a proposed rule if, within fourteen (14) days of the receipt of the proposed rule, the germane joint subcommittee files a written request with the agency for such a statement. The statement shall contain an evaluation of the costs and benefits of the rule, including any health, safety, or welfare costs and benefits. The adequacy of the contents of the statement of economic impact is not subject to judicial review.

SECTION 25. That Section 67-6102, Idaho Code, be, and the same is hereby amended to read as follows:

67-6102. AWARDS COMMITTEE -- CREATION -- MEMBERSHIP. There is hereby created in the office of the governor the state employees incentive award committee. The committee shall consist of the governor, or his representative, who shall serve as chairman, the director of the legislative ~~council~~ services office or his designee, and three (3) private citizens who represent business, management or industry. The three (3) citizen members shall be appointed by the governor to serve two (2) year terms.

SECTION 26. That Section 67-7450, Idaho Code, be, and the same is hereby amended to read as follows:

67-7450. AUDIT OF FUNDS -- REPORTS. (1) The right is reserved to the state of Idaho to audit funds of the commission at any time.

(2) On or before January 15 of each year, the director shall file with the senate state affairs committee, the house state affairs com-

mittee, the legislative ~~council~~ services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal years and a projection of anticipated expenses by category for the current and next fiscal years. From and after January 15, 1990, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(3) In addition to the reports required in subsection (2) of this section, the director shall also file the same report with the joint finance-appropriations committee. Notwithstanding any other provision of this chapter, the joint finance-appropriations committee may, by appropriation measure, limit or modify proposed expenditures of the commission.

Approved March 11, 1996.

CHAPTER 160
(S.B. No. 1363)

AN ACT

RELATING TO GOVERNOR'S HOUSING; REPEALING SECTION 1, CHAPTER 367, LAWS OF 1995; AMENDING CHAPTER 4, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-455, IDAHO CODE, TO CREATE THE GOVERNOR'S HOUSING COMMITTEE AND TO CREATE THE GOVERNOR'S RESIDENCE FUND AND TO PROVIDE WHAT MONEYS IN THE FUND MAY BE UTILIZED FOR; AND TRANSFERRING MONEYS IN THE GOVERNOR'S RESIDENCE ACCOUNT TO THE GOVERNOR'S RESIDENCE FUND.

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

SECTION 1. That Section 1, Chapter 367, Laws of 1995, be, and the same is hereby repealed.

SECTION 2. That Chapter 4, Title 67, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 67-455, Idaho Code, and to read as follows:

67-455. GOVERNOR'S HOUSING COMMITTEE -- GOVERNOR'S RESIDENCE FUND. There is hereby created the governor's housing committee consisting of five (5) appointed members. The following public officials shall each appoint one (1) member to serve on the committee: the president pro tempore of the senate, the speaker of the house of representatives, the minority leader of the senate and the minority leader of the house of representatives and the director of the department of administration. Members of the committee shall serve at the pleasure of the appointing public official or his successor.

There is hereby created the governor's residence fund. All moneys in or added to the governor's residence fund and any dividend or

interest earnings thereon are hereby perpetually appropriated to the department of administration and set apart for the purposes of providing a governor's housing allowance and the acquisition and maintenance of a governor's residence and the same shall be available for such purposes immediately upon being credited to the account, upon authorization for expenditure being given by the governor's housing committee. Upon the direction of the committee, the department shall use moneys in the account for any purpose related to a governor's housing allowance or the acquisition or construction or maintenance of a governor's residence. The net proceeds from any sale or rental of a governor's residence shall be returned to the governor's residence fund.

SECTION 3. All moneys contained in the Governor's Residence Account on June 30, 1995, as provided in Chapter 367, Laws of 1995, shall be transferred to the Governor's Residence Fund created in Section 2 of this act.

Approved March 11, 1996.

CHAPTER 161
(S.B. No. 1293, As Amended)

AN ACT

RELATING TO THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5201, IDAHO CODE, TO ADD DEFINITIONS; AMENDING SECTION 67-5203, IDAHO CODE, TO ELIMINATE THE REQUIREMENT THAT PROCLAMATIONS OF THE GOVERNOR BE PUBLISHED IN THE ADMINISTRATIVE BULLETIN OR ADMINISTRATIVE CODE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 67-5204, IDAHO CODE, TO ELIMINATE THE REQUIREMENT THAT PROCLAMATIONS OF THE GOVERNOR BE PUBLISHED IN THE ADMINISTRATIVE BULLETIN OR ADMINISTRATIVE CODE; AMENDING SECTION 67-5205, IDAHO CODE, TO REQUIRE THAT THE ADMINISTRATIVE RULES COORDINATOR PROVIDE THE LEGISLATURE WITH FREE COPIES OF ALL RULES SUBMITTED TO THE LEGISLATURE FOR REVIEW; AMENDING SECTION 67-5221, IDAHO CODE, TO REQUIRE THAT THE NOTICE OF PROPOSED RULEMAKING CONTAIN A SPECIFIC DESCRIPTION OF ANY FEES OR CHARGES IMPOSED OR INCREASED IN THE RULE; AMENDING SECTION 67-5224, IDAHO CODE, TO REQUIRE THAT PUBLICATION OF A PENDING RULE INCLUDE THE DATE WHEN THE RULE WILL BECOME FINAL AND EFFECTIVE AND A STATEMENT THAT THE PENDING RULE MAY BE REJECTED, AMENDED OR MODIFIED BY CONCURRENT RESOLUTION OF THE LEGISLATURE AND SHALL ALSO INCLUDE AN IDENTIFICATION OF ANY FEES OR CHARGES IMPOSED OR INCREASED WITH A STATEMENT THAT THIS PORTION OF THE PENDING RULE SHALL NOT BECOME EFFECTIVE UNLESS AFFIRMATIVELY APPROVED BY CONCURRENT RESOLUTION, TO PROVIDE THAT A PENDING RULE SHALL BECOME FINAL AND EFFECTIVE ON JULY 1 FOLLOWING THE CONCLUSION OF THE REGULAR OR SPECIAL LEGISLATIVE SESSION AT WHICH IT IS SUBMITTED FOR REVIEW, OR AS PROVIDED IN THE RULE, BUT NOT EARLIER THAN THE CONCLUSION OF THE LEGISLATIVE SESSION AT WHICH IT WAS SUBMITTED FOR REVIEW, TO PROVIDE FOR RETROACTIVE APPLICATION OF A RULE, TO REQUIRE THAT AGENCIES PROVIDE THE ADMINISTRATIVE RULES COORDINATOR WITH A DESCRIPTION OF ANY PENDING RULE OR PORTION

THEREOF IMPOSING A NEW FEE OR CHARGE OR INCREASING AN EXISTING FEE OR CHARGE AND TO REQUIRE PUBLICATION AFTER THE LEGISLATIVE SESSION CONCLUDES OF A LIST OF ALL FINAL RULES BECOMING EFFECTIVE ON A DATE OTHER THAN JULY 1 AND ANY TEMPORARY RULES REMAINING IN EFFECT PURSUANT TO CONCURRENT RESOLUTION; AMENDING SECTION 67-5226, IDAHO CODE, TO PROVIDE THAT A PROPOSED RULE NEED NOT BE PROMULGATED IN CONJUNCTION WITH A TEMPORARY RULE IF THE TEMPORARY RULE WILL EXPIRE BY ITS OWN TERMS OR BY OPERATION OF LAW BEFORE THE PROPOSED RULE COULD BECOME FINAL, TO MAKE GRAMMATICAL CHANGES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 67-5227, IDAHO CODE, TO PROVIDE FOR A VARIANCE BETWEEN A PENDING RULE AND A PROPOSED RULE AND TO PROVIDE CLARIFYING LANGUAGE; AMENDING SECTION 67-5228, IDAHO CODE, TO PROVIDE FOR TECHNICAL CORRECTIONS OF A PENDING RULE WITHOUT COMPLIANCE WITH REGULAR RULEMAKING PROCEDURES AND FOR INCORPORATION OF THE CORRECTIONS IN THE PENDING RULE UPON PUBLICATION; AMENDING SECTION 67-5231, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 67-5273, IDAHO CODE, TO PROVIDE FOR JUDICIAL REVIEW OF A TEMPORARY RULE; AMENDING SECTION 67-5291, IDAHO CODE, TO CLARIFY THAT THE STANDING COMMITTEES OF THE LEGISLATURE MAY REVIEW TEMPORARY, PENDING AND FINAL RULES AND TO CLARIFY REFERENCES; AND AMENDING SECTION 67-5292, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 67-5201, Idaho Code, be, and the same is hereby amended to read as follows:

67-5201. DEFINITIONS. As used in this act:

(1) "Administrative code" means the Idaho administrative code established in this chapter.

(2) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(3) "Agency action" means:

(a) the whole or part of a rule or order;

(b) the failure to issue a rule or order; or

(c) an agency's performance of, or failure to perform, any duty placed on it by law.

(4) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(5) "Bulletin" means the Idaho administrative bulletin established in this chapter.

(6) "Contested case" means a proceeding which results in the issuance of an order.

(7) "Coordinator" means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.

(8) "Document" means any ~~proclamation,~~ executive order, notice, rule or statement of policy of an agency.

(9) "Final rule" means a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

(10) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.

(1~~0~~1) "Official text" means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.

(1~~1~~2) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.

(1~~2~~3) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(14) "Pending rule" means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review.

(1~~3~~5) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(16) "Proposed rule" means a rule published in the bulletin as provided in section 67-5221, Idaho Code.

(1~~4~~7) "Provision of law" means the whole or a part of the state or federal constitution, or of any state or federal:

(a) statute; or

(b) rule or decision of court.

(1~~5~~8) "Publish" means to bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law.

(1~~6~~9) "Rule" means the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

(a) law or policy, or

(b) the procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:

(i) statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

(ii) declaratory rulings issued pursuant to section 67-5232, Idaho Code; or

(iii) intra-agency memoranda; or

(iv) any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(~~17~~20) "Rulemaking" means the process for formulation, adoption,

amendment or repeal of a rule.

(21) "Submitted for review" means that a rule has been provided to the legislature for review at a regular or special legislative session as provided in section 67-5291, Idaho Code.

(22) "Temporary rule" means a rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in section 67-5226, Idaho Code.

SECTION 2. That Section 67-5203, Idaho Code, be, and the same is hereby amended to read as follows:

67-5203. PUBLICATION OF ADMINISTRATIVE BULLETIN. (1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published in the bulletin. The bulletin shall be published by the administrative rules coordinator not less frequently than the first Wednesday of each calendar month, but not more frequently than every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

(a) all ~~proclamations and~~ executive orders of the governor;

(b) agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and ~~final~~ pending rules, together with any explanatory material supplied by the agency;

(c) all agency documents required by law to be published in the bulletin; and

(d) any legislative documents affecting a final agency rule.

(5) The text of all documents published in the bulletin shall be the official text of that document until the document has been published in the administrative code. Judicial notice shall be taken of all documents published in the bulletin.

(6) The coordinator shall provide a process for access to the contents of the bulletin and to the administrative code by electronic means.

SECTION 3. That Section 67-5204, Idaho Code, be, and the same is hereby amended to read as follows:

67-5204. PUBLICATION OF ADMINISTRATIVE CODE. (1) The administrative rules coordinator shall annually publish a publication to be known as the "Idaho Administrative Code."

(2) The administrative code shall be a codification of:

(a) all ~~proclamations--and~~ executive orders of the governor that have been published in the bulletin and have not been rescinded;

(b) the text of all final rules;

(c) any legislative documents affecting a final agency rule; and

(d) all documents required by law to be published in the administrative code.

(3) The text of all documents published in the administrative code shall be the official text of that document. Judicial notice shall be taken of all documents published in the administrative code.

SECTION 4. That Section 67-5205, Idaho Code, be, and the same is hereby amended to read as follows:

67-5205. FORMAT -- COSTS -- DISTRIBUTION -- FUNDS. (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual printed pamphlet copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, for reprints and bound volumes thereof and for pamphlet rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state, and the number of copies which shall be distributed free for official use, in addition to those free copies required to be as provided in this section, shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state. Free copies shall be distributed by the coordinator, as follows:

(a) One (1) to each county clerk for the use of the county law library.

(b) One (1) each to the senate and the house of representatives.

(c) One (1) to the attorney general.

(d) One (1) to the legislative council.

(e) One (1) each to the state universities and colleges, and one (1) to each community college.

(f) One (1) to the state law library.

(g) One (1) to the state library.

(h) One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, Albertson College Library, Ricks College Library and Twin Falls Public Library.

In addition to those free copies required to be distributed by this section, the coordinator shall provide to the legislature free copies of all rules subject to review by the legislature pursuant to section 67-5291, Idaho Code, and may distribute other free copies for official use.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for

volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(4) There is hereby created in the state treasury the administrative code account. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and for providing electronic access, shall be deposited in the account. All agencies which have any material published in the bulletin, administrative code or supplements thereto, or newspapers, are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of publication and distribution of such material. All moneys placed in the account are perpetually appropriated to the coordinator for the administration of the provisions of this chapter, and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

The coordinator shall allocate costs of production, publication and distribution to each participating agency in the same proportion that the amount of the costs of production, publication and distribution for that agency bears to the total costs of production, publication and distribution for all agencies, with the costs to be determined on a per page basis. A cost per page may be imposed even though less than a full page of publication is required.

The cost allocations to each participating agency shall be made monthly by the coordinator, and each participating agency shall promptly pay into the administrative code account such costs.

SECTION 5. That Section 67-5221, Idaho Code, be, and the same is hereby amended to read as follows:

67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

(a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;

(b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

(c) the text of the proposed rule prepared in legislative format;

(d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

(e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

(f) the manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code; and

(g) the deadline for public comments on the proposed rule.

(2) (a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The form of the notice shall be substantially as follows: typefaces used shall measure greater than seven (7) points, and space width shall not be less than two (2) newspaper columns. The content of the notice shall be substantially as follows:

A prominent bold typeface heading designed to alert readers to the rules and information contained in the notice. The notice shall include the agency name and address, rule number, rule subject matter as provided in paragraph (1)(b) of this section, and the comment deadline. A brief statement in a prominent bold typeface that informs citizens where they can view the administrative bulletin in hard copy or electronic form shall be included.

(b) The coordinator shall cause the notice required in paragraph (a) of this subsection to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published. The coordinator is authorized to negotiate a rate or rates with any or all newspapers publishing these notices which will provide adequate exposure to the notices by the least expensive means. For the purposes of this section, the provisions of section 60-105, Idaho Code, shall not apply.

SECTION 6. That Section 67-5224, Idaho Code, be, and the same is hereby amended to read as follows:

67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall consider fully all written and oral submissions respecting the proposed rule.

(2) Subject to the provisions of subsection (3) of this section, the agency shall publish the text of ~~the final~~ a pending rule in the bulletin. In addition, the agency shall publish a concise explanatory statement containing:

(a) reasons for adopting the ~~final~~ rule; ~~and~~

(b) a statement of any change between the text of the proposed rule and the text of the ~~final~~ pending rule with an explanation of the reasons for any changes;

(c) the date on which the pending rule will become final and effective, as provided in subsection (5) of this section, and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature; and

(d) an identification of any portion of the pending rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature.

(3) With the permission of the coordinator, the agency need not publish in full the text of the ~~final~~ pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the ~~final~~ pending rule must cite the volume of the bulletin where the text is available and note all changes that have been made.

(4) An agency shall not publish a ~~final~~ pending rule until at least seven (7) days after the close of all public comment.

(5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending rule shall become final and effective on July 1 following the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

(b) When the legislature approves, amends or modifies a pending rule pursuant to section 67-5291, Idaho Code, ~~such~~ the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution. ~~Otherwise,--except--as--set-forth-in-sections-67-5226-and-67-5228, Idaho-Code,-no-rule-adopted-by-an-agency-shall-become-final--until the--conclusion--of--a--regular--or-special-legislative-session-to which-such-rule-has-been-submitted-for-review.~~

(c) ~~Provided-however,-that-e~~Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved, amended or modified by concurrent resolution.

(6) Each agency shall provide the administrative rules coordinator with a description of any pending rule or portion thereof imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. The administrative rules coordinator shall provide the legislature with a compilation of the descriptions provided by the agencies.

(7) At the conclusion of the legislative session or as soon thereafter as is practicable, the coordinator shall publish a list of final rules becoming effective on a date other than July 1, as provided in section 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided in section 67-5226(3), Idaho Code.

SECTION 7. That Section 67-5226, Idaho Code, be, and the same is hereby amended to read as follows:

67-5226. TEMPORARY RULES. (1) If the governor finds that:

(a) ~~it--is--reasonably--necessary--to~~ protection of the public health, safety, or welfare; or

(b) compliance with deadlines in amendments to governing law or federal programs; or

(c) conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule. The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

(2) A rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved, amended or modified by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of ~~such~~ the fee or charge.

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless ~~such~~ the rule is approved, amended or modified by concurrent resolution, in which case ~~such~~ the rule may remain in effect until the time specified in the resolution or until ~~such~~ the rule has been replaced by a ~~permanent~~ final rule ~~adopted in accordance with the rulemaking requirements of this chapter~~ which has become effective as provided in section 67-5224(5), Idaho Code.

(4) Temporary rules shall be published in the first available issue of the bulletin.

(5) Temporary rules are not subject to the requirements of section 67-5223, Idaho Code.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a ~~permanent~~ proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

SECTION 8. That Section 67-5227, Idaho Code, be, and the same is hereby amended to read as follows:

67-5227. VARIANCE BETWEEN ~~FINAL~~ PENDING RULE AND PROPOSED RULE. An agency may adopt a ~~final~~ pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the ~~final~~ pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject of agency action ~~in order for such members of the public~~ and were reasonably able from that notification to determine whether their interests could be affected by agency action on that subject.

SECTION 9. That Section 67-5228, Idaho Code, be, and the same is hereby amended to read as follows:

67-5228. EXEMPTION FROM REGULAR RULEMAKING PROCEDURES. An agency may amend a ~~final~~ pending rule to correct typographical errors, transcription errors, or clerical errors without compliance with regular

rulemaking procedures when the amendments are approved by the coordinator. Such amendments become ~~effective without compliance with regular rulemaking procedures~~ incorporated in the pending rule upon publication in the bulletin.

SECTION 10. That Section 67-5231, Idaho Code, be, and the same is hereby amended to read as follows:

67-5231. INVALIDITY OF RULES NOT ADOPTED IN COMPLIANCE WITH THIS CHAPTER -- TIME LIMITATION. (1) Rules may be promulgated by an agency only when specifically authorized by statute. A temporary or final rule adopted and becoming effective after July 1, 1993, is voidable unless adopted in substantial compliance with the requirements of this chapter.

(2) A proceeding, either administrative or judicial, to contest any rule on the ground of noncompliance with the procedural requirements of this chapter must be commenced within two (2) years from the effective date of the rule.

SECTION 11. That Section 67-5273, Idaho Code, be, and the same is hereby amended to read as follows:

67-5273. TIME FOR FILING PETITION FOR REVIEW. (1) A petition for judicial review of a temporary or final rule may be filed at any time, except as limited by section 67-5231, Idaho Code.

(2) A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under section 67-5271(2), Idaho Code, must be filed within twenty-eight (28) days of the issuance of the final order, the date when the preliminary order became final, or the issuance of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within twenty-eight (28) days after the decision thereon. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

SECTION 12. That Section 67-5291, Idaho Code, be, and the same is hereby amended to read as follows:

67-5291. LEGISLATIVE REVIEW OF ~~ADOPTED~~ RULES. The standing committees of the legislature may review ~~adopted~~ temporary, pending and final rules which have been published in the bulletin or in the administrative code. If reviewed, the standing committee which reviewed the

rules shall report to the membership of the body its findings and recommendations concerning its review of the rules. If ordered by the presiding officer, the report of the committee shall be printed in the journal. A concurrent resolution may be adopted approving the rule, or rejecting, amending or modifying the rule where it is determined that ~~such~~ the rule violates the legislative intent of the statute under which ~~such~~ the rule was made, or where it is determined that any rule previously promulgated and reviewed by the legislature shall be deemed to violate the legislative intent of the statute under which ~~such~~ the rule was made. ~~Where an agency submits a rule or part of a rule which has been adopted or which has repealed or amended an already existing rule, t~~The rejection, amendment or modification of ~~the new~~ a rule by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsibility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve, amend, modify, or reject an agency rule and to transmit a copy of ~~such~~ the concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of ~~the~~ a new rule, or the incorporation of any legislative amendments to ~~the~~ a new rule. If a rule has been amended or modified by the legislature, the agency shall republish the rule in accordance with the provisions of chapter 52, title 67, Idaho Code, reflecting the action taken by the legislature and the effective date thereof. If a rule has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and effect until the same is rejected, amended or modified by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms.

SECTION 13. That Section 67-5292, Idaho Code, be, and the same is hereby amended to read as follows:

67-5292. EXPIRATION OF ADMINISTRATIVE RULES. (1) Notwithstanding any other provision of this chapter to the contrary, every rule adopted and becoming effective after June 30, 1990, shall automatically expire on July 1 of the following year unless ~~such~~ the rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

(2) All rules adopted prior to June 30, 1990, shall expire on July 1, 1991, unless extended by statute. Thereafter, any ~~such~~ rules which are extended shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each succeeding year.

(3) Rules adopted and becoming effective pursuant to this chapter

may be extended in whole or in part. When any part of an existing rule is amended, then that entire rule shall be subject to the provisions of this section.

(4) This section is a critical and integral part of this chapter. If any portion of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall be deemed to affect all rules adopted subsequent to the effective date of this act and such rules shall be deemed null, void and of no further force and effect.

SECTION 14. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved March 12, 1996.

CHAPTER 162
(S.B. No. 1297, As Amended)

AN ACT

RELATING TO THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5205, IDAHO CODE, TO PROVIDE THAT MONEYS IN THE ADMINISTRATIVE CODE FUND MAY BE APPROPRIATED TO THE ADMINISTRATIVE RULES COORDINATOR FOR THE ADMINISTRATION OF THE ACT AND TO PROVIDE THAT THE COORDINATOR MAY CHARGE A FEE NOT TO EXCEED CERTAIN AMOUNTS TO PARTICIPATING AGENCIES FOR PUBLICATION IN THE ADMINISTRATIVE CODE AND THE BULLETIN.

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

SECTION 1. That Section 67-5205, Idaho Code, be, and the same is hereby amended to read as follows:

67-5205. FORMAT -- COSTS -- DISTRIBUTION -- FUNDS. (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual printed pamphlet copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, for reprints and bound volumes thereof and for pamphlet rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state, and the number of copies

which shall be distributed free for official use, in addition to those free copies required to be as provided in this section, shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state. Free copies shall be distributed by the coordinator, as follows:

(a) One (1) to each county clerk for the use of the county law library.

(b) One (1) each to the senate and the house of representatives.

(c) One (1) to the attorney general.

(d) One (1) to the legislative council.

(e) One (1) each to the state universities and colleges, and one (1) to each community college.

(f) One (1) to the state law library.

(g) One (1) to the state library.

(h) One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, Albertson College Library, Ricks College Library and Twin Falls Public Library.

In addition to those free copies required to be distributed by this section, the coordinator may distribute free copies for official use.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(4) There is hereby created in the state treasury the administrative code ~~account~~ fund. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and for providing electronic access, shall be deposited in the ~~account~~ fund. All agencies which have any material published in the bulletin, administrative code or supplements thereto, or newspapers, are hereby ~~authorized and~~ directed to pay out of their appropriations to the coordinator their respective shares of the costs of publication and distribution of such material. All moneys placed in the ~~account are perpetually~~ fund may be appropriated to the coordinator for the administration of the provisions of this chapter, and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

The coordinator shall ~~allocate costs of production, publication and distribution~~ charge an annual fee to each participating agency ~~in the same proportion that the amount of the costs of production, publication and distribution for that agency bears to the total costs of production, publication and distribution for all agencies, with the costs to be determined on a per page basis~~ for each page published in the administrative code not to exceed fifty-six dollars ($56.00) per page. In addition, the coordinator shall charge a fee to each partic-

ipating agency for each page published in the bulletin not to exceed sixty-one dollars ($61.00) per page. A ~~cost~~ fee per page may be ~~imposed~~ charged even though less than a full page of publication is required,~~.~~

~~The cost allocations to each participating agency shall be made monthly by the coordinator,~~ and each participating agency shall promptly pay into the administrative code ~~account~~ fund such ~~costs~~ charge.

Approved March 12, 1996.

CHAPTER 163
(S.B. No. 1332)

AN ACT

RELATING TO THE DISTRICT MAGISTRATES COMMISSION; AMENDING SECTION 1-2203, IDAHO CODE, TO PROVIDE FOR THE APPOINTMENT BY THE ADMINISTRATIVE DISTRICT JUDGE OF A MAGISTRATE JUDGE TO SERVE AS A NONVOTING MEMBER OF THE DISTRICT MAGISTRATES COMMISSION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 1-2203, Idaho Code, be, and the same is hereby amended to read as follows:

1-2203. DISTRICT MAGISTRATES COMMISSION -- MEMBERS. (1) There is hereby established in each judicial district of the state of Idaho a district magistrates commission to be known as the "district magistrates commission of the .... judicial district," the members of which shall consist of the chairman of the board of county commissioners of each county in the district or member of such board designated by the chairman, the mayors of three (3) municipalities, one (1) of whom shall be from a city of over ten thousand (10,000) population, in the district to be appointed by the governor, two (2) qualified electors residing within the district to be appointed by the governor, the administrative judge of the district or district judge of the district designated by him, ~~and~~ two (2) attorneys nominated by the district bar associations in each district and appointed by the Idaho state bar, and a magistrate judge in the district who shall be a nonvoting member, to be appointed by and serve at the pleasure of the administrative district judge. Temporary attorney members may be nominated in such number as the bar association in each district deems appropriate at any time by the respective district bar association and appointed by the Idaho state bar to fill any temporary attorney member vacancy on the district magistrates commissions. Each of the members shall be over the age of majority and shall be and remain a citizen of the United States, a bona fide resident of the state and district and of good moral character.

(2) Forthwith after making any appointments to such commissions the respective appointing authorities shall duly certify in writing to the administrative director of the courts and to the secretary of state the following facts with respect to each appointee:

(a) Full name,

(b) Age,

(c) Residence address,

(d) If employed, the nature of his occupation and business address,

(e) The name of the district magistrate commission to which appointed,

(f) The date of expiration of term for which appointed,

(g) Except for the initial appointees under this act, the name of the person he succeeds on the commission, and,

(h) If a voting member other than a mayor or district judge, ~~or magistrate,~~ his political party.

(3) No voting member, other than the persons appointed while serving as mayor or county commissioner and district judge shall hold any city, county or state elective office or be employed by the state or any city or county while he is a member of the commission.

(4) The two (2) attorney members shall serve for a term of two (2) years and may succeed themselves for two (2) additional terms. The qualified elector members shall serve terms of six (6) years each and may succeed themselves. The mayors shall serve terms of six (6) years and may succeed themselves, provided that their terms will end when they cease to hold the office which entitles them to membership on the commission. Appointments to fill vacancies shall be made by the initial appointing authority for the unexpired term.

(5) A vacancy on the commission shall be caused by a voting member dying, resigning, moving his residence outside the district, moving his residence to another county and, in the case of a mayor, district judge or county commissioner member, losing his status as such official for any reason; provided, however, that except in the case of death or resignation of a voting member he shall continue to serve until his successor is duly appointed and qualified. A vacancy on the commission shall be caused by an attorney member dying, resigning, moving his residence to without the district or being suspended or disbarred from the practice of law. A temporary vacancy shall be caused by an attorney member having been engaged in the practice of law as a partner of an applicant or currently practicing law in the same firm as an applicant seeking a magistrate judge's position in the judicial district of the attorney member. It shall be the duty of any member who has become disqualified for any reason promptly to report that fact in writing to the chairman and secretary of the commission. It shall be the duty of the chairman or secretary promptly to report in writing to the appropriate appointing authority, the existence of any vacancy on the commission.

Approved March 12, 1996.

CHAPTER 164
(S.B. No. 1333)

AN ACT

RELATING TO COURT FEES; AMENDING SECTION 31-3201A, IDAHO CODE, TO PROVIDE FOR A FEE OF THIRTY-TWO DOLLARS TO REOPEN A DIVORCE ACTION OR MODIFY A DIVORCE DECREE AND TO PROVIDE FOR DISTRIBUTION OF THE FEE.

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

SECTION 1. That Section 31-3201A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201A. COURT FEES. The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law;

(a) A fee of $32.00 for filing a civil case of any type in the district court or in the magistrate's division of the district court including cases involving the administration of decedents' estates, whether testate or intestate, and conservatorships of the person or of the estate or both with the following exceptions:

The filing fee shall be $10.00 in each case where the amount of money or damages or the value of personal property claimed does not exceed $300. The filing fee shall be $12.00 in the following types of cases:

(1) Where the amount of money or damages or the value of personal property claimed exceeds $300 but does not exceed $1,000;

(2) Where a case is brought for forcible or unlawful entry or detainer whether brought for rent or possession or both and regardless of the amount;

(3) Where a case is brought under chapter 20, title 16, Idaho Code, for the termination of parent-child relationship;

(4) Where a case is brought under chapter 2, title 32, Idaho Code, for permission to marry;

(5) Where a case involving the administration of a decedent's estate is brought under the Summary Administration of Small Estates Act;

(6) In cases where a court order is issued only for a certain specific reason other than the administering of an estate, including but not limited to proceedings brought under sections 14-114, 15-514, 15-1401, 15-1518 and/or 15-1709, Idaho Code, or for some specific reason;

(7) In cases brought to determine heirship without administration;

(8) In cases brought to determine inheritance or transfer tax;

(9) In proceedings brought for adoption;

(10) In proceedings brought for letters of guardianship of the person or of the estate or both.

No filing fee shall be charged in the following types of cases:

(1) In cases brought under chapter 3, title 66, Idaho Code, for commitment of mentally ill persons;

(2) In cases brought under the Youth Rehabilitation Act;

(3) In cases brought under the Child Protective Act.

In all cases in which a filing fee of $32.00 is paid, $17.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $15.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $12.00 is paid, $4.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $8.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $10.00 is paid, $3.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $7.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(b) A fee of $15.50 shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, or found to have committed an infraction or any minor traffic, conservation or ordinance violation except when the court orders such fee waived because the person is indigent and unable to pay such fee; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, $5.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $10.50 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account. If the magistrate court facilities are provided by a city, $5.00 of such fee shall be paid to the city treasurer for deposit in the city general fund, $2.50 of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrates court facilities, and $8.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(c) A fee of $12.00 shall be paid by any party, except the plaintiff, making an appearance in any civil action in the district court or in the magistrate's division of the district court. Of such fee, $4.00 shall be paid to the county treasurer for deposit in the district court fund of the county; and $8.00 of such fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(d) A fee of $9.00 shall be paid by the person or persons required to make an account pursuant to either chapter 11 or chapter 18, title 15, Idaho Code, at the time such account is filed. All of

such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(e) A fee of $17.00 shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, $6.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $11.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(f) A fee of $7.00 shall be paid by an intervenor upon making an appearance in any civil action in the district court or in the magistrate's division of the district court. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(g) A fee of $8.00 shall be paid by a party filing a third party claim as defined in the Idaho Rules of Civil Procedure. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(h) A fee of $8.00 shall be paid by any party filing a cross-claim. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(i) A fee of $9.00 shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(j) A fee of $9.00 shall be paid by any party appearing after judgment or applying to reopen a case. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county. A fee of $32.00 shall be paid by a party applying to reopen a divorce action or modify a divorce decree, with all of the fee to be distributed in the same manner as the fee provided for in subsection (a), of this section is distributed.

(k) A fee of $9.00 shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court. No additional fee shall be required if a new trial is granted. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(l) A fee of $9.00 shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(m) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(n) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such

fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(o) That portion of the filing fees required to be remitted to the state treasurer for deposit in the state general account shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer.

(p) Of the fees derived from the filing of any divorce action required to be transmitted to the state treasurer for deposit in the general account, the county treasurer shall retain $5.00, which shall be separately identified and deposited in the district court fund of the county. Such moneys shall be used exclusively for the purpose of establishing a uniform system of qualifying and approving persons, agencies or organizations to conduct evaluations of persons convicted of domestic assault or battery as provided in section 18-918, Idaho Code. No provision of chapter 52, title 39, Idaho Code, shall apply to the moneys provided for in this subsection.

(q) In consideration of the aforesaid fees the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law.

Approved March 12, 1996.

CHAPTER 165
(S.B. No. 1335)

AN ACT

RELATING TO CLAIMS FOR WAGES; AMENDING SECTION 45-607, IDAHO CODE, TO PROVIDE FOR THE PAYMENT OF ATTORNEY'S FEES AND COSTS OF SUIT IN A SUIT FOR UNPAID WAGES AND PENALTIES IF A DEMAND IS MADE IN WRITING FIVE DAYS BEFORE SUIT IS BROUGHT FOR THE PAYMENT OF A SUM NOT TO EXCEED THE AMOUNT FOUND TO BE DUE BY THE COURT OR THE JURY.

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

SECTION 1. That Section 45-607, Idaho Code, be, and the same is hereby amended to read as follows:

45-607. PENALTY FOR FAILURE TO PAY. Whenever an employer fails to pay all wages then due an employee at the times due under section 45-606, Idaho Code, then the employee's regular wages he would have been entitled to had he rendered services in the manner as last employed, shall continue at the same rate from the day wages are due

until paid in full or for thirty (30) days, whichever is less.

No employee who secretes or absents himself to avoid payment, or refuses to receive the same when made available as provided for in section 45-606, Idaho Code, shall be entitled to any penalty under this chapter.

Every employee shall have such lien and all other rights and remedies for the protection and enforcement of such unpaid wages and penalties as he would have been entitled to had he rendered services therefor in the manner as last employed, including costs of suit and reasonable attorney's fees if a demand is made, in writing, at least five (5) days before suit is brought, for a sum not to exceed the amount found due by decision of the court or verdict of the jury.

Approved March 12, 1996.

CHAPTER 166
(S.B. No. 1336)

AN ACT

RELATING TO COURT FEES FOR DIVORCE ACTIONS; AMENDING SECTION 31-3201A, IDAHO CODE, TO PROVIDE THAT THE FIVE DOLLARS TO BE RETAINED BY THE COUNTY TREASURER FROM THE FILING OF A DIVORCE ACTION SHALL BE USED FOR THE COSTS OF EVALUATING, COUNSELING AND TREATING PERSONS CONVICTED OF DOMESTIC ASSAULT OR BATTERY FOR ANGER CONTROL AND PREVENTION.

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

SECTION 1. That Section 31-3201A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201A. COURT FEES. The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law;

(a) A fee of $32.00 for filing a civil case of any type in the district court or in the magistrate's division of the district court including cases involving the administration of decedents' estates, whether testate or intestate, and conservatorships of the person or of the estate or both with the following exceptions:

The filing fee shall be $10.00 in each case where the amount of money or damages or the value of personal property claimed does not exceed $300. The filing fee shall be $12.00 in the following types of cases:

(1) Where the amount of money or damages or the value of personal property claimed exceeds $300 but does not exceed $1,000;

(2) Where a case is brought for forcible or unlawful entry or detainer whether brought for rent or possession or both and regardless of the amount;

(3) Where a case is brought under chapter 20, title 16, Idaho

Code, for the termination of parent-child relationship;
(4) Where a case is brought under chapter 2, title 32, Idaho Code, for permission to marry;
(5) Where a case involving the administration of a decedent's estate is brought under the Summary Administration of Small Estates Act;
(6) In cases where a court order is issued only for a certain specific reason other than the administering of an estate, including but not limited to proceedings brought under sections 14-114, 15-514, 15-1401, 15-1518 and/or 15-1709, Idaho Code, or for some specific reason;
(7) In cases brought to determine heirship without administration;
(8) In cases brought to determine inheritance or transfer tax;
(9) In proceedings brought for adoption;
(10) In proceedings brought for letters of guardianship of the person or of the estate or both.
No filing fee shall be charged in the following types of cases:
(1) In cases brought under chapter 3, title 66, Idaho Code, for commitment of mentally ill persons;
(2) In cases brought under the Youth Rehabilitation Act;
(3) In cases brought under the Child Protective Act.

In all cases in which a filing fee of $32.00 is paid, $17.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $15.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $12.00 is paid, $4.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $8.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $10.00 is paid, $3.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $7.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(b) A fee of $15.50 shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, or found to have committed an infraction or any minor traffic, conservation or ordinance violation except when the court orders such fee waived because the person is indigent and unable to pay such fee; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, $5.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $10.50 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account. If the magistrate court facilities are provided by a city, $5.00 of such fee shall be

paid to the city treasurer for deposit in the city general fund, $2.50 of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrates court facilities, and $8.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(c) A fee of $12.00 shall be paid by any party, except the plaintiff, making an appearance in any civil action in the district court or in the magistrate's division of the district court. Of such fee, $4.00 shall be paid to the county treasurer for deposit in the district court fund of the county; and $8.00 of such fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(d) A fee of $9.00 shall be paid by the person or persons required to make an account pursuant to either chapter 11 or chapter 18, title 15, Idaho Code, at the time such account is filed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(e) A fee of $17.00 shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, $6.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $11.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(f) A fee of $7.00 shall be paid by an intervenor upon making an appearance in any civil action in the district court or in the magistrate's division of the district court. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(g) A fee of $8.00 shall be paid by a party filing a third party claim as defined in the Idaho Rules of Civil Procedure. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(h) A fee of $8.00 shall be paid by any party filing a cross-claim. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(i) A fee of $9.00 shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(j) A fee of $9.00 shall be paid by any party appearing after judgment or applying to reopen a case. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(k) A fee of $9.00 shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court. No additional fee shall be required if a new trial is granted. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(l) A fee of $9.00 shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(m) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(n) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(o) That portion of the filing fees required to be remitted to the state treasurer for deposit in the state general account shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer.

(p) Of the fees derived from the filing of any divorce action required to be transmitted to the state treasurer for deposit in the general account, the county treasurer shall retain $5.00, which shall be separately identified and deposited in the district court fund of the county. Such moneys shall be used exclusively for the purpose of establishing a uniform system of qualifying and approving persons, agencies or organizations to conduct evaluations of persons convicted of domestic assault or battery as provided in section 18-918, Idaho Code, and the administration of section 18-918(5), Idaho Code, relating to the evaluation and counseling or other treatment of such persons for anger control and prevention, including the payment of the costs of evaluating and counseling or other treatment of an indigent defendant. No provision of chapter 52, title 39, Idaho Code, shall apply to the moneys provided for in this subsection.

(q) In consideration of the aforesaid fees the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law.

Approved March 12, 1996.

CHAPTER 167
(S.B. No. 1338)

AN ACT

RELATING TO INJURY TO CHILDREN; AMENDING SECTION 18-1501, IDAHO CODE, TO ELIMINATE AN AMBIGUITY IN THE STATUTE BY REMOVING AN INCORRECTLY PLACED WORD.

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

SECTION 1. That Section 18-1501, Idaho Code, be, and the same is hereby amended to read as follows:

18-1501. INJURY TO CHILDREN. (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, ~~or~~ willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(3) The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

Approved March 12, 1996.

CHAPTER 168
(S.B. No. 1339)

AN ACT

RELATING TO COMPUTATION OF A TERM OF IMPRISONMENT; AMENDING SECTION 18-309, IDAHO CODE, TO PROVIDE THAT THE COURT SHALL GIVE CREDIT IN THE JUDGMENT FOR ANY PERIOD OF INCARCERATION PRIOR TO ENTRY OF JUDGMENT.

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

SECTION 1. That Section 18-309, Idaho Code, be, and the same is

hereby amended to read as follows:

18-309. COMPUTATION OF TERM OF IMPRISONMENT. In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Approved March 12, 1996.

CHAPTER 169
(S.B. No. 1340)

AN ACT

RELATING TO FORCIBLE ENTRY AND UNLAWFUL DETAINER; AMENDING SECTION 6-311A, IDAHO CODE, TO PROVIDE THAT IN AN ACTION EXCLUSIVELY FOR THE POSSESSION OF LAND OF FIVE ACRES OR LESS FOR THE NONPAYMENT OF RENT THE ACTION SHALL BE TRIED BY THE COURT WITHOUT A JURY; AND REPEALING SECTION 6-311B, IDAHO CODE.

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

SECTION 1. That Section 6-311A, Idaho Code, be, and the same is hereby amended to read as follows:

6-311A. JUDGMENT ON TRIAL BY COURT. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent, ~~if~~ the action ~~is~~ shall be tried by the court without a jury. If, ~~and~~ after hearing the evidence ~~it~~ the court concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of an action for damages.

SECTION 2. That Section 6-311B, Idaho Code, be, and the same is hereby repealed.

Approved March 12, 1996.

CHAPTER 170
(S.B. No. 1341)

AN ACT

RELATING TO NOTIFICATION OF LOST OR DESTROYED WARRANTS; AMENDING SECTION 67-1022, IDAHO CODE, TO REQUIRE THAT A DUPLICATE OR PHOTOCOPY OF AN AFFIDAVIT AFFIRMING THE LOSS OF A WARRANT BE SENT TO THE STATE TREASURER BY THE AGENCY REQUESTING ISSUANCE OF A DUPLICATE WARRANT.

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

SECTION 1. That Section 67-1022, Idaho Code, be, and the same is hereby amended to read as follows:

67-1022. WARRANTS, HOW DRAWN -- LOST WARRANTS. (1) All warrants must be drawn in the order prescribed by the state controller.

(2) In case of the loss or destruction of any warrant heretofore issued or that may be issued by the state controller, and, after notice by the involved agency to the state treasurer and state controller to stop payment on the lost or destroyed warrant the state controller is hereby authorized to issue his duplicate warrant to take the place of the warrant so lost or destroyed, upon satisfactory proof by affidavit of the loss of the said warrant. In the issuance of any such duplicate warrant, the state controller may require an indemnity bond, conditioned upon the payment to the state of Idaho of any loss or damage or obligation by reason of the said lost warrant becoming a claim against the state; and, it shall be the duty of the state controller to notify the state treasurer of the issuance of the said duplicate warrant.

(3) In all situations when the involved agency is required to send an affidavit to the state controller as proof of the loss of a warrant, the agency shall also send a duplicate or photocopy of the affidavit to the state treasurer.

Approved March 12, 1996.

CHAPTER 171
(S.B. No. 1351)

AN ACT

RELATING TO MANUFACTURED HOME DEALER'S AND BROKER'S LICENSING; AMENDING SECTION 44-2103, IDAHO CODE, TO PROVIDE THAT FEES AND BONDS PROVIDED SHALL BE THE EXCLUSIVE FEES AND BONDS REQUIRED OF SUPPLIERS GOVERNED BY THIS CHAPTER.

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

SECTION 1. That Section 44-2103, Idaho Code, be, and the same is hereby amended to read as follows:

44-2103. FEES -- DEPOSIT OF FEES. (1) Fees for licensing of dealers, brokers, manufacturers, salesmen and service companies shall not exceed:

(a) Manufactured home dealer or broker's license $250.00
(b) Manufacturer license $250.00
(c) Manufactured home service company/installer $125.00
(d) Manufactured home salesman's license ..... $ 25.00

(2) All license fees collected by the department under the provisions of this chapter shall be paid into the manufactured housing account, which is hereby created in the dedicated fund. The expenses incurred in administering and enforcing the provisions of this chapter shall be paid from the account.

(3) The following performance bonding requirements shall be met before the issuance of these licenses:

(a) Manufacturer ..... $20,000 bond
(b) Manufactured home dealer ..... $20,000 bond
(c) Manufactured home broker ..... $20,000 bond
(d) Manufactured home service company/installer .... $ 5,000 bond

(4) The director is authorized to provide by rule, in accordance with the provisions of section 44-2102, Idaho Code, for the acceptance of a money deposit in lieu of a bond in satisfaction of the bonding requirements of this section.

(5) Fees and bond requirements of this section shall be the exclusive fee and bond requirements for dealers, brokers, manufacturers, salesmen and service companies governed by the provisions of this chapter, and shall supersede any program of any political subdivision of the state which sets fee or bond requirements for the same services.

Approved March 12, 1996.

CHAPTER 172
(S.B. No. 1356)

AN ACT

RELATING TO THE FISH AND GAME COMMISSION; AMENDING SECTION 36-102, IDAHO CODE, TO INCREASE THE NUMBER OF MEMBERS ON THE FISH AND GAME COMMISSION, TO CREATE FISH AND GAME REGIONS WITHIN THE STATE, TO CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 36-102, Idaho Code, be, and the same is hereby amended to read as follows:

36-102. IDAHO FISH AND GAME COMMISSION. (a) Creation. There is hereby created the Idaho fish and game commission. The department of fish and game of the state of Idaho is hereby placed under the supervision, management and control of said Idaho fish and game commission, hereinafter referred to as the commission or as said commission.

(b) Membership -- Appointment -- Qualifications. The commission

shall consist of ~~six--(6)~~ seven (7) members, to be appointed by the governor of the state of Idaho, who shall hold office during the pleasure of the governor and who shall be subject to removal by him. The selection and appointment of said members shall be made solely upon consideration of the welfare and best interests of fish and game in the state of Idaho, and no person shall be appointed a member of said commission unless he shall be well informed upon, and interested in, the subject of wildlife conservation and restoration. No member shall hold any other elective or appointive office, state, county or municipal, or any office in any political party organization. Not more than ~~three-(3)~~ four (4) of the members of said commission shall at any time belong to the same political party. Each of the members of said commission shall be a citizen of the United States, and of the state of Idaho, and a bona fide resident of the ~~district~~ region from which he is appointed as hereinafter set forth. Said members so appointed shall act and assume full powers and duties upon appointment, as herein provided, but such appointments shall be subject to confirmation by the senate at its next session.

(c) Creation of ~~Districts~~ Regions -- Terms of Office. For the purpose of this act, the state of Idaho is divided into ~~six-(6)-districts,-numbered-from-one-(1)--to--six--(6)--respectively.~~ seven (7) regions, which shall be named:

~~District-No.-1-shall~~ (1) Panhandle region to consist of the counties of Boundary, Bonner, Kootenai, Shoshone~~,~~ and Benewah;

~~District--No.--2--shall~~ (2) Clearwater region to consist of the counties of Latah, Clearwater, Nez Perce, Lewis~~,~~ and Idaho;

~~District-No.-3-shall~~ (3) Southwestern region to consist of the counties of Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore~~,~~ and Owyhee;

~~District-No.-4-shall~~ (4) Magic Valley region to consist of the counties of ~~Lemhi,-Custer,-Clark,-Fremont,-Jefferson,-Bonneville,-Madison,-Teton-and-Butte~~ Camas, Blaine, Gooding, Lincoln, Minidoka, Jerome, Twin Falls and Cassia;

~~District--No.--5--shall~~ (5) Southeastern region to consist of the counties of Bingham, Power, Bannock, Caribou, Oneida, Franklin~~,~~ and Bear Lake;

~~District--No.--6-shall~~ (6) Upper Snake River region to consist of the counties of ~~Camas,--Gooding,--Jerome,--Twin--Falls,--Cassia,-Blaine,--Lincoln,--and--Minidoka~~ Clark, Fremont, Butte, Jefferson, Madison, Teton and Bonneville;

(7) Salmon region to consist of the counties of Lemhi and Custer.

Each of the above enumerated ~~districts~~ regions shall, at all times, be represented by one (1) member of the commission, appointed from said ~~district~~ region by the governor.

The members of said commission shall be appointed for a term of four (4) years; provided, that in the case of the death of any commissioner, or his removal from office as hereinbefore provided, the governor shall appoint a successor from the same ~~district~~ region for the unexpired term. No member shall serve more than two (2) consecutive terms, except that a member appointed to fill an unexpired term may be appointed to two (2) additional, full terms. Members serving on the effective date of this act shall be eligible to complete the term they are then serving, and shall thereafter be governed by the provisions

of this section limiting the length of any additional terms to four (4) years and the number of consecutive terms to two (2).

(d) Oath of Office -- Bond. Each commissioner shall, before entering upon his official duties, take and subscribe to the official oath, in writing, as provided by section 59-401, Idaho Code, to which said official oath there shall be added a declaration as to the name of the political party to which such commissioner belongs, and said commissioner shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

(e) Compensation and Reimbursement for Expenses. Each member of the commission shall be compensated as provided by section 59-509(h), Idaho Code. All such compensation and expenses shall be paid from the fish and game account.

(f) Quorum. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power.

(g) Office and Supplies. The commission shall have its principal office in the city of Boise and is authorized to purchase supplies, equipment, printed forms, and notices, and to issue such publications as may be necessary.

Approved March 12, 1996.

CHAPTER 173
(S.B. No. 1359)

AN ACT

RELATING TO THE CRIME OF INTENTIONALLY MAKING FALSE STATEMENTS; AMENDING CHAPTER 54, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5414, IDAHO CODE, TO PROVIDE CRIMINAL PENALTIES FOR PERSONS MAKING INTENTIONALLY FALSE STATEMENTS IN THE APPLICATION OR REQUEST FOR A DOMESTIC VIOLENCE PROTECTIVE ORDER.

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

SECTION 1. That Chapter 54, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-5414, Idaho Code, and to read as follows:

18-5414. INTENTIONALLY MAKING FALSE STATEMENTS. A person is guilty of a misdemeanor if he willfully and intentionally gives or causes to be given false information to any court, court personnel, court clerk or any state or local government agency or personnel in the application or request for a domestic violence protective order pursuant to chapter 63, title 39, Idaho Code.

Approved March 12, 1996.

CHAPTER 174
(S.B. No. 1364)

AN ACT

RELATING TO LICENSING AND REGULATION OF CREMATORIES; AMENDING SECTION 27-303, IDAHO CODE, TO PROVIDE THAT IT SHALL BE THE DUTY OF THE STATE BOARD OF MORTICIANS TO PROMULGATE RULES GOVERNING THE CREMATION OF HUMAN REMAINS; AMENDING SECTION 27-305, IDAHO CODE, TO PROVIDE THAT A PERMIT OR LICENSE TO OPERATE A CREMATORY SHALL BE ISSUED BY THE STATE BOARD OF MORTICIANS; AMENDING SECTION 27-306, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF MORTICIANS SHALL IMPOSE AN ANNUAL LICENSE FEE OF ONE HUNDRED DOLLARS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 27-307, IDAHO CODE, TO PROVIDE THAT RECORDS OF CREMATORIES MAY BE INSPECTED BY THE BUREAU OF OCCUPATIONAL LICENSES AS THE AGENT OF THE BOARD OF MORTICIANS; AMENDING SECTION 27-308, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF MORTICIANS MAY REFUSE TO GRANT OR REVOKE LICENSES TO OPERATE CREMATORIES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 27-309, IDAHO CODE, TO PROVIDE THAT VIOLATIONS OF THE STATE BOARD OF MORTICIAN'S RULES MAY BE ABATED AND PENALTIES IMPOSED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1106, IDAHO CODE, TO PROVIDE TO THE STATE BOARD OF MORTICIANS THE POWER AND DUTY TO LICENSE AND REGULATE CREMATORIES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1107, IDAHO CODE, TO PROVIDE TO THE BUREAU OF OCCUPATIONAL LICENSES POWERS AND DUTIES RELATING TO THE REGULATION AND LICENSING OF CREMATORIES IN THE STATE OF IDAHO AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 27-303, Idaho Code, be, and the same is hereby amended to read as follows:

27-303. INSPECTION OF CREMATORIES -- RULES ~~AND--REGULATIONS~~. It shall be the duty of the Idaho state board of ~~health-and-welfare~~ morticians to establish, promulgate and from time to time amend reasonable rules ~~and--regulations~~ governing the cremation of human remains. Such rules shall provide minimum standards of sanitation, required equipment and fire protection which the state board of health shall deem necessary for the protection of the public. The ~~director-of the-department-of-health-and-welfare~~ board of morticians or its agent shall inspect all crematoriums at least once each year and may inspect as often as the board of morticians shall deem necessary for the enforcement of this act.

SECTION 2. That Section 27-305, Idaho Code, be, and the same is hereby amended to read as follows:

27-305. PERMITS TO OPERATE CREMATORIES. Any person, firm, association or corporation desiring a crematory in the state of Idaho shall be a funeral establishment licensed under section 54-1111, Idaho Code, and shall apply for and receive from the ~~director-of-the-department-of~~

~~health-and-welfare~~ board of morticians a permit or license to be issued by and in such form as the ~~director~~ board shall prescribe. Applications for permits to operate crematories shall be in writing and shall contain the name of the applicant, the address and the location of the crematory and a description of the type of structure and equipment to be used in the operation of the crematory, and such further information as the ~~director~~ board may require. The ~~director~~ board or its agent shall examine the premises and structure to be used as a crematory and shall issue the permit only if the applicant and structure meet the standards required by the rules of the state board of ~~health-and-welfare~~ morticians and the provisions of this act.

SECTION 3. That Section 27-306, Idaho Code, be, and the same is hereby amended to read as follows:

27-306. LICENSE OR PERMIT FEE -- RENEWAL. Each applicant for a permit to operate a crematory in the state of Idaho shall pay to the ~~director~~ bureau of occupational licenses as agent of the board of morticians at the time of filing the application the sum of ~~twenty-five~~ one hundred dollars (~~$25.~~100). All licenses or permits issued under this act shall expire on June 30th of each year and may be renewed by payment of an annual license fee of ~~twenty-five~~ one hundred dollars (~~$25.~~100) provided the applicant is not in violation of this act or the rules ~~and regulations~~ of the state board of ~~health-and-welfare~~ morticians.

SECTION 4. That Section 27-307, Idaho Code, be, and the same is hereby amended to read as follows:

27-307. RECORDS OF CREMATORIES. Upon the receipt of a human body for cremation, the crematory shall deliver to the funeral director or his agent who delivers such body to the crematory, a receipt therefor showing the date of delivery, name of the funeral director from whom the body is received and the name of the deceased. Each crematory shall maintain a record of each cremation of human remains disclosing the name of the person cremated, the name of the person authorizing the cremation, the date the body was received, the date the cremation was performed and such other information as the state board of ~~health and welfare~~ morticians may require. The record of each cremation shall be signed by the owner or operator of the crematorium and by the licensed mortician who supervised the cremation. Such records shall be kept at the crematory for inspection by the ~~director of the department of--health-and-welfare~~ board of morticians who may also require copies thereof to be filed with ~~him~~ it or the bureau of occupational licenses containing such information as may be necessary for the use of the ~~director~~ board.

SECTION 5. That Section 27-308, Idaho Code, be, and the same is hereby amended to read as follows:

27-308. REVOCATION AND REFUSAL TO REISSUE LICENSE. The ~~director of the department of health and welfare~~ board of morticians may refuse to grant, or renew the license provided for in this act to a person

otherwise qualified who fails to meet or comply with the provisions of this act or the rules ~~and regulations~~ adopted by the ~~state~~ board of ~~health and welfare~~ morticians pursuant to the provisions of this act.

SECTION 6. That Section 27-309, Idaho Code, be, and the same is hereby amended to read as follows:

27-309. VIOLATION DECLARED PUBLIC NUISANCE -- ENFORCEMENT -- PENALTIES. Maintenance or operation of a building or structure within the state of Idaho as a crematorium in violation of the provisions of this act or the rules ~~and regulations~~ of the ~~state~~ board of ~~health and welfare~~ morticians adopted pursuant thereto is hereby declared to be a public nuisance and may be abated as such as provided by law. Any person who violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars ($100~~.00~~) or be imprisoned in the county jail for a period not exceeding thirty (30) days, or both by such fine and imprisonment. It shall be the duty of the ~~director of the department of health and welfare~~ bureau of occupational licenses as agent of the board of morticians that the provisions of this act are properly administered and enforced throughout the state and all peace officers and prosecuting attorneys shall aid in their several capacities in the discharge of these duties.

SECTION 7. That Section 54-1106, Idaho Code, be, and the same is hereby amended to read as follows:

54-1106. POWERS AND DUTIES OF BOARD. The state board of morticians shall have the following powers and duties:

A. To prepare, conduct, and grade examinations of applicants for mortician licenses.

B. To certify the results of examinations of applicants and certify the applicant as having "passed" or "failed."

C. To conduct hearings and proceedings in connection with the suspension or revocation of licenses.

D. To make findings and recommendations to the governor on any and all matters relating to the enforcement of the provisions of this act.

E. To perform all other duties and exercise all other powers granted under this act, or the laws of the state of Idaho.

F. To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

G. To perform all duties and exercise all powers granted under chapter 3, title 27, Idaho Code, pertaining to licensing and regulation of crematories.

SECTION 8. That Section 54-1107, Idaho Code, be, and the same is hereby amended to read as follows:

54-1107. POWERS AND DUTIES OF BUREAU CHIEF. The chief of the bureau of occupational licenses, shall have the following powers and duties under this act:

A. To determine and pass upon the qualifications of applicants

for all licenses under this act.

B. To issue all licenses provided for under the provisions of this act.

C. To annually renew licenses under this act.

D. To collect all fees prescribed and required herein.

E. To conduct hearings and proceedings for the suspension or revocation of licenses and to suspend or revoke any license for any of the causes hereinafter defined and set forth under this act; provided, however, that the bureau chief shall not revoke or suspend any license without first receiving written findings and recommendations from the board of morticians.

F. To keep general books of record of all official acts, proceedings and transactions of the board while acting under this act, including the following:

(1) A cash book showing in detail all receipts and disbursements for the board received or expended under this act.

(2) A special register containing the names and addresses of all applicants, the date the application was received, the result of the examination, and whether the applicant received a license or was rejected, and a full statement of the reasons therefor.

(3) All books of record kept shall be prima facie evidence of all matters therein recorded, and shall be public records.

G. To prescribe rules ~~and regulations~~ for the implementation and enforcement of the provisions of this act.

H. To publish and distribute copies of this act and the rules ~~and regulations~~ issued by the board to applicants, licensees and the public.

I. To perform all duties and exercise all powers granted under chapter 3, title 27, Idaho Code.

Approved March 12, 1996.

CHAPTER 175
(S.B. No. 1392)

AN ACT

RELATING TO CREATION OF A COMMISSION FOR REAPPORTIONMENT; AMENDING TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 15, TITLE 72, IDAHO CODE, TO PROVIDE CREATION OF A COMMISSION FOR REAPPORTIONMENT, TO PROVIDE APPOINTMENT OF MEMBERS OF THE COMMISSION, TO PROHIBIT POLITICAL ACTIVITIES, TO PROVIDE COMPENSATION, TO PROVIDE ORGANIZATION AND PROCEDURE, TO SPECIFY CRITERIA GOVERNING PLANS, TO PROVIDE STAFF AND TO PROVIDE FOR FILING A FINAL REPORT.

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

SECTION 1. That Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 15, Title 72, Idaho Code, and to read as follows:

CHAPTER 15
COMMISSION FOR REAPPORTIONMENT

72-1501. COMMISSION FOR REAPPORTIONMENT. (1) A commission for reapportionment shall be organized, upon the order of the secretary of state, in the event that:

(a) A court of competent jurisdiction orders a redistricting of an existing state legislative or congressional plan; or

(b) In a year ending in one (1), a new federal census is available, in which case an order shall be issued no earlier than June 1.

(2) A commission formed pursuant to paragraph (1)(b) of this section shall be reconvened if, prior to the next general election, a court of competent jurisdiction orders the plan adopted by that commission to be revised.

72-1502. MEMBERS. The president pro tempore of the senate, the speaker of the house of representatives, and the minority leaders of the senate and the house of representatives shall each designate one (1) member of the commission and the state chairmen of the two (2) largest political parties, determined by the vote cast for governor in the last gubernatorial election, shall each designate one (1) member of the commission. Appointing authorities should give consideration to achieving geographic representation in appointments to the commission. If an appointing authority does not select the members within fifteen (15) calendar days following the secretary of state's order to form the commission, such members shall be appointed by the supreme court.

Should a vacancy on the commission occur during the tenure of a commission, the secretary of state shall issue an order officially recognizing such vacancy. The vacancy shall be filled by the original appointing authority within fifteen (15) days of the order. Should the original appointing authority fail to make the appointment within fifteen (15) days, the vacancy shall be filled by the supreme court.

No person may serve on the commission who:

(1) Is not a registered voter of the state at the time of selection; or

(2) Is or has been within one (1) year a registered lobbyist; or

(3) Is or has been within two (2) years prior to selection an elected official or elected legislative district, county or state party officer. The provisions of this subsection do not apply to the office of precinct committeeperson.

A person who has served on a commission for reapportionment shall be precluded from serving in either house of the legislature for five (5) years following such service on the commission.

72-1503. POLITICAL ACTIVITIES PROHIBITED. No person may serve on the commission who is a candidate for political office as the term "candidate" is defined in section 67-6602, Idaho Code. In the event a person serving on the commission becomes a candidate, a vacancy on the commission shall be declared by the secretary of state, and filled as provided by law.

72-1504. COMPENSATION. Members of the commission shall be compen-

sated at the rate established by the citizen's committee on compensation for members of the legislature who are engaged in legislative business while the legislature is not in session. In addition, they shall be entitled to expense reimbursement for actual travel expense, including transportation, food and lodging, when necessary for officially authorized commission business at the same rate as expense reimbursements are made for other state offices and employees.

72-1505. ORGANIZATION AND PROCEDURE. The commissioners shall elect, by majority vote, a member or members to serve as chairman or cochairmen and other officers as they may determine.

All proceedings of the commission shall be governed by the following procedure:

(1) All meetings of the commission shall be subject to the provisions of the open meeting law.

(2) The commission shall provide notice of all meetings to any citizen or organization requesting the same.

(3) Copies of the validated census database, and all other databases available to the commission, will be provided in a form, as determined by the commission, to any person at cost.

(4) The commission shall hold meetings in different locations in the state in order to maximize the opportunity for public participation.

(5) A quorum of the commission shall consist of four (4) members. In the event there is a previously scheduled meeting, less than a quorum may take testimony and information, but no votes other than to set a future agenda, to prepare for future meetings, and to adjourn or recess, may be taken. Any final action of the commission shall be by a vote of two-thirds (2/3) of the full membership of the commission.

(6) A member must be present to vote.

(7) A redistricting plan may be presented to the commission by an individual citizen or organization. All such plans shall be public information. Any citizen or organization shall provide a current mailing address and telephone number to accompany any plan submitted.

72-1506. CRITERIA GOVERNING PLANS. Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

(1) The total state population as reported by the U.S. census bureau, and the population of subunits determined therefrom, shall be exclusive permissible data.

(2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.

(3) Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes.

(4) To the maximum extent possible, the plan should avoid drawing districts that are oddly shaped.

(5) Division of counties should be avoided whenever possible. Counties should be divided into districts not wholly contained within that county only to the extent reasonably necessary to meet the requirements of the equal population principle. In the event that a county must be divided, the number of such divisions, per county,

should be kept to a minimum.

(6) To the extent that counties must be divided to create districts, such districts shall be composed of contiguous counties.

(7) District boundaries should retain, as far as practicable, the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code.

(8) Counties shall not be divided to protect a particular political party or a particular incumbent.

72-1507. STAFF. The legislative council is directed to furnish such secretarial and other staff assistance as the commission may require in the performance of its duties. The council shall prepare and submit a budget for the expenses of the commission, including staff, equipment, meetings, salary and expense reimbursement of members, for consideration by the legislature not later than the session held in a year ending in nine (9) preceding the convening of a commission.

72-1508. FINAL REPORT. The final report of the commission shall be filed with the office of the secretary of state not more than ninety (90) days after the commission has been organized. At the next regular or special session of the legislature, the secretary of state shall transmit a copy of the report to the president of the senate and the speaker of the house, which shall be spread upon the journals.

Approved March 12, 1996.

CHAPTER 176
(S.B. No. 1400)

AN ACT

RELATING TO THE SCHOOL ACCOUNTABILITY REPORT CARD; AMENDING SECTION 33-4501, IDAHO CODE, TO PROVIDE THAT REQUIREMENTS OF THE SECTION SHALL APPLY IN A DISTRICT WHICH CHOOSES TO REQUIRE SCHOOL ACCOUNTABILITY REPORT CARDS; AND AMENDING SECTION 33-4502, IDAHO CODE, TO PROVIDE THAT A BOARD OF TRUSTEES MAY CHOOSE TO REQUIRE A SCHOOL ACCOUNTABILITY REPORT CARD.

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

SECTION 1. That Section 33-4501, Idaho Code, be, and the same is hereby amended to read as follows:

33-4501. SCHOOL ACCOUNTABILITY REPORT CARD. In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the superintendent of public instruction shall by October 30, 1990, develop and present to the state board of education for adoption a statewide model school accountability report card.

(1) The model school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(a) Student progress toward meeting reading, writing, arithmetic and other academic goals as measured by a listing of scores on applicable statewide tests over at least a three (3) year period. High school reports should include both SAT and composite ACT scores for a similar period.
(b) Progress toward reducing drop-out rates.
(c) Estimated expenditures per student.
(d) Progress toward reducing class size and teaching loads.
(e) Reduction of teachers assigned outside their subject areas of competence.
(f) Currency of textbooks and other instructional materials.
(g) The availability of qualified personnel to provide counseling and other student support services.
(h) Qualifications and utilization of substitute teachers.
(i) Safety and adequacy of school facilities.
(j) An explanation of the teacher evaluation process.
(k) Classroom discipline and climate for learning.
(l) Teacher and staff training.
(m) Curriculum improvement.
(n) Quality of school instruction.
(o) Quality of school leadership.
(p) School goals and progress toward those goals.
(q) Achievement of any individual, team or class awards in district, state or national competition; i.e., a school wide "bragging sheet."

(2) In a district which chooses to prepare a district report card, c~~C~~ompilation of report cards of individual schools into one (1) district report is a recommended format so long as individuality is maintained and comparisons can be made. ~~This~~ A district report, or the report on the largest high school, if either is prepared in the district, shall include reproductions of the district's school profile for the latest two (2) years as prepared by the state department of education.

(3) There is hereby created in the department of education a task force on instructional improvement which shall consist of not more than eleven (11) members. The superintendent of public instruction shall appoint the members of the task force on instructional improvement. The members of the task force shall consist of practicing classroom teachers, school administrators, parents, school board members, classified employees, students and education research specialists and provided that four (4) members of the task force shall consist of practicing classroom teachers. In developing the statewide model school accountability report card, the superintendent of public instruction shall consult with the task force on instructional improvement. Members of the task force shall be compensated as provided in section 59-509(b), Idaho Code. The task force shall terminate upon the adoption of a statewide model accountability report card.

SECTION 2. That Section 33-4502, Idaho Code, be, and the same is hereby amended to read as follows:

33-4502. SCHOOL DISTRICT REQUIREMENTS. The board of trustees of each school district, including a specially chartered district, main-

taining an elementary or secondary school ~~shall~~ may require each school to develop a school accountability report card by June 30, 1991 and implement the same by October 15, 1991.

(1) The school accountability report card may include, but is not limited to, the conditions listed in section 33-4501, Idaho Code. A school's accountability report card, if a card is required, shall be developed with input from teachers, parents and patrons.

~~(2) Not less than every three (3) years, the board of trustees of each school district, including specially chartered districts, shall compare the categories of each school's accountability report card to the model school accountability report card adopted by the state board of education and shall disseminate a written assessment of the differences which shall be included with the next published school accountability report card. Variances among schools are expected and shall be permitted to account for local needs.~~

~~(3)~~ The board of trustees of each school district, including specially chartered districts, ~~shall~~ may require each school to annually issue~~, on or before October 15,~~ a school accountability report card, publicize such report card and notify parents or guardians of each student that a copy will be provided upon request.

Approved March 12, 1996.

CHAPTER 177
(S.B. No. 1401)

AN ACT

RELATING TO THE STATUTE OF FRAUDS; AMENDING SECTION 9-505, IDAHO CODE, TO DELETE THE REQUIREMENT OF WRITTEN NOTICE ON CERTAIN PROMISES OR COMMITMENTS TO LEND MONEY OR GRANT OR EXTEND CREDIT.

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

SECTION 1. That Section 9-505, Idaho Code, be, and the same is hereby amended to read as follows:

9-505. CERTAIN AGREEMENTS TO BE IN WRITING. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 9-506, Idaho Code.

3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be

charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars ($50,000) or more, made by a person or entity engaged in the business of lending money or extending credit~~,-hereinafter-a-"covered--transaction."-The-person-or-entity-making-the-promise-or-commitment-must-disclose--the--foregoing-provision-to-the-borrower-in-writing-at-the-time of-closing-of-any-covered-transaction-between--them.--Such--disclosure may--be--in-the-note-or-other-loan-instrument-or-may-be-contained-in-a separate-writing.-Rendering-of-financial-advice-by--a--creditor--to--a debtor-is-not-a-covered-transaction.~~

Approved March 12, 1996.

CHAPTER 178
(S.B. No. 1404)

AN ACT

RELATING TO SECURED TRANSACTIONS; AMENDING SECTION 28-9-104, IDAHO CODE, TO OMIT DEPOSIT ACCOUNTS FROM TRANSACTIONS EXCLUDED BY ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 28-9-105, IDAHO CODE, TO CHANGE THE DEFINITION OF "DEPOSIT ACCOUNT"; AND AMENDING SECTION 28-9-302, IDAHO CODE, TO PROVIDE PROCEDURES FOR PERFECTING A SECURITY INTEREST IN DEPOSIT ACCOUNTS.

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

SECTION 1. That Section 28-9-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-104. TRANSACTIONS EXCLUDED FROM CHAPTER. This chapter does not apply:

(a) To a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) To a landlord's lien; or

(c) To a lien given by statute or other rule of law for services or materials except as provided in section 28-9-310 on priority of such liens; or

(d) To a transfer of a claim for wages, salary or other compensation of an employee; or

(e) To a transfer by a government or governmental subdivision or agency; or

(f) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexist-

ing indebtedness; or

(g) To a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (section 28-9-306), and priorities in proceeds (section 28-9-312); or

(h) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) To any right of set-off; or

(j) Except to the extent that provision is made for fixtures in section 28-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) To a transfer in whole or in part of any claim arising out of tort~~;-or~~

~~(l)--To---a--transfer--of--an--interest--in--any--deposit--account (subsection-(1)-of-section-28-9-105),-except-as-provided-with--respect to--proceeds--(section--28-9-306)--and-priorities-in-proceeds-(section 28-9-312)~~.

SECTION 2. That Section 28-9-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-105. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a <u>negotiable</u> certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of chapter 1 (section 28-1-201), and a receipt of the kind described in subsection (2) of section 28-7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section

28-9-313), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 28-3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service;

(o) "Photographic record" means images of documents stored in digital form on a medium which will not permit alteration of the image, as well as images of documents produced by a photochemical process on film.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account."	Section 28-9-106.
"Attach."	Section 28-9-203.
"Commodity contract."	Section 28-9-115.
"Commodity customer."	Section 28-9-115.
"Commodity intermediary."	Section 28-9-115.
"Construction mortgage."	Section 28-9-313(1).
"Consumer goods."	Section 28-9-109(1).
"Control."	Section 28-9-115.
"Equipment."	Section 28-9-109(2).
"Farm products."	Section 28-9-109(3).
"Fixture."	Section 28-9-313(1).
"Fixture filing."	Section 28-9-313(1).
"General intangibles."	Section 28-9-106.
"Inventory."	Section 28-9-109(4).
"Investment property."	Section 28-9-115.

"Lien creditor."	Section 28-9-301(3).
"Proceeds."	Section 28-9-306(1).
"Purchase money security interest."	Section 28-9-107.
"United States."	Section 28-9-103.

(3) The following definitions in other chapters apply to this chapter:

"Broker."	Section 28-8-102.
"Certificated security."	Section 28-8-102.
"Check."	Section 28-3-104.
"Clearing corporation."	Section 28-8-102.
"Contract for sale."	Section 28-2-106.
"Control."	Section 28-8-106.
"Delivery."	Section 28-8-301.
"Entitlement holder."	Section 28-8-102.
"Financial asset."	Section 28-8-102.
"Holder in due course."	Section 28-3-302.
"Note."	Section 28-3-104.
"Sale."	Section 28-2-106.
"Securities intermediary."	Section 28-8-102.
"Security."	Section 28-8-102.
"Security certificate."	Section 28-8-102.
"Security entitlement."	Section 28-8-102.
"Uncertificated security."	Section 28-8-102.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 3. That Section 28-9-302, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-302. WHEN FILING IS REQUIRED TO PERFECT SECURITY INTEREST -- SECURITY INTERESTS TO WHICH FILING PROVISIONS OF THIS CHAPTER DO NOT APPLY. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 28-9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under section 28-9-304 or in proceeds for a ten (10) day period under section 28-9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 28-9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (section 28-4-208) or arising under the chapter on sales (see section 28-9-113) or covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the

transferor, and subsequent transfers by the assignee thereunder;

(h) a security interest in investment property which is perfected without filing under section 28-9-115 or section 28-9-116;

(i) a security interest in timber retained by the state of Idaho;

(j) a security interest in a deposit account. Such a security interest is perfected:

(i) as to a deposit account maintained with the secured party, when the security agreement is executed; and

(ii) as to a deposit account not described in subparagraph (i), when notice thereof in writing is given to the organization with whom the deposit account is maintained.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) chapter 5, title 49, Idaho Code, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of part 4, chapter 9, title 28, apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 28-9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 28-9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

(5) The filing provisions of this chapter do not apply to a security interest in personal property or fixtures of any utility company, as hereinafter defined, which security interest is created by a mortgage, deed of trust or other security agreement which also covers real property situated in the state of Idaho and which has been filed for record in accordance with the laws of Idaho governing deeds of trust and mortgages on real property. Such security interest shall be perfected by such filing, whether such filing shall have been accomplished before or after the effective date set out in section 28-10-101; and such security interest shall be and remain effective, both as to the personal property or fixtures covered by the security interest at the time that it is perfected and as to personal property

or fixtures which may subsequently be covered by the security interest under any after-acquired property provision of the mortgage, deed of trust, or other security agreement creating the security interest, as long as such mortgage, deed of trust or other security agreement shall remain in effect, without the necessity for any refiling under the provisions of this chapter 9.

Except as provided in the preceding paragraph of this subsection (5) notwithstanding anything in this chapter 9 or any other law to the contrary, the proper place to file a financing statement in order to perfect a security interest in personal property or fixtures of a utility company, as hereinafter defined, is in the office of the secretary of state; and the security interest covered by the financing statement shall continue perfected, both as to the personal property or fixtures covered by the security interest at the time that it is perfected and as to personal property or fixtures which may subsequently be covered by the security interest under any after-acquired property provision of the security agreement creating the security interest, without the necessity for any refiling or filing of a continuation statement under the provisions of this chapter 9, for as long as may be provided for in the security agreement creating the security interest. When the financing statement covers goods of a utility company as hereinafter defined, which goods are or are to become fixtures, no description of the real estate concerned or the name of the record owner or record lessee thereof is required.

A "utility company" shall mean any person, corporation, association, or other entity, foreign or domestic, primarily engaged in the railroad or street railway business; the ownership or operation of wires, or cables, used in the transmission or distribution of telephone, telegraph or television signals or any other information or data; the transmission or distribution of oil, gas or petroleum products by pipeline; or the generation, production, transmission or distribution of electric energy, steam, gas or water, whether its activities be interstate or intrastate.

Approved March 12, 1996.

CHAPTER 179
(S.B. No. 1405)

AN ACT

RELATING TO THE IDAHO BUILDING CODE ADVISORY ACT; AMENDING SECTION 39-4109, IDAHO CODE, TO PROVIDE FOR THE ADOPTION OF SPECIFIED CODES AND TO PROVIDE FOR EXCEPTIONS, TO DELETE CERTAIN CODES, TO ADD THE UNIFORM CODE FOR BUILDING CONSERVATION AND TO DELETE OBSOLETE REFERENCES.

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

SECTION 1. That Section 39-4109, Idaho Code, be, and the same is hereby amended to read as follows:

39-4109. ADOPTION OF CODES. The following codes are hereby adopted for the state of Idaho:

(1) The latest edition of the Uniform Building Code, published by the International Conference of Building Officials, as adopted by the Idaho Building Code Advisory Board and appendices thereto, excepting appendices ~~chapter 1 as it relates to existing buildings,~~ chapter ~~11~~ 3 divisions 2-4 as it relates to agricultural buildings and ~~structures, chapter 12 as it relates to group R division 3 occupancies, chapter 31,~~ requirements for R-3 and R-4 occupancies, chapter 4 as it relates to special use and occupancy, chapter 9 as it relates to basement pipe inlets, chapter 10 as it relates to building security, chapter ~~35~~ 12 division II as it relates to sound transmission control, chapter 19 as it relates to protection of residential concrete exposed to freezing and thawing, chapter 21 as it relates to prescriptive masonry construction in high wind areas, chapter 23 as it relates to conventional light frame construction in high wind areas, chapter 31 division III as it relates to patio cover, and chapter ~~70~~ 33 as it relates to excavation and grading, and chapter 34 as it relates to existing structures;

(2) The latest edition of the Uniform Mechanical Code, ~~1973,~~ published by the International Conference of Building Officials ~~and the International Association of Plumbing and Mechanical Officials~~;

(3) ~~Americans with Disabilities Act (ADA) Part III, (Appendix A to Part 36 Standards for Accessible Design), Accessibility Guidelines for Buildings and Facilities as published in the Federal Register Volume 56 No. 144, Friday, July 26, 1991, and subsequent editions and this shall also be known as UBC Standard 31-1;~~

~~(4)~~ The latest edition of the Safety Code for Elevators~~, Dumbwaiters,~~ and Escalators ~~and Moving Walks,~~ (ASME/ANSI A17.1)~~-1971, and ANSI A17.1b-1973~~, published by the American Society of Mechanical Engineers and the American National Standards Institute;

(~~5~~4) The latest edition of the Life Safety Code, ~~National Fire Protection Association Code number~~ NFPA-101~~-1973~~, published by the National Fire Protection Association; and

~~(6) National Fire Protection Association Code numbers 501A-1974, and 501B-1974, published by the National Fire Protection Association; and~~

~~(7) Americans with Disabilities Act (ADA) Part II, Accessibility Guidelines for Buildings and Facilities, and Transportation Facilities as published in the Federal Register Volume 56 No. 173, Friday, September 6, 1991.~~

(5) The latest edition of the Uniform Code for Building Conservation, published by the International Conference of Building Officials.

Approved March 12, 1996.

CHAPTER 180
(S.B. No. 1549)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL

YEAR 1997; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Water Resources the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT SERVICES:					
FROM:					
General Fund	$ 717,700	$ 369,800	$ 44,600	$ 414,100	$ 1,546,200
Water Administration Fund	29,400	20,300			49,700
Indirect Cost Recovery Fund	213,000	44,200	16,000		273,200
TOTAL	$ 960,100	$ 434,300	$ 60,600	$ 414,100	$ 1,869,100
II. PLANNING AND POLICY DIVISION:					
FROM:					
General Fund	$1,399,600	$ 254,400	$ 34,000	$ 414,600	$ 2,102,600
Water Pollution Control Fund	161,100	40,900	9,000	350,000	561,000
Federal Grant Fund	96,700	56,800	2,400		155,900
Indirect Cost Recovery Fund	51,700	4,300			56,000
Miscellaneous Revenue Fund	95,900	193,500	4,600		294,000
TOTAL	$1,805,000	$ 549,900	$ 50,000	$ 764,600	$ 3,169,500
III. ENERGY DIVISION:					
FROM:					
General Fund	$ 132,700	$ 22,800			$ 155,500
Petroleum Violation Escrow Fund	244,300	1,562,600			1,806,900
Federal Grant Fund	627,700	585,500			1,213,200
Indirect Cost Recovery Fund	77,800	110,000			187,800
Miscellaneous Revenue Fund		20,000			20,000
TOTAL	$1,082,500	$2,300,900			$ 3,383,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
IV. WATER MANAGEMENT DIVISION:					
A. SNAKE BASIN ADJUDICATION:					
FROM:					
General Fund	$1,484,500	$ 753,200	$ 6,000	$ 71,700	$ 2,315,400
Water Claims Adjudication Fund				500,000	500,000
TOTAL	$1,484,500	$ 753,200	$ 6,000	$ 571,700	$ 2,815,400
B. WATER MANAGEMENT:					
FROM:					
General Fund	$2,355,600	$ 466,600	$ 69,000		$ 2,891,200
Water Administration Fund	395,800	85,000	11,300		492,100
Resource Conservation Fund				$ 50,000	50,000
Federal Grant Fund	125,400	195,300	7,600		328,300
Indirect Cost Recovery Fund	38,700	3,100			41,800
Miscellaneous Revenue Fund	243,800	33,900	6,600		284,300
TOTAL	$3,159,300	$ 783,900	$ 94,500	$ 50,000	$ 4,087,700
GRAND TOTAL	$8,491,400	$4,822,200	$211,100	$1,800,400	$15,325,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Water Resources is authorized no more than one hundred seventy-one (171) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 12, 1996.

CHAPTER 181
(S.B. No. 1547)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 1997; CLARIFYING THE APPROPRIATION FOR THE PORTFOLIO INVESTMENT PROGRAM; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Public Employee Retirement System the following amounts, to be expended for the named programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. RETIREMENT ADMINISTRATION:				
FROM:				
Public Employee Retirement System Fund	$1,646,300	$3,623,800	$ 91,000	$5,361,100
II. PORTFOLIO INVESTMENT:				
FROM:				
Public Employee Retirement System Fund	$ 241,400	$ 196,800	$ 28,200	$ 466,400
III. 401(k) ADMINISTRATION:				
FROM:				
401(k) Administration Fund		$ 5,000		$ 5,000
GRAND TOTAL	$1,887,700	$3,825,600	$119,200	$5,832,500

SECTION 2. Notwithstanding Section 59-1311(4)(d), Idaho Code, moneys appropriated in Section 1 of this act for the Portfolio Investment Program are for administrative costs of the Portfolio Program as provided in Section 59-1311(3), Idaho Code. Amounts necessary to pay all other investment expenses related to the Portfolio Program are perpetually appropriated to the Public Employee Retirement System Board as provided in Section 59-1311(4)(a), (b) and (c), Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Public Employee Retirement System is authorized no more than forty-eight (48) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 12, 1996.

CHAPTER 182
(S.B. No. 1514)

AN ACT

RELATING TO CHARITABLE SOLICITATIONS; AMENDING SECTION 48-1202, IDAHO CODE, TO PROVIDE DEFINITIONS AND REQUIREMENTS FOR DISCLOSURE

LABELS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 48-1203, IDAHO CODE, TO PROVIDE UNLAWFUL ACTS AND TO PROVIDE EXCEPTIONS.

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

SECTION 1. That Section 48-1202, Idaho Code, be, and the same is hereby amended to read as follows:

48-1202. DEFINITIONS. In this chapter:

(1) "Charitable organization" means:

(a) Any person determined by the Internal Revenue Service to be tax exempt pursuant to section 501(c)(3) of the Internal Revenue Code; or

(b) Any person who is or who holds himself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental, civic, veteran or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner engages in a charitable solicitation.

(2) "Charitable purpose" means:

(a) Any purpose described in Internal Revenue Code section 501(c)(3); or

(b) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental, civic, veteran, or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety.

(3) "Charitable solicitation" means any oral or written request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such money, credit, property, financial assistance or other thing of value or any portion thereof, will be used for a charitable purpose or benefit a charitable organization. No contribution need be made in order for a charitable solicitation to be deemed to have taken place.

(4) "Container" means any box, carton, package, receptacle, canister, jar, dispenser or machine that offers a product for sale or distribution as part of a charitable solicitation.

(5) "Contribution" means the grant, promise or pledge of money, credit, property, financial assistance or other thing of value in response to a charitable solicitation.

(~~5~~6) "Damages" means a loss, detriment or injury, whether to person, property, reputation or rights through any act or practice declared unlawful under the provisions of this chapter.

(7) "Disclosure label" means a printed or typed notice that is legible and easy to read and is affixed to a container in a conspicuous place on containers accessible to the public. Disclosure labels shall inform the public of the following:

(a) The approximate annual percentage paid, if any, to any individual, person or charitable organization to maintain, service or collect the contributions raised by the solicitation;

(b) The net percentage or sum paid to the specific charitable

purpose in the most recent calendar year;

(c) If the maintenance, service, and collection from the container is performed by volunteers or paid individuals.

(68) "Person" means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

SECTION 2. That Section 48-1203, Idaho Code, be, and the same is hereby amended to read as follows:

48-1203. UNLAWFUL ACTS. (1) It is unlawful for any person, except a religious corporation, a religious association, a religious educational institution or a religious society, in the planning, conduct or execution of any charitable solicitation, to utilize any unfair, false, deceptive, misleading or unconscionable act or practice. In deciding whether an act or practice is unfair, false, deceptive, misleading or unconscionable within the meaning of this subsection, definitions, standards and interpretations relating thereto under the Idaho consumer protection act and regulations promulgated thereunder shall apply.

(2) It is unlawful for a religious corporation, a religious association, a religious educational institution or a religious society, in the planning, conduct or execution of any charitable solicitation, knowingly and willfully to utilize any false, deceptive or misleading act or practice.

(3) It is unlawful for any person or charitable organization to use a container in a public place to solicit contributions by offering a product for sale knowing the container does not have a disclosure label affixed to it. However, no charitable organization shall be liable under this subsection if the container generates less than a gross amount of one hundred dollars ($100) per year or the charitable organization generates less than a gross amount of five hundred dollars ($500) per year from all sources for any charitable purpose or purposes. It is an absolute defense to prosecution under this subsection if the person or charitable organization soliciting contributions has given one hundred percent (100%) of the receipts generated by the container to the designated charitable organization to further the charitable purpose or purposes for which contributions were solicited.

Approved March 12, 1996.

CHAPTER 183
(S.B. No. 1503)

AN ACT

RELATING TO LEASING OF OFFICE SPACE FOR STATE USE; AMENDING SECTION 67-5708, IDAHO CODE, TO PROVIDE THAT OFFICE SPACE SHALL INCLUDE AND MEAN THE WAREHOUSE AND CENTRAL OFFICE OF THE IDAHO STATE

LIQUOR DISPENSARY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-5708, Idaho Code, be, and the same is hereby amended to read as follows:

67-5708. LEASING OF OFFICE SPACE FOR STATE USE -- MANAGEMENT OF STATE CAPITOL MALL -- CONTROL OF PARKING. The department of administration shall negotiate for, approve, and make any and all lease or rental agreements for office space to be used by the various state departments, agencies and institutions in the state of Idaho. For purposes of this chapter, the term "office space" shall include and mean the warehouse and central office of the Idaho state liquor dispensary.

The department of administration shall manage multi-agency office space constructed through the state building authority as established in chapter 64, title 67, Idaho Code, and shall sublease such office space to various state departments, agencies, and institutions in the state of Idaho. The department of administration is directed to operate any property acquired for the state capitol mall and to enter into rental contracts and lease agreements not inconsistent with the use of such capitol mall real estate for state building purposes when so authorized.

The director may authorize and enter into leases of state capitol mall real estate and multi-agency office space constructed through the state building authority, not needed for state building purposes, to other governmental entities or to nonprofit organizations upon such terms as are just and equitable.

The administrator of the division of public works shall promulgate rules for the control of the parking of motor vehicles in the state capitol mall. Any person who shall violate any of the provisions of the rules shall be subject to a fine of not less than two dollars ($2.00) nor more than twenty-five dollars ($25.00); provided however, that any person who shall violate any of the provisions of the rules concerning the altering, counterfeiting or misuse of parking permits shall be subject to a fine of not more than fifty dollars ($50.00).

Every magistrate and every court having jurisdiction of criminal offenses and the violation of public laws committed in the county of Ada shall have jurisdiction to hear and determine violations of the provisions of the rules and to fix, impose and enforce payment of fines therefor. Alleged violations of the parking rules are not subject to the provisions of chapter 52, title 67, Idaho Code. The department of administration may pay costs incurred in the operation and management of those properties from rents received therefrom.

When a state building or facility of the state of Idaho is authorized by statute, and a maximum cost for such building or facility has been set by statute, the administrator of the division of public works may enter into lease-purchase or other time-purchase agreements with the Idaho state building authority or other party for such building or facility.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 12, 1996.

CHAPTER 184
(S.B. No. 1483)

AN ACT

RELATING TO TAX NOTICES AND FEES FOR SERVICES; AMENDING SECTION 63-1103, IDAHO CODE, TO REQUIRE THAT AN ENTITY REQUESTING A FEE BE PLACED ON THE TAX NOTICE, HAVE THE AUTHORITY TO PUT A LIEN ON THE PROPERTY AND TO ENABLE THE FEE TO BE COLLECTED LIKE REAL AND PERSONAL PROPERTY TAXES; AMENDING SECTION 63-2201A, IDAHO CODE, TO REQUIRE THAT AN ENTITY, REQUESTING A FEE BE PLACED ON THE TAX NOTICE, HAVE THE AUTHORITY TO PUT A LIEN ON THE PROPERTY AND TO ENABLE THE FEE TO BE COLLECTED LIKE REAL AND PERSONAL PROPERTY TAXES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-1103, Idaho Code, be, and the same is hereby amended to read as follows:

63-1103. TAX NOTICE AND RECEIPTS -- DUTY OF TAX COLLECTOR. (a) The tax collector of each county in this state must, prior to the fourth Monday of November in each year, mail to every taxpayer, or to his agent or representative, at his last known post-office address, a tax notice prepared upon forms prescribed by the state tax commission, which shall contain at least the following:

(1) The year in which the tax was levied.
(2) The name and address of the property owner.
(3) An accurate description of the property, or in lieu thereof, the registered tax number.
(4) The uniform parcel number.
(5) Full market value.
(6) The amount of taxes due shown separately and in total:
  a. State;
  b. County;
  c. City;
  d. School district;
  e. And every other tax being separately shown.
(7) All tax levies in tax code area.
(8) The date when such taxes become delinquent.
(9) All delinquency certificates outstanding against said property.
(10) Whether a tax custodial account exists.

(b) The original or copies of tax notices shall be numbered con-

secutively and the original and duplicate tax notices affecting the same assessment shall bear the same numbers, which numbers must be entered upon the real property assessment roll.

(c) Tax notices prepared by tax code areas shall state that levy sheets are available to the public.

(d) Levy sheets shall list the total tax levy for each taxing district or taxing jurisdiction and total in each tax code area.

(e) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall deliver to the equitable titleholder a true copy of the tax notice provided for herein on or before the second Monday of December.

(f) A "tax code area" for purposes of this section shall mean a geographical area made up of one or more taxing districts with one total levy within its boundary.

(g) The original receipts shall be retained for a period of ten (10) years. Tax entries shall be preserved as permanent records by the tax collector either in original form or on microfilm to be made available when necessary for reviewing.

(h) Computer and data processing routines for completion of all phases of the tax roll procedures may be utilized with the responsibility for completion of each office's statutory duties to remain under the supervision of that office. Wherever the designation tax assessment roll appears, data processing or computer procedures and forms to be known as official tax records may be substituted.

(i) No charge, other than property taxes, shall be included on a tax notice unless the entity placing such charge has received approval from the board of county commissioners to place such charge on the tax notice and such entity:

(1) Has the authority by law to place a lien on property; and

(2) Has the authority to certify such charge to the auditor; and

(3) Is required to collect such charge in the same manner provided by law for the collection of real and personal property taxes.

SECTION 2. That Section 63-2201A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2201A. FEES FOR SERVICES. (1) Notwithstanding any other provision of law, the governing board of any taxing district may impose and cause to be collected fees for those services provided by that district which would otherwise be funded by ad valorem tax revenues. The fees collected pursuant to this section shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered.

(2) No charge, other than property taxes, shall be included on a tax notice unless the taxing district placing such charge has received approval by the board of county commissioners to place such charge on the tax notice and meets the criteria set forth in subsection (i) of section 63-1103, Idaho Code.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1996.

Approved March 12, 1996.

CHAPTER 185
(S.B. No. 1481)

AN ACT

RELATING TO HUNTING LICENSES; AMENDING SECTION 36-404, IDAHO CODE, TO ALLOW THE EARLY PURCHASE OF A HUNTING LICENSE BY SOME YOUTHS; AND AMENDING SECTION 36-407, IDAHO CODE, TO ALLOW THE EARLY PURCHASE OF A HUNTING LICENSE BY SOME YOUTHS; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 36-404, Idaho Code, be, and the same is hereby amended to read as follows:

36-404. CLASSES OF LICENSES. The licenses required by the provisions of this title shall be of eight (8) classes. Licenses of the first five (5) classes mentioned in this section may be purchased or obtained only by persons who meet residency requirements under the provisions of section 36-202(r) and (s), Idaho Code, or who are valid holders of a lifetime license certificate.

Class 1: Adult Combination -- Hunting -- Fishing -- Trapping Licenses. Licenses to be issued only to persons who are residents of the state of Idaho.

Class 2: Youth Hunting -- Trapping Licenses. (a) Hunting license. Licenses to be issued only to persons who are residents of the state of Idaho and are between twelve (12) and seventeen (17) years of age, inclusive. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age.

(b) Trapping licenses. Licenses to be issued only to persons who are residents of the state of Idaho and are seventeen (17) years of age or younger.

Class 3: Youth Combination -- Fishing Licenses. Licenses to be issued only to persons who are residents of the state of Idaho between fourteen (14) and seventeen (17) years of age, inclusive.

Class 4: Senior Resident Combination License. Licenses to be issued only to persons over sixty-five (65) years of age who have been bona fide residents of the state of Idaho for a continuous period of not less than five (5) years last preceding application.

Class 5: Resident Lifetime Combination -- Hunting -- Fishing License. Licenses to be issued only to persons who are valid holders of a lifetime license certificate.

Class 6: Nonresident Hunting -- Fishing -- Trapping -- Licenses. Licenses required of persons who are nonresidents.

Class 7: Duplicate License -- Tag. A license or tag to be issued as a replacement for an original license or tag lost or mutilated. Said license or tag shall be issued in the same class and type as the original and upon issuance of such duplicate license or tag the original license or tag shall become null and void.

Class 8: Resident Hunting and Fishing License with Tags, Permits and Stamps. Licenses to be issued only to persons who meet residency requirements under the provisions of section 36-202(r) and (s), Idaho Code.

SECTION 2. That Section 36-407, Idaho Code, be, and the same is hereby amended to read as follows:

36-407. NONRESIDENT FISHING, HUNTING, AND TRAPPING LICENSES -- FEES -- RIGHTS UNDER. Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) Nonresident Hunting License. A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of one hundred dollars ($100).

(b) Nonresident Season Fishing License. A license entitling a person to fish in the public waters of the state. A license of this kind may be had by persons fourteen (14) years of age or older upon payment of fifty dollars ($50.00).

(c) Nonresident Trapping License. A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of this kind may be had upon payment of one hundred and fifty dollars ($150) providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) Nonresident Nongame License. A license entitling a person to carry a shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of fifteen dollars ($15.00). This license shall be valid only during the period of January 1 to August 31 of the calendar year in which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Two Day Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, and pygmy rabbits for any two (2) consecutive days. A person holding this license may not hunt pheasants in an area

during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of fifty-five dollars ($55.00).

(f) Falconry Meet Permit. The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of ten dollars ($10.00). Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) Daily Fishing License -- Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of six dollars ($6.00) for the first effective day and three dollars ($3.00) for each consecutive day thereafter.

(h) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of thirty dollars ($30.00). The three (3) day license holder may fish for and take one (1) steelhead trout and one (1) anadromous salmon or either two (2) steelhead trout or two (2) anadromous salmon subject to the limitations prescribed in this title and rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so. Moneys collected pursuant to this subsection shall be remitted as specified by law.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after May 1, 1996.

Approved March 12, 1996.

CHAPTER 186
(S.B. No. 1480)

AN ACT

RELATING TO THE ADJUDICATION OF WATER RIGHTS; AMENDING SECTION 42-1401A, IDAHO CODE, TO ESTABLISH WHEN CONSUMPTIVE USE MUST BE DECREED; AMENDING SECTION 42-1411, IDAHO CODE, TO PROVIDE A STATUTORY CITATION FOR THE ANNUAL VOLUME OF CONSUMPTIVE USE; AMENDING SECTION 42-1411A, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING SECTION 42-1414, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING SECTION 42-1420, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 42-1421, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING SECTION 42-1425, IDAHO CODE, TO CLARIFY THAT PURPOSE OF USE AND NATURE OF USE REFER TO THE SAME WATER RIGHT ELEMENT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-1401A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1401A. DEFINITIONS. The following terms are defined for purposes of this chapter as follows:

(1) "Claimant" means any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf ownership of rights to the use of water is asserted.

(2) "Consumptive use" means the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purposes of maintaining water quality is required before the water may be returned to the water system. "Consumptive use" for an irrigation water right shall be based upon the most water consumptive crop that can be grown in the area during the period of the year when water is used for irrigation. "Consumptive use" is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code. The determination of the annual volume of "consumptive use" for all uses of water other than irrigation need not be decreed unless reported in the director's report. "Consumptive use" amounts not decreed may be quantified, when quantification is necessary, as part of any future transfer proceedings pursuant to section 42-222, Idaho Code.

(3) "Department" means the Idaho department of water resources.

(4) "Director" means collectively the director of the Idaho department of water resources and the Idaho department of water resources.

(5) "Domestic use" is defined in section 42-111, Idaho Code.

(6) "General adjudication" means an action both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system, except as provided in section 42-1420, Idaho Code, and for the administration of those rights.

(7) "Party" means any person who is a claimant or any person who is served or joined.

(8) "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity, except that "person" does not include the director of the department or the department.

(9) "Private adjudication" means an action commenced in accordance with section 42-1404, Idaho Code, for the judicial determination of both the extent and priority of the rights of named persons to the use of water from any water system within the state of Idaho, for which a general adjudication has not been commenced or completed, that binds only those persons joined in the action and for the administration of such rights.

(10) "Purchaser" means any successor in interest of a claimant, whether the interest is acquired by purchase, gift, inheritance, or other means.

(11) "Supplemental adjudication" means an action commenced in accordance with section 42-1424, Idaho Code, for the judicial determi-

nation of both the extent and priority of the rights of a person to the use of water from any water system within the state of Idaho which has been adjudicated in a general adjudication or in a private adjudication.

(12) "Stock watering use" means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day.

(13) "Water system" includes all rivers, streams, lakes, springs, ground waters, or other sources within this state, including any river system or other source, as used in 43 U.S.C. section 666.

SECTION 2. That Section 42-1411, Idaho Code, be, and the same is hereby amended to read as follows:

42-1411. REPORT OF THE DIRECTOR. (1) The director shall prepare a director's report on the water system. The director may file the director's report in parts as the director deems appropriate. The director may include such explanatory material as he deems appropriate in the director's report. Such explanatory material shall not impose any conditions or restrictions on the rights reported and shall not be subject to objection. This explanatory material shall not be used to support any notice of claim, objection to a notice of claim, or response to an objection.

(2) The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:

(a) the name and address of the claimant;

(b) the source of water;

(c) the quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right;

(d) the date of priority;

(e) the legal description of the point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(f) the purpose of use;

(g) the period of the year when water is used for such purposes;

(h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;

(i) the annual volume of consumptive use <u>as provided in section 42-1401A(2), Idaho Code;</u>

(j) conditions on the exercise of any water right included in any decree, license, or approved transfer application; and

(k) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

(3) The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights.

(4) The director shall file the director's report with the district court, and the director's report shall be a part of the record. Upon filing with the court, the director's report, except for the explanatory material referred to in subsection (1) of this section, shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law. The unobjected to portions of the director's report shall be decreed as reported.

(5) Each claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right. Since the director's report is prima facie evidence of the nature and extent of the water rights acquired under state law, a claimant of a water right acquired under state law has the burden of going forward with the evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report. Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection. Any other party to the proceeding may submit evidence in opposition to the objector's position and in support of the director's report. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

(6) The director shall file an original of the director's report with the district court. The director shall also distribute for display and review at least one (1) copy of the director's report to the office of the clerk of the district court for each county in which any part of the water system is located. The director shall also serve on each claimant or the claimant's attorney whose water right is listed in the director's report a notice of filing of the director's report. Notice shall be sent to the last known address of the claimant or the claimant's attorney. The notice shall be prepared by the director using plain and concise language and shall include:

(a) a statement that the director's report of the various water rights acquired under state law has been filed with the district court, naming the district court(s) to which the report was filed;

(b) a copy of that portion of the report setting forth the claimant's water right;

(c) a statement that a complete copy of the director's report is available for inspection, listing the locations at which the director's report is available, which shall include the office of the clerk of the district court for each county in which any part of the water system is located, the offices of the department, and any other locations the director may designate;

(d) a statement that all or a portion of the director's report is available upon request at the offices of the department, subject to payment of a reasonable fee to cover costs of reproduction and mailing;

(e) a statement that any claimant may file objections to any portion of the director's report with the district court specified in the notice and must mail a copy of the objection to the director, and to the claimant of each claimed right objected to, if the objector is not also the claimant of the right for which the objection is filed;

(f) the date prior to which all objections must be filed, which

shall not be less than sixty (60) days for any director's report containing five hundred (500) claims or less, one hundred twenty (120) days for any director's report containing more than five hundred (500) claims and not more than five thousand (5,000) claims, and one hundred eighty (180) days for any director's report containing more than five thousand (5,000) claims; the above-stated periods of time shall commence on the date of service by mail of the notice of filing;

(g) a statement that claimants may file responses with the court to objections filed against their claims, and that a copy of any response must be mailed to the director and to the objector;

(h) the date prior to which all responses to objections must be filed with the court, which shall not be less than one hundred twenty (120) days following receipt of a copy of the objection; and

(i) a statement that any part of the report to which no objections are filed shall be decreed by the district court and the time and location set for the hearing at which the unobjected parts of the report will be decreed, which time shall not be less than sixty (60) days following the expiration of the period for filing responses to objections.

(7) The director shall file an affidavit with the district court demonstrating compliance with the notice requirements of subsection (6) of this section.

SECTION 3. That Section 42-1411A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1411A. SERVICE OF NOTICE OF AND DETERMINATION OF WATER RIGHTS ESTABLISHED UNDER FEDERAL LAW. (1) The district court shall determine the water rights established under federal law in accordance with the procedures established in this section.

(2) The district court shall determine the following procedures for water rights established under federal law:

(a) The contents of a notice of water right claims established under federal law;

(b) The method of service of the notice of water right claims established under federal law;

(c) The location of any depositories of notices of claim for water rights established under federal law, if the district court determines that claim depositories are necessary to provide other claimants reasonable access to the notices of claims established under federal law.

(3) The district court shall be guided by the following three (3) principles in establishing the procedures required in this section:

(a) The purpose of this notice is to provide notice to other claimants of the filing of water rights established under federal law comparable to the notice of filing for water rights acquired under state law;

(b) The procedures shall not impose any burden greater than the burden placed upon the director to prepare, file, and serve the notice of filing for a director's report; and

(c) The procedure shall comply with the McCarran amendment, 43

USC 666.

(4) Any claimant of a water right established under federal law shall serve all such notices of claim on the other claimants in accordance with the procedures established by the district court.

(5) Any claimant may contract with the director to perform all or any portion of the service required in this section. The director shall require in any contract that the cost of the services provided by the director are reimbursed by the claimant of a water right established under federal law.

(6) The United States, if it filed any notices of claim for a water right established under federal law, and any other claimants of such water rights, shall file an affidavit demonstrating proof of service in compliance with this section.

(7) The district court shall provide at least sixty (60) days for filing objections to water rights established under federal law where the number of those water rights are five hundred (500) or less, at least one hundred twenty (120) days where the number of these water rights are more than five hundred (500) and not more than five thousand (5,000), and at least one hundred eighty (180) days where the number of these water rights are more than five thousand (5,000).

(8) Any claimant who desires to object to a claim established under federal law shall file an objection with the district court within the time specified in the notice of water right claims established under federal law. The claimant shall also send a copy of the objection to the claimant whose claim is the subject of the objection and to the director. Any claimant may file a response to an objection.

(9) The notice of claim, objection, and responses to an objection shall identify the issues to be litigated.

(10) If a claimant of a water right established under federal law has filed notices of claim for one (1) water use based upon state and federal law, the district court shall develop procedures, after an opportunity for hearing, for coordination of the determination of such claims based upon state and federal law.

(11) The district court shall conduct the trial without a jury on an objection or any group of objections in accordance with the Idaho rules of civil procedure.

(12) Each claimant of a water right established under federal law has the ultimate burden of persuasion for each element of a water right. Since no independent review of the notice of claim has occurred as provided for water rights acquired under state law in a director's report, a claimant of a water right established under federal law has the burden of going forward with the evidence to establish a prima facie case for the water right established under federal law. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

(13) The district court shall enter a partial decree that contains or incorporates a statement of each element of a water right as stated in subsection (~~2~~1) of section 42-1409, Idaho Code, as applicable, and that contains such general provisions, remarks, and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

(14) If no objections are filed to a notice of claim for a water

right established under federal law, the claimant shall appear at a hearing scheduled by the district court and shall demonstrate a prima facie case of the existence of the water right established under federal law prior to entry of a decree for such claimed water right established under federal law. If the claimant fails to present a prima facie case of the existence of the water right established under federal law, then the district court shall enter an order determining that the claimed water right does not exist.

(15) Any party may appeal in accordance with the Idaho rules of civil procedure.

(16) The attorney general shall represent the state of Idaho in all matters regarding claims to water rights established under federal law, including, but not limited to, filing objections to water right claims established under federal law.

SECTION 4. That Section 42-1414, Idaho Code, be, and the same is hereby amended to read as follows:

42-1414. FEES FOR FILING NOTICE OF CLAIMS WITH THE DIRECTOR. (1) In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights the department of water resources shall accept no notice of claim required under the provisions of section 42-1409, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after January 1, 1985.

(a) Flat fee per claim filed:

(i) Claims for domestic and/or ~~stockwatering~~ stock watering rights $25.00

(ii) Claims for all other rights $50.00

(b) Additional variable water use fee for claims filed based upon acreage, power generating capacity, c.f.s., or equivalent volume of water:

(i) Irrigation use (one fee irrespective of number of claims): ..... $ 1.00 per acre

(ii) Power: ..... $ 3.50 per kilowatt of capacity (manufacturer's nameplate rating)

(iii) Aquaculture: ..... $ 10.00 per c.f.s.

(iv) Municipal, industrial, commercial, mining, heating, cooling: ..... $100.00 per c.f.s.

(v) Public instream flow, public lake level maintenance, wildlife: ..... $100.00 per c.f.s.

(c) Payment of a variable water use fee of more than one thousand dollars ($1,000) may be spread out over as many as five (5) annual equal payments with ten percent (10%) interest accruing on the unpaid balance. All fees collected by the department pursuant to this section shall be placed in the water resources adjudication account established in section 42-1777, Idaho Code.

(2) If a claimant increases in an amended notice of claim the amount of water claimed, the amount of land irrigated, or the kilowatt

capacity of the generating facility, the claimant shall pay upon filing the amended notice of claim an additional variable fee in accordance with the rates set forth in subsection (1) of this section. Claimants shall be entitled to a return of filing fees or late fees only where the fee was miscalculated at the time the original or amended notice of claim was filed.

(3) If a claimant files a notice of claim after the date set by the director in the notice mailed or served in accordance with subsections (2), (3), or (4) of section 42-1408, Idaho Code, or with subsection (9~~7~~) of section 42-1409, Idaho Code; the claimant shall pay the fee set forth in subsection (1) of this section, and in addition, the amount of fifty dollars ($50.00) or fifteen percent (15%) of the original filing fee, whichever is greater. The director may waive the late processing fee or a portion thereof for good cause.

SECTION 5. That Section 42-1420, Idaho Code, be, and the same is hereby amended to read as follows:

42-1420. BINDING EFFECT OF DECREE -- EXCEPTIONS. (1) The decree entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system except that the following described water rights shall not be lost by failure to file a notice of claim:

(a) a water right for domestic use or stock watering use, specifically excluded from the general adjudication by court order;

(b) a water right application for permit filed under chapters 2 or 15, title 42, Idaho Code;

(c) a water right permit issued under chapters 2 or 15, title 42, Idaho Code, unless the director required the permit holder to file a notice of claim in accordance with subsection (9~~7~~) of section 42-1409, Idaho Code;

(d) a water right license issued under chapter 2 or 15, title 42, Idaho Code, if proof of beneficial use had not been filed on the date of commencement of the general adjudication, unless the director required the license holder to file a notice of claim in accordance with subsection (7) of section 42-1409, Idaho Code; and

(e) a claim to a water right established under federal law, if the priority of the right claimed is later than and junior to the date of entry of the order commencing the general adjudication.

(2) The exceptions from the conclusive effect of a decree in a general adjudication stated in subsection (1) above shall not apply to any water right for which a notice of claim or negotiated agreement is filed.

SECTION 6. That Section 42-1421, Idaho Code, be, and the same is hereby amended to read as follows:

42-1421. PROCEDURES FOR ADJUDICATION OF UNPERFECTED WATER RIGHTS INITIATED UNDER STATE LAW -- DIRECTOR'S JURISDICTION. (1) All persons claiming a water right based on an application or permit on the date of entry of the order commencing a general adjudication are not required to file a notice of claim unless required in accordance with subsection (9~~7~~) of section 42-1409, Idaho Code. If the director

approves the application in whole or in part during the pendency of a general adjudication and prior to filing the director's report, the director shall notify the permit holder of the pendency of the general adjudication. A permit holder who is not required by the director to file a notice of claim in accordance with subsection (~~9~~7) of section 42-1409, Idaho Code, may file a notice of claim at any time prior to filing the director's report.

(2) All persons claiming a water right based on a water right license existing on the date of entry of the order commencing a general adjudication shall file a notice of claim.

(3) The district court shall decree any claimed water right for which proof of beneficial use has not been filed, but shall state that the right is conditioned upon completion of the appropriation in accordance with the laws of the state governing the appropriation of water and that the decreed right shall be subject to the terms of the license to appropriate water that is ultimately issued.

(4) The director retains jurisdiction of all applications, permits and licenses under chapter 2, 3, 6 or 15, title 42, Idaho Code, to take action authorized by the conditions contained in any permit or license or by applicable law and action on any application for transfer under section 42-222, Idaho Code.

(5) The director retains jurisdiction of all decreed water rights under chapters 2, 3 and 6, title 42, Idaho Code, to take action authorized by the conditions of any decree or by applicable law, including action on any application for transfer under section 42-222, Idaho Code.

(6) The director retains jurisdiction of all beneficial use water rights under chapters 2, 3 and 6, title 42, Idaho Code, to take action authorized by applicable law.

SECTION 7. That Section 42-1425, Idaho Code, be, and the same is hereby amended to read as follows:

42-1425. ACCOMPLISHED TRANSFERS. (1) Legislative findings regarding accomplished transfers and the public interest.

(a) The legislature finds and declares that prior to the commencement of the Snake River basin adjudication, many persons entitled to the use of water or owning land to which water has been made appurtenant either by decree of the court or under provisions of the constitution and statutes of this state changed the place of use, ~~purpose of use,~~ point of diversion, nature <u>or purpose</u> of use, or period of use of their water rights without compliance with the transfer provisions of sections 42-108 and 42-222, Idaho Code.

(b) The legislature finds that many of these changes occurred with the knowledge of other water users and that the water has been distributed to the right as changed. The legislature further finds and declares that the continuation of the historic water use patterns resulting from these changes is in the local public interest provided no other existing water right was injured at the time of the change. Denial of a claim based solely upon a failure to comply with sections 42-108 and 42-222, Idaho Code, where no injury or enlargement exists, would cause significant undue finan-

cial impact to a claimant and the local economy. Approval of the accomplished transfer through the procedure set forth in this section avoids the harsh economic impacts that would result from a denial of the claim.

(c) The legislature further finds and declares that examination of these changes by the director through the procedures of section 42-222, Idaho Code, would be impractical and unduly burdensome. The more limited examination of these changes provided for in this section, constitutes a reasonable procedure for an expeditious review by the director while ensuring that the changes do not injure other existing water rights or constitute an enlargement of use of the original right.

(2) Any change of place of use, ~~purpose of use,~~ point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, may be claimed in a general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right. Except for the consent requirements of section 42-108, Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures:

(a) If an objection is filed to a claim for accomplished change of place of use, ~~purpose of use,~~ point of diversion, nature or purpose of use or period of use, the district court shall remand the water right to the director for further hearing to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right. After a hearing, the director shall submit a supplemental report to the district court setting forth his findings and conclusions. If the claimant or any person who filed an objection to the accomplished transfer is aggrieved by the director's determination, they may seek review before the district court. If the change is disallowed, the claimant shall be entitled to resume use of the original water right, provided such resumption of use will not cause injury or can be mitigated to prevent injury to existing water rights. The unapproved change shall not be deemed a forfeiture or abandonment of the original water right.

(b) This section is not applicable to any claim based upon an enlargement of use.

SECTION 8. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 12, 1996.

CHAPTER 187
(S.B. No. 1476)

AN ACT

RELATING TO WATER DELIVERY ORGANIZATIONS; AMENDING SECTION 42-1102, IDAHO CODE, TO CLARIFY WHAT THE RIGHT-OF-WAY INCLUDES, TO PROVIDE WHAT CONSTITUTES NOTICE TO THE OWNER OF THE LAND THAT THE OWNER OF THE DITCH, CANAL OR CONDUIT HAS THE RIGHT-OF-WAY, TO PROVIDE APPLICATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-1204, IDAHO CODE, TO CLARIFY WHAT THE RIGHT-OF-WAY INCLUDES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-1102, Idaho Code, be, and the same is hereby amended to read as follows:

42-1102. OWNERS OF LAND -- RIGHT TO RIGHT-OF-WAY. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for the purposes of irrigation~~:~~. The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. Pprovided, that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation, must keep such ditch, canal or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section.

This section shall apply to ditches, canals or other conduits existing on the effective date of this act, as well as to ditches, canals or other conduits constructed after such effective date.

SECTION 2. That Section 42-1204, Idaho Code, be, and the same is hereby amended to read as follows:

42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes or other conduits, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others. The owners or constructors have the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 12, 1996.

CHAPTER 188
(S.B. No. 1469)

AN ACT

RELATING TO ADOPTION; AMENDING SECTION 16-1507, IDAHO CODE, TO STRIKE THE REQUIREMENT FOR IDENTIFICATION OF PARENTAGE FOR FOREIGN BORN CHILD; AMENDING CHAPTER 15, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1514, IDAHO CODE, TO PROVIDE FOR A JUDICIAL PROCEDURE FOR THE ADOPTION OF FOREIGN BORN CHILDREN RECOGNIZING PERMISSION BY THE UNITED STATES DEPARTMENT OF STATE OR THE UNITED STATES DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE, OR IN THE ALTERNATIVE AN ORDER FROM A COURT OR AUTHORIZED AGENCY FROM THE COUNTRY OF BIRTH, AS GROUNDS FOR THE ENTRY OF A DECREE OF ADOPTION BY AN IDAHO COURT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 16-1507, Idaho Code, be, and the same is hereby amended to read as follows:

16-1507. ORDER OF ADOPTION. The judge must examine all persons appearing before him pursuant to ~~the last section~~ this chapter, each separately, and ~~the~~ any report of the investigation provided pursuant to the last section and if satisfied that the interests of the child will be promoted by the adoption, he must in the adoption of all foreign born persons make a finding of facts as to the true or probable date and place of birth ~~and parentage~~ of the foreign born child to be adopted and make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

SECTION 2. That Chapter 15, Title 16, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 16-1514, Idaho Code, and to read as follows:

16-1514. INTERNATIONAL ADOPTION. (1) Proceedings to adopt a foreign born child who has been allowed to enter the United States for the purpose of adoption shall be commenced by the filing of a petition under this section. Similarly, United States citizen parents who have adopted a child in a foreign country may commence proceedings to have the foreign adoption recognized and granted judicial comity by the filing of a petition under this section. A petition under this section shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the judicial district in which said person or persons reside. The petitioner shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the child proposed to be adopted and the name by which he or she shall be known when adopted;

(c) The degree of relationship of the child, if any, to the petitioner or petitioners;

(d) The child's country of origin, and date of birth, if known;

(e) That the child has been issued a visa or other document authorizing entry into the United States as an immigrant or for the purpose of adoption in the United States and the date of the person's entry into the United States;

(f) That a home study of the petitioner or petitioners was prepared and the name of the person or agency performing the home study. A copy of the home study shall be attached to the petition;

(g) That, to the information and belief of the petitioners, the biological parents of the child to be adopted are residents of another country;

(h) That the adoption of such child is in the child's best interests.

(2) At the time fixed for the hearing on a petition for adoption

under this section, the person or persons adopting the child and the child to be adopted must appear before the court where the petition was filed. The judge shall examine the petitioner or petitioners at the hearing and, if satisfied that the proposed adoption is in the best interests of the child to be adopted, shall enter a decree of adoption. The petitioner or petitioners shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as the petitioner's own lawful child.

(3) This section governs the adoption of all foreign born children who have entered the United States to be adopted or who have entered the United States as immigrants after having been adopted in a foreign country by United States citizens. Notwithstanding any other provision of this chapter, no consent shall be required from the biological parents of the child to be adopted if the child has been granted permission by the United States department of state or United States department of justice, immigration and naturalization service to enter the United States for the purpose of adoption or as an immigrant after having been adopted in a foreign country by United States citizens. A visa or other document from the United States department of state or United States department of justice, immigration and naturalization service authorizing entry into the United States for the purpose of adoption or as an immigrant due to adoption in a foreign country by a United States citizen, shall be deemed conclusive evidence of the termination of the parental rights of the biological parents and compliance with the laws of the country of the child's birth. The provisions of chapter 20, title 16, Idaho Code, shall not apply to adoptions under this section.

(4) The decisions and orders of foreign courts and government agencies, authorized to approve adoptions, shall be accorded judicial comity or the same full faith and credit accorded a judgment of a sister state without additional proceedings or documentation, provided the United States department of state or United States department of justice, immigration and naturalization service has allowed the child to enter the United States as set forth in subsection (3) of this section.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 12, 1996.

CHAPTER 189
(S.B. No. 1468)

AN ACT

RELATING TO JURY SERVICE; AMENDING SECTION 2-209, IDAHO CODE, TO PROVIDE THAT A POSTPONEMENT SHALL BE PROVIDED FOR NURSING MOTHERS AND TO AUTHORIZE THE COURT TO REQUEST DOCUMENTATION OF MEDICAL CONDITIONS.

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

SECTION 1. That Section 2-209, Idaho Code, be, and the same is hereby amended to read as follows:

2-209. COURT DETERMINATION OF QUALIFICATION OF PROSPECTIVE JUROR -- QUALIFICATIONS -- PHYSICIAN'S CERTIFICATE OF PHYSICAL OR MENTAL DISABILITY. (1) The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical list of names drawn from the master jury wheel.

(2) A prospective juror is disqualified to serve on a jury if he:

(a) is not a citizen of the United States, eighteen (18) years old, and a resident of the county;

(b) is unable to read, speak, and understand the English language;

(c) is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion;

(d) has lost the right to vote because of a criminal conviction; or

(e) is seventy (70) years of age or older and submits in writing a statement requesting that he be excused.

(3) The court shall provide that a mother nursing her child shall have service postponed until she is no longer nursing the child.

(4) The court may require a person requesting a postponement for any medical reason to provide documentation from a medical care provider and the provider is subject to inquiry by the court at its discretion.

Approved March 12, 1996.

CHAPTER 190
(S.B. No. 1462)

AN ACT

RELATING TO THE CHIROPRACTIC PRACTICE ACT; AMENDING CHAPTER 7, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-715, IDAHO CODE, TO PROVIDE FOR IMMUNITY FROM LIABILITY FOR MEMBERS OF THE PEER REVIEW COMMITTEE, TO MAKE LICENSEE PARTICIPATION IN THE PEER REVIEW SYSTEM MANDATORY AND TO EXEMPT PEER REVIEW FROM THE CONTESTED CASE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT.

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

SECTION 1. That Chapter 7, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-715, Idaho Code, and to read as follows:

54-715. PEER REVIEW COMMITTEE. The board of examiners may act as a peer review committee or may appoint other licensed chiropractors to perform such functions as set forth in section 54-707(13), Idaho Code.

(1) No monetary liability on the part of, and no cause of action for damages may arise against any member of a peer review committee duly appointed pursuant to the provisions of this chapter, for any act or proceeding undertaken or performed within the scope of the functions of such committee as provided in rules to be promulgated by the board pursuant to chapter 52, title 67, Idaho Code, if the committee member:

(a) Acts without malice;

(b) Has made a reasonable effort to obtain the facts of the matter on which the member acts; and

(c) Acts in reasonable belief that the action taken is warranted by the facts as known by the member after a reasonable effort to obtain facts.

(2) The contested case provisions of chapter 52, title 67, Idaho Code, do not apply to activities of the peer review committee.

(3) All licensees shall, as a condition of licensure, fully cooperate with and promptly respond to inquiries and requests from the committee

(4) The recommendations of the committee as to necessity for services of a licensee, and as to reasonableness of charges and procedures shall be reported to the person who requested the review and one (1) member of the board of examiners as designated by the board.

Approved March 12, 1996.

CHAPTER 191
(S.B. No. 1437)

AN ACT

RELATING TO THIRD PARTY LIABILITY UNDER WORKER'S COMPENSATION LAW; AMENDING SECTION 72-223, IDAHO CODE, TO LIMIT THE CLASSIFICATION OF THIRD PARTIES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 72-223, Idaho Code, be, and the same is hereby amended to read as follows:

72-223. THIRD PARTY LIABILITY. (1) The right to compensation under this law shall not be affected by the fact that the injury, occupational disease or death is caused under circumstances creating in some person other than the employer a legal liability to pay damages therefor, such person so liable being referred to as the third

party. Such third party shall not include those employers described in section 72-216, Idaho Code, having under them contractors or subcontractors who have in fact complied with the provisions of section 72-301, Idaho Code; nor include the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed.

(2) Action may be instituted against such third party by the employee, or in event compensation has been claimed and awarded, by the employee and employer jointly, in the employee's name, or, if the employee refuses to participate in such action, by the employer in the employee's name.

(3) If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability.

(4) On any recovery by the employee against a third party, the employer shall pay or have deducted from his subrogated portion thereof, a proportionate share of the costs and attorney's fees incurred by the employee in obtaining such recovery.

(5) If death results from the injury or occupational disease and if the employee leaves no dependents entitled to benefits under this law, the surety shall have a right of action against the third party for recovery of income benefits, reasonable expenses of medical and related services and burial expense actually paid by the surety and for recovery of amounts paid into the industrial special indemnity account pursuant to section 72-420, Idaho Code, and such right of action shall be in addition to any cause of action of the heirs or personal representatives of the deceased.

(6) All rights and restrictions herein granted to the employer have previously been intended to be, and are hereby expressly granted to the industrial special indemnity account.

SECTION 2. This act shall be in full force and effect on and after July 1, 1996.

Approved March 12, 1996.

CHAPTER 192
(S.B. No. 1427)

AN ACT

RELATING TO TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES; AMENDING SECTION 6-902, IDAHO CODE, TO FURTHER DEFINE THE TERM POLITICAL SUBDIVISION AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 6-902, Idaho Code, be, and the same is

hereby amended to read as follows:

6-902. DEFINITIONS. As used in this act:

1. "State" means the state of Idaho or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

2. "Political subdivision" means any county, city, municipal corporation, health district, school district, irrigation district, an operating agent of irrigation districts whose board consists of directors of its member districts, special improvement or taxing district, or any other political subdivision or public corporation. As used in this act, the terms "county" and "city" also mean state licensed hospitals and attached nursing homes established by counties pursuant to ~~title 31,~~ chapter 36, title 31, Idaho Code, or jointly by cities and counties pursuant to ~~title 31,~~ chapter 37, title 31, Idaho Code.

3. "Governmental entity" means and includes the state and political subdivisions as herein defined.

4. "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity, temporarily or permanently in the service of the governmental entity, whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

5. "Bodily injury" means any bodily injury, sickness, disease or death sustained by any person and caused by an occurrence.

6. "Property damage" means injury or destruction to tangible property caused by an occurrence.

7. "Claim" means any written demand to recover money damages from a governmental entity or its employee which any person is legally entitled to recover under this act as compensation for the negligent or otherwise wrongful act or omission of a governmental entity or its employee when acting within the course or scope of his employment.

Approved March 12, 1996.

CHAPTER 193
(S.B. No. 1412)

AN ACT

RELATING TO CONFLICTS OF INTEREST; AMENDING SECTION 18-1361, IDAHO CODE, TO PROVIDE THAT A PERSON RELATED TO A PUBLIC SERVANT BY BLOOD OR MARRIAGE WITHIN THE SECOND DEGREE MAY CONTRACT TO PROVIDE GOODS OR SERVICES TO THE PUBLIC BODY OF WHICH THE PUBLIC SERVANT IS A MEMBER IF THE CONTRACT IS REASONABLY NECESSARY TO RESPOND TO A DISASTER OR IF THERE ARE LESS THAN THREE SUPPLIERS OF THE GOODS OR SERVICES WITHIN A FIFTEEN MILE RADIUS OF THE PLACE WHERE THE GOODS OR SERVICES ARE TO BE PROVIDED IF CERTAIN PROCEDURES ARE FOLLOWED; AMENDING SECTION 18-1361A, IDAHO CODE, TO PROVIDE THAT A PERSON RELATED TO A PUBLIC SERVANT BY BLOOD OR MARRIAGE WITHIN THE

SECOND DEGREE MAY CONTRACT WITH THE GOVERNMENTAL ENTITY OF WHICH THE PUBLIC SERVANT IS A MEMBER IF CERTAIN PROCEDURES ARE FOLLOWED; AMENDING SECTION 33-507, IDAHO CODE, TO PROVIDE THAT A SCHOOL DISTRICT MAY CONTRACT WITH A PERSON RELATED TO A TRUSTEE BY BLOOD OR MARRIAGE WITHIN THE SECOND DEGREE OR WITH THE SPOUSE OF A TRUSTEE IF THE PROCEDURES OF SECTION 18-1361 OR 18-1361A, IDAHO CODE, ARE FOLLOWED; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-1361, Idaho Code, be, and the same is hereby amended to read as follows:

18-1361. SELF-INTERESTED CONTRACTS -- EXCEPTION. Where there are less than three (3) suppliers of a good or a service within a fifteen (15) mile radius of where the good or service is to be provided, it shall not constitute a violation of the provisions of subsection (~~4~~1) (d) or (e) of section 18-1359, Idaho Code, for a public servant or for his relative to contract with the public body of which ~~he~~ the public servant is a member if the contract is reasonably necessary to respond to a disaster as defined in chapter 10, title 46, Idaho Code, or if ~~he~~ the procedures listed below are strictly ~~observes the following procedure:~~ observed. For purposes of this section, "relative" shall mean any person related to the public servant by blood or marriage within the second degree.

(1) The contract is competitively bid and the public servant or his relative submits the low bid; and

(2) Neither t~~T~~he public servant nor his relative takes ~~no~~ any part in the preparation of the contract or bid specifications, ~~or~~ and the public servant takes no part in voting on or ~~approval of~~ approving the contract or bid specifications; and

(3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and

(4) Neither t~~T~~he public servant nor his relative has ~~not~~ violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

SECTION 2. That Section 18-1361A, Idaho Code, be, and the same is hereby amended to read as follows:

18-1361A. NONCOMPENSATED APPOINTED PUBLIC SERVANT -- RELATIVES OF PUBLIC SERVANT -- EXCEPTION. When a person is a public servant by reason of his appointment to a governmental entity board for which the person receives no salary or fees for his service on said board, it shall not constitute a violation of the provisions of subsection (1)(d) or (e) of section 18-1359, Idaho Code, for a public servant or for his relative to contract with the public body of which ~~he~~ the public servant is a member if ~~he~~ the procedures listed below are strictly ~~observes the following procedure:~~ observed. For purposes of this section, "relative" shall mean any person related to the public servant by blood or marriage within the second degree.

(1) The contract is competitively bid and the public servant or his relative submits the low bid; and

(2) Neither t~~T~~he public servant nor his relative takes ~~no~~ any part in the preparation of the contract or bid specifications, ~~or~~ and the public servant takes no part in voting on or ~~approval of~~ approving the contract or bid specifications; and

(3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and

(4) Neither t~~T~~he public servant nor his relative has ~~not~~ violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

SECTION 3. That Section 33-507, Idaho Code, be, and the same is hereby amended to read as follows:

33-507. LIMITATION UPON AUTHORITY OF TRUSTEES. It shall be unlawful for any trustee to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the school district, or to accept any reward or compensation for services rendered as a trustee except as may be otherwise provided in this section. The board of trustees of a school district may accept and award contracts involving the school district to businesses in which a trustee or a person related to him by blood or marriage within the second degree has a direct or indirect interest provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of a school district for deposit in any bank or trust company, or the lending of money by any bank or trust company to any school district, shall not be deemed to be a contract pertaining to the maintenance or conduct of a school district within the meaning of this section; nor shall the payment by any school district board of trustees of compensation to any bank or trust company for services rendered in the transaction of any banking business with such district board of trustees, be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

It shall be unlawful for the board of trustees of any class of school district to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract requires, or will require, the payment or delivery of any school district funds, money or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

When any relative of any trustee or relative of the spouse of a trustee related by affinity or consanguinity within the second degree is considered for employment in a school district, such trustee shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 12, 1996.

CHAPTER 194
(S.B. No. 1377)

AN ACT

RELATING TO WORKER'S COMPENSATION INSURANCE; AMENDING SECTION 41-1612, IDAHO CODE, TO REQUIRE THAT A FILING SHALL CONTAIN A MINIMUM PREMIUM BETWEEN ONE HUNDRED FIFTY AND THREE HUNDRED DOLLARS AND THAT PREMIUMS SHALL BE CALCULATED ON AN ANNUAL SALARY OF THIRTEEN THOUSAND DOLLARS FOR PARTNERSHIPS AND SOLE PROPRIETORSHIPS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 72-102, IDAHO CODE, TO DEFINE "CUSTOM FARMER," TO DEFINE "FARM LABOR CONTRACTOR," AND TO REDEFINE "INDEPENDENT CONTRACTOR" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 72-203, IDAHO CODE, TO INCLUDE FARM LABOR CONTRACTING WITH EMPLOYMENT COVERED BY WORKER'S COMPENSATION LAW AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 72-212, IDAHO CODE, TO DELETE THE AGRICULTURAL PURSUITS EXEMPTION FROM THE LIST OF EXEMPTIONS TO THE WORKER'S COMPENSATION LAW AND TO MAKE A TECHNICAL CORRECTION; PROVIDING A SUNSET CLAUSE FOR SECTION 1 OF THE BILL; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 41-1612, Idaho Code, be, and the same is hereby amended to read as follows:

41-1612. ADHERENCE TO FILINGS. (1) No insurer shall issue, renew, or continue in force in this state any ~~workmen's~~ worker's compensation insurance at premium rates which are less than the rates applicable under the filings in effect for the insurer, or in effect in accordance with sections 41-1607 (exemption from filing) or 41-1613 (excess rates), Idaho Code.

(2) No filing shall contain a minimum premium that is less than one hundred fifty dollars ($150) or greater than three hundred dollars ($300).

(3) With respect to determination of premiums for partnerships and sole proprietorships, filings shall include a premium calculated on an annual salary of thirteen thousand dollars ($13,000).

SECTION 2. That Section 72-102, Idaho Code, be, and the same is hereby amended to read as follows:

72-102. DEFINITIONS. Words and terms used in the ~~workmen's~~ worker's compensation law, unless the context otherwise requires, are defined in the subsections which follow:

(1) "Alien" means a person who is not a citizen, a national or a

resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(2) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this law.

(3) "Burial expenses" means a sum, not to exceed six thousand dollars ($6,000) for funeral and burial or cremation, together with the actual expenses of transportation of the employee's body to his place of residence within the United States or Canada.

(4) "Commission" means the industrial commission.

(5) "Community service worker" means any person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 18, title 16, Idaho Code, and who has been informally diverted under the provisions of section 16-1807A, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district or other taxing district authorized to levy a tax or an assessment or any other political subdivision or any private not-for-profit agency which has elected worker's compensation insurance coverage for such person.

(6) "Compensation" used collectively means any or all of the income benefits and the medical and related benefits and medical services.

(7) "Custom farmer" means a person who contracts to supply operated equipment to a proprietor of a farm for the purpose of performing part or all of the activities related to raising or harvesting agricultural or horticultural commodities.

(8) "Death" means death resulting from an injury or occupational disease.

(89) Dependency limitations.

(a) "Adopted" and "adoption" include cases where persons are treated as adopted as well as those of legal adoption unless legal adoption is specifically provided.

(b) "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption.

(c) "Child" includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent.

(d) "Grandchild" includes children of legally adopted children and children of stepchildren, but does not include stepchildren of children, stepchildren of stepchildren, or stepchildren of adopted children unless actually dependent.

(e) "Parent" includes stepparents and parents by adoption.

(f) "Grandparent" includes parents of parents by adoption, but does not include parents of stepparents, stepparents of parents, or stepparents of stepparents.

(910) "Disability," for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning

capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

(~~10~~1) "Employee" is synonymous with "workman" and means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 72-212, Idaho Code, unless an election as provided in section 72-213, Idaho Code, has been filed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(~~11~~2) "Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed. If the employer is secured, it means his surety so far as applicable.

(~~12~~3) "Farm labor contractor" means any person or his agent or subcontractor who, for a fee, recruits and employs farm workers and performs any farm labor contracting activity.

(14) "Gender and number." The masculine gender includes the feminine and neuter; "husband" or "wife" includes "spouse"; the singular number includes plural and the plural the singular.

(~~13~~5) "Income benefits" means payments provided for or made under the provisions of this law to the injured employee disabled by an injury or occupational disease, or his dependents in case of death, excluding medical and related benefits.

(~~14~~6) "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished. For the purposes of worker's compensation law, a custom farmer is considered to be an independent contractor.

(~~15~~7) "Injury" and "accident."

(a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the ~~workmen's~~ worker's compensation law.

(b) "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

(c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

(~~16~~8) "Medical and related benefits" means payments provided for or made for medical, hospital, burial and other services as provided in this law other than income benefits.

(~~17~~9) "Medical services" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities and supplies.

(~~18~~20) "Occupational diseases."

(a) "Occupational disease" means a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment, but shall not include psychological injuries, disorders or conditions unless the conditions set forth in section 72-451, Idaho Code, are met.

(b) "Contracted" and "incurred," when referring to an occupational disease, shall be deemed the equivalent of the term "arising out of and in the course of" employment.

(c) "Disablement," except in the case of silicosis, means the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.

(d) "Disablement," in the case of silicosis, means the event of first becoming actually incapacitated, because of such disease, from performing any work in any remunerative employment; and "disability" means the state of being so incapacitated.

(e) "Silicoses" means the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO_2) dust.

(~~19~~21) "Outworker" means a person to whom articles or materials are furnished to be treated in any way on premises not under the control or management of the person who furnished them.

(2~~0~~2) "Person" means the state or any political subdivision thereof, or any individual, partnership, firm, association, trust, corporation, including the state insurance fund, or any representative thereof.

(2~~1~~3) "Physician" means medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses.

(2~~2~~4) "Secretary" means the secretary of the commission.

(2~~3~~5) "Self-insurer" means an employer who has been authorized under the provisions of this law to carry his own liability to his employees covered by this law.

(2~~4~~6) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.

(2~~5~~7) "Surety" means any insurer authorized to insure or guarantee payment of ~~workmen's~~ worker's compensation liability of employers in any state; it also includes the state insurance fund, a self-insurer and an inter-insurance exchange.

(2~~6~~8) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone and the territories of the United States.

(~~27~~9) "Wages" and "wage earning capacity" prior to the injury or disablement from occupational disease means the employee's money payments for services as calculated under section 72-419, Idaho Code, and shall additionally include the reasonable market value of board, rent, housing, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration, and gratuities received in the course of employment from others than the employer. "Wages" shall not include sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(~~28~~30) "Wages" and "wage earning capacity" after the injury or disablement from occupational disease shall be presumed to be the actual earnings after the injury or disablement, which presumption may be overcome by showing that those earnings do not fairly and reasonably represent wage earning capacity; in such a case wage earning capacity shall be determined in the light of all factors and circumstances which may affect the worker's capacity to earn wages.

(~~29~~31) "Work experience student" means any person enrolled in the public school districts of this state and who, as part of his instruction, is enrolled in a class or program for academic credit and for which the student is employed by, or works for, a private or governmental entity. The student need not receive wages from the private or governmental entity in order to be classified as a work experience student.

(30~~2~~) "Worker's compensation law" or "~~W~~workmen's compensation law" means and includes the ~~workmen's~~ worker's compensation law of this state and any like or similar law of any state, United States, territory, or province of Canada.

SECTION 3. That Section 72-203, Idaho Code, be, and the same is hereby amended to read as follows:

72-203. EMPLOYMENTS COVERED. This law shall apply to all public employment and to all private employment including farm labor contracting not expressly exempt by the provisions of section 72-212, Idaho Code.

SECTION 4. That Section 72-212, Idaho Code, be, and the same is hereby amended to read as follows:

72-212. EXEMPTIONS FROM COVERAGE. None of the provisions of this law shall apply to the following employments unless coverage thereof is elected as provided in section 72-213, Idaho Code.

(1) Household domestic service.

(2) Casual employment.

(3) Employment of outworkers.

(4) Employment of members of an employer's family dwelling in his household.

(5) Employment which is not carried on by the employer for the sake of pecuniary gain.

(6) Employment as the owner of a sole proprietorship; employment of a working member of a partnership or a limited liability company; employment of an officer of a corporation who at all times during the

period involved owns not less than ten ~~per-cent~~ percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof.

(7) Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States.

(8) ~~Agricultural-pursuits.--Agricultural-pursuits,-as-used-herein,-shall-include-the-raising-or-harvesting-of-any-agricultural-or--horticultural--commodity-including-the-raising,-pelting,-shearing,-feeding,-caring-for,-training-and-management-of--livestock,-bees,--poultry--and-fur-bearing--animals--and--wildlife--raised--in-captivity,-on-inclosed-lands-and-public-ranges.-Agricultural-pursuits-shall-include-the-loading-and-transporting,-by-motor-vehicle,-of-any-agricultural-or--horticultural--commodity--to-any-storage,-processing,-distribution-or-manufacturing-destination-and-the-unloading-of-the-commodity-at-such--destination;-provided,-that-the-exemption-for-the-transportation,-loading-or--unloading-of-agricultural-or-horticultural-commodities-shall-apply-only-to-individuals,-corporations,-partnerships-or-other--legal--entities--who--are--transporting,-loading-or-unloading-only-those-agricultural-or-horticultural-commodities-which-the-individual,--corporation,-partnership--or--other-legal-entity-produced,-raised-or-harvested.-The-return-trip-from-a-manufacturing,-processing,-storage-or--distribution-destination--is--exempted-if:-the-return-trip-to-the-original-point-of-debarkation-is-by-the-safest-and-most-direct-route--reasonably--possible,--the--cargo-transported-on-the-return-trip,-if-any,-is-to-be-used-exclusively-by-the--individual,--corporation,--partnership,--or--other-legal--entity--which--is--transporting-the-cargo,-and-the-cargo-transported-is-to-be-used-only-in-direct-connection-with--the--agricultural-pursuit.~~

~~(9)~~ Pilots of agricultural spraying or dusting planes. Employment as a pilot of an aircraft, used to apply fertilizers and pesticides to agricultural crops, when actually operating an aircraft, shall be exempt from the provisions of the ~~workmen's~~ worker's compensation law, if: the employer files with, and has written approval by, the industrial commission, prior to employing a pilot for the purpose of engaging in the application of pesticides to agricultural crops by aircraft, proof of coverage of an insurance policy that will provide to the employed pilot of such aircraft while actually operating an aircraft, benefits in an amount of not less than: twenty-five thousand dollars ($25,000) accidental death and dismemberment, ten thousand dollars ($10,000) medical expense payments, and five hundred dollars ($500) per month disability income for a minimum of forty-eight (48) months.

(~~10~~9) Associate real estate brokers and real estate salesmen. Service performed by an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(~~11~~0) Volunteer ski patrollers.

(~~12~~1) Officials of athletic contests involving secondary schools, as defined in section 33-119, Idaho Code.

SECTION 5. Subsections (2) and (3) of Section 41-1612, Idaho Code, as added by the provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2001.

SECTION 6. This act shall be in full force and effect on and after January 1, 1997.

Approved March 12, 1996.

CHAPTER 195
(H.B. No. 465, As Amended)

AN ACT

RELATING TO THE ADOPTION OF ADULTS; AMENDING SECTION 16-1501, IDAHO CODE, TO PROVIDE THAT AN ADULT MAY BE ADOPTED IF THE PERSON ADOPTING HAS SUSTAINED THE RELATION OF PARENT TO THE PERSON TO BE ADOPTED FOR MORE THAN ONE YEAR WHILE THE PERSON WAS A MINOR OR WHERE THE COURT FINDS AFTER INVESTIGATION THAT A SUBSTANTIAL FAMILY RELATIONSHIP HAS BEEN CREATED; AMENDING SECTION 16-1504, IDAHO CODE, TO PROVIDE THAT A PETITION TO ADOPT AN ADULT MAY BE GRANTED ONLY UPON WRITTEN CONSENT OF THE ADULT TO BE ADOPTED, THAT PERSON'S SPOUSE, AND THE GUARDIAN OR CONSERVATOR OF A DISABLED OR INCAPACITATED ADULT; AMENDING SECTION 16-1506, IDAHO CODE, TO PROVIDE FOR PROCEEDINGS FOR THE ADOPTION OF AN ADULT AND TO PROVIDE FOR AN INVESTIGATION WHERE THE ADULT TO BE ADOPTED IS INCAPACITATED OR DISABLED; AMENDING SECTION 16-1508, IDAHO CODE, TO PROVIDE THE EFFECT OF ADOPTION OF AN ADULT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 16-1511, IDAHO CODE, TO REMOVE AN OBSOLETE REFERENCE; DECLARING AN EMERGENCY AND CONFIRMING ADULT ADOPTIONS ACCOMPLISHED PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

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

SECTION 1. That Section 16-1501, Idaho Code, be, and the same is hereby amended to read as follows:

16-1501. MINORS AND ADULTS MAY BE ADOPTED. Any minor child may be adopted by any adult person residing in and having residence in Idaho, in the cases and subject to the rules prescribed in this chapter.

Persons not minors may be adopted by a resident adult in cases where the person adopting has sustained the relation of parent to such adopted person: (i) for a period in excess of one (1) year while the person was a minor; or (ii) for such period of time or in such manner that the court after investigation finds a substantial family relationship has been created.

SECTION 2. That Section 16-1504, Idaho Code, be, and the same is hereby amended to read as follows:

16-1504. CONSENT OF PARENTS, GUARDIAN, NEAREST RELATIVE, OR NEXT FRIEND OF CHILD -- EXCEPTIONS. (1) A child cannot be adopted without

the consent of its parents, if living, except that the consent of a putative father whose paternity has not been legally established by order of a court of competent jurisdiction shall be implied as provided in section 16-1513, Idaho Code, nor without the consent of its guardian if one has been legally appointed or, if no living parents or guardian, then of its nearest relative; if no relative, then by the consent of some person appointed by the judge to act in the proceedings as the next friend to such child. The consent of a parent who is a minor shall not be voidable because of that minority. No consent shall be required of, nor notice given to, any person whose parental relationship to such child shall have been terminated in accordance with the provisions of either chapter 16 or 20, title 16, Idaho Code, or by a court of competent jurisdiction of a sister state under like proceedings; or in any other manner authorized by the laws of a sister state. Where a voluntary child placement agency licensed by the state in which it does business is authorized to place a child for adoption and to consent to such child's adoption under the laws of such state, the consent of such agency to the adoption of such child in a proceeding within the state of Idaho shall be valid and no further consents or notices shall be required.

(2) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult being adopted and the adult's spouse, if any, and by the guardian or conservator of a disabled or incapacitated adult, if one has been appointed.

SECTION 3. That Section 16-1506, Idaho Code, be, and the same is hereby amended to read as follows:

16-1506. PROCEEDINGS ON ADOPTION. (1) Proceedings to adopt a child shall be commenced by the filing of a petition together with a copy thereof. Said petition shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the county in which said person or persons reside. The petitioners shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the name and address of the petitioner or petitioners, the name of the child proposed to be adopted and the name by which ~~it~~ the person to be adopted shall be known if and when adopted, the degree of relationship of the child, if any, to the petitioner or petitioners and the names of any person or agency whose consent to said adoption is necessary. At the time fixed for hearing such petition the person adopting a child, and the child adopted, and the spouse of petitioner if a natural parent of the child, must appear before the court of the county wherein the petition was filed. Petitioner shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

(2) Any person or persons whose consent is required shall execute such consent in writing, in a form consistent with the provisions of subsection f. of section 16-2005, Idaho Code, which consent being filed in the court where the application is made, shall be deemed a sufficient appearance on the part of such person or persons. If any adoptive parent, or a person not a minor being adopted by a resident

adult under the provisions of section 16-1501, Idaho Code, is a member of the armed services and is unable to attend the hearing, his appearance and testimony shall be received by means of deposition, which shall be filed in the court at the time of the hearing.

(3) Prior to the placement for adoption of any child in the home of prospective adoptive parents, it shall be required that a thorough social investigation of the prospective adoptive family and all of its members, consistent with the rules regarding such investigations promulgated by the department of health and welfare, shall be completed and that a positive recommendation for adoptive placement shall have been made. The social investigation may be performed by any individual who meets the requirements of the law. A copy of the study must be submitted to the department and the department may impose a reasonable fee, not to exceed fifty dollars ($50.00), for oversight of such privately conducted studies. In those instances where the prospective adoptive parent is married to the birth parent or is the grandparent of the child to be adopted, such social investigation shall be completed with regard to the prospective adoptive parent only upon order of the court. In exigent circumstances where the prospective adoptive parents are determined by the court to have been unable to complete a social investigation of the family with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines the best interests of the child are served by other placement. If exigent circumstances exist, a social investigation shall be initiated within five (5) days of placement. Once initiated, all studies shall be completed within sixty (60) days. Upon the filing of a petition to adopt a minor child by a person unrelated to the child or unmarried to a natural parent of the child and at the discretion of the court upon the filing of any other petition for adoption, a copy of such petition, together with a statement containing the full names and permanent addresses of the child and the petitioners, shall be served by the court receiving the petition within five (5) days on the director of the department of health and welfare by registered mail or personal service. If no private investigation is conducted, it shall then be the duty of the said director, through the personnel of the department or through such qualified child-placing children's adoption agency incorporated under chapter 3, title 30, Idaho Code, as the director may designate, to verify the allegations of the petition, and as soon as possible not exceeding thirty (30) days after service of the petition on the director to make a thorough investigation of the matter to include in all cases information as to the alleged date and place of birth and as to parentage of the child to be adopted as well as the source of all such information and report his findings in writing to the court. The investigative report shall include reasonably known or available medical and genetic information regarding both natural parents and sources of such information as well as reasonably known or available providers of medical care and services to the natural parents. A copy of all medical and genetic information compiled in the investigation shall be made available to the adopting family by the department or other investigating children's adoption agency prior to entry of the final order of adoption. The petition, statement and all other papers, records or files relating to the adoption, including the preplacement

investigation and recommendation, shall be returned to the court with the investigative report. The department of health and welfare or other children's adoption agency may require the petitioner to pay all or any part of the costs of the investigation. If the report disapproves of the adoption of the child, motion may be made to the court to dismiss the petition.

(4) Proceedings for termination of parent-child relationship in accordance with chapter 20, title 16, Idaho Code, and proceedings for adoption may be consolidated and determined at one (1) hearing provided that all of the requirements of this chapter as well as chapter 20, title 16, Idaho Code, be fully complied with. In all disputed matters under this chapter or chapter 20, title 16, Idaho Code, the paramount criterion for consideration and determination by the court shall be the best interests of the child.

(5) Proceedings for the adoption of an adult shall be as provided in subsection (1) of this section and any consents required shall be executed as provided in subsection (2) of this section. Upon a finding by the court that the consent of all persons for whom consent is required has been given and that the requirements of section 16-1501, Idaho Code, have been proven to the satisfaction of the court, the court shall enter an order granting the adoption. In cases where the adult proposed to be adopted is incapacitated or disabled, the court may require that an investigation be performed. The form and extent of the investigation to be undertaken may be as provided in subsection (3) of this section, or as otherwise ordered by the court. If an investigation is performed, the court must review and approve the findings of the investigation before issuing an order approving the adoption.

SECTION 4. That Section 16-1508, Idaho Code, be, and the same is hereby amended to read as follows:

16-1508. EFFECT OF ADOPTION. A child or adult, when adopted, may take the name of the person adopting, and the two (2) shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of section 14-103, Idaho Code, and to the same extent as a child of the whole blood.

SECTION 5. That Section 16-1511, Idaho Code, be, and the same is hereby amended to read as follows:

16-1511. SEALING RECORD OF PROCEEDINGS. Upon the motion of petitioners, or upon its own motion the ~~probate~~ court shall order that the record of its proceedings in any adoption proceeding shall be sealed. When such order has been made and entered the court shall seal such record and thereafter the seal shall not be broken except upon the motion of petitioners or the person adopted; provided, however, that such record may be sealed again as in this section provided.

SECTION 6. An emergency existing therefor, which emergency is

hereby declared to exist, this act shall be effective immediately upon its passage and approval. Adoptions of adults accomplished prior to the effective date of this act shall not be subject to procedural challenge on the basis that the procedures used in the prior adoption do not meet the requirements of this act.

Approved March 12, 1996.

CHAPTER 196
(H.B. No. 531)

AN ACT

RELATING TO MEDICAL ASSISTANCE; AMENDING SECTION 56-209b, IDAHO CODE, TO GIVE THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE DISCRETION WITH RESPECT TO CERTAIN SERVICES UNDER THE STATE MEDICAL ASSISTANCE PROGRAM AND TO CLARIFY THE DEPARTMENT OF HEALTH AND WELFARE'S SUBROGATION AND CREDITOR'S RIGHTS TO RECOVER FROM THIRD PARTIES FOR SERVICES PROVIDED TO INDIVIDUALS RECEIVING MEDICAL ASSISTANCE; AND PROVIDING SEVERABILITY.

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

SECTION 1. That Section 56-209b, Idaho Code, be, and the same is hereby amended to read as follows:

56-209b. MEDICAL ASSISTANCE -- MEDICAL ASSISTANCE ACCOUNT. (1) Medical assistance shall be awarded to ~~persons who are recipients of old age assistance, aid to dependent children, aid to the blind, aid to the disabled, and such~~ persons as mandated by ~~title XIX of the Social Security Act~~ federal law; and medical assistance may be awarded to such other persons not required to be awarded medical assistance as mandated by ~~title XIX of the Social Security Act~~ federal law when such award is to the fiscal advantage of the state of Idaho.

(2) There is hereby created in the dedicated fund the medical assistance account. The medical assistance account shall be an entity primarily designed to receive moneys from the families and relatives of patients receiving medical assistance under the state plan for medicaid, and to provide a source of moneys to pay for the state's share of medical assistance expenses. Moneys in the medical assistance account may not be commingled with moneys in the cooperative welfare account. Moneys in the medical assistance account must be appropriated in order to be expended to pay for the state's share of medical assistance expenses.

(3) In all cases where the department of health and welfare through the medical assistance program has or will be required to pay medical expenses for a recipient and that recipient is entitled to recover any or all such medical expenses from any third party, the department of health and welfare will be subrogated to the rights of the recipient to the extent of the amount of medical assistance bene-

fits paid by the department as the result of the occurrence giving rise to the claim against the third party.

(4) If a recipient of medical assistance pursues a claim against a third party through litigation or a settlement ~~in such a claim is pursued by the recipient of medical assistance~~, the recipient will so notify the department. If the recipient recovers funds, either by settlement or judgment, from such a third party, the recipient ~~will repay~~ shall reimburse the department to the extent of the funds received in settlement minus attorney fees and costs, the amount of the medical assistance benefits paid by the department on his behalf as a result of ~~said~~ the occurrence giving rise to the need for medical assistance. The department shall be entitled to all the legal rights and powers of a creditor against a debtor in enforcing the recipient's reimbursement obligation.

(5) The department shall have priority to any amount received from a third party which can reasonably be construed to compensate the recipient for the occurrence giving rise to the need for medical assistance, whether the settlement or judgment is obtained through the subrogation right of the department or through recovery by the recipient, and whether or not the recipient is made whole by the amount recovered. The department will be entitled to reimbursement of medical assistance benefits paid on behalf of the recipient arising from the incident or occurrence prior to any amount being distributed to the recipient.

(~~4~~6) In the event a recipient of assistance through the medical assistance program incurs the obligation to pay attorney fees and costs for the purpose of enforcing a monetary claim to which the department ~~is subrogated~~ has a right under this section, the amount which the department is entitled to recover, or any lesser amount which the department may agree to accept in compromise of its claim, shall be reduced by an amount which bears the same relation to the total amount of attorney fees and costs actually paid by the recipient as the amount actually recovered for medical expenses paid by the department, exclusive of the reduction for attorney fees and costs, bears to the total amount paid by the third party to the recipient. If a settlement or judgment is received by the recipient without delineating what portion of the settlement or judgment is in payment of medical expenses, it will be presumed that the settlement or judgment applies first to the medical expenses incurred by the recipient in an amount equal to the expenditure for medical assistance benefits paid by the department as a result of the occurrence giving rise to the payment or payments to the recipient.

SECTION 2. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portion of this act.

Approved March 12, 1996.

CHAPTER 197
(H.B. No. 617)

AN ACT

RELATING TO THE DIVISION OF PURCHASING; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5724A, IDAHO CODE, TO PROVIDE THAT THE ADMINISTRATOR OF THE DIVISION OF PURCHASING SHALL BE ENTITLED TO ACQUIRE PROPERTY FOR THE STATE OF IDAHO FROM THE GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SCHEDULE CONTRACTS WITHOUT THE NECESSITY OF COMPLIANCE WITH COMPETITIVE BIDDING PROCEDURES.

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

SECTION 1. That Chapter 57, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5724A, Idaho Code, and to read as follows:

67-5724A. ACQUISITION OF PROPERTY -- GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SCHEDULE CONTRACTS. Notwithstanding any provision in this chapter to the contrary, the administrator of the division of purchasing may, instead of soliciting bids, contract for services or property at a price equal to or less than the contractor's current federal supply contract price for sales to the general services administration of the United States without the use of competitive bids so long as the contractor has indicated a willingness in writing to extend such contractor pricing, terms and conditions to the administrator and the administrator considers the price to be advantageous to the state.

Approved March 12, 1996.

CHAPTER 198
(H.B. No. 618)

AN ACT

RELATING TO THE DIVISION OF PURCHASING; AMENDING SECTION 67-5716, IDAHO CODE, TO PROVIDE AN ADDITIONAL DEFINITION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5717, IDAHO CODE, TO AUTHORIZE COMPETITIVE SEALED PROPOSALS AND NEGOTIATIONS IN CONNECTION WITH ACQUISITIONS FOR WHICH COMPETITIVE SEALED BIDS ARE NOT PRACTICABLE OR ADVANTAGEOUS TO THE STATE; AND AMENDING SECTION 67-5718, IDAHO CODE, TO PROVIDE STANDARDS FOR THE AWARD OF A BID IN CONNECTION WITH ACQUISITIONS BY MEANS OF COMPETITIVE SEALED PROPOSALS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-5716, Idaho Code, be, and the same is

hereby amended to read as follows:

67-5716. DEFINITIONS OF TERMS. (1) Acquisition. The process of procuring or purchasing property by the state of Idaho.

(2) Procurement. Obtaining property for state use by lease, rent, or any manner other than by purchase or gift.

(3) Property. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property.

(4) Goods. Items of personal property, not qualifying as equipment, parts or supplies.

(5) Services. Personal services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding is not prohibited or made impractical by statute, rules ~~and--regulations~~ or generally accepted ethical practices.

(6) Parts. Items of personal property acquired for repair or replacement of unserviceable existing items.

(7) Supplies. Items of personal property having an expendable quality or during its normal use is consumed and which requires or suggests acquisition in bulk.

(8) Equipment. Items of personal property which have a normal useful life expectancy of two (2) or more years.

(9) Component. An item of property normally assembled with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities.

(10) Vendor. A person or entity capable of supplying property to the state.

(11) Bidder. A registered vendor who has submitted a bid on a specific item or items of property to be acquired by the state.

(12) Lowest responsible bidder. The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.

(13) Contractor. A bidder who has been awarded an acquisition contract.

(14) Registered vendor. A qualified vendor registered with the administrator of the division of purchasing.

(15) Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.

(16) Bid. A written offer to perform a contract to purchase or supply property or services in response to an invitation for bid or request for proposal.

SECTION 2. That Section 67-5717, Idaho Code, be, and the same is hereby amended to read as follows:

67-5717. POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF PURCHASING. The administrator of the division of purchasing:

(1) Shall acquire, according to the provisions of this chapter, all property for state agencies;

(2) Shall acquire all property, unless excepted, by competitive bid, and shall specifically require competitive bids for property to be rented, leased or purchased through a deferred payment plan;

(3) Shall determine, based upon the requirements contained in the specification and matter relating to responsibility, the lowest responsible bidder in all competitively bid acquisition contracts;

(4) Shall enter into all contracts and agreements, and any modifications thereto, for the acquisition of any and all property in behalf of and in the name of the state;

(5) Shall, when economically feasible and practical, consolidate requisitions and acquire property in amounts as large as can be efficiently managed and controlled;

(6) May appoint a deputy, who shall have power to act for him and in his place while absent, which deputy shall be bonded to the state of Idaho as prescribed by chapter 8, title 59, Idaho Code;

(7) May require from any contractor the submission of a performance bond for such sum as will, in the opinion of the administrator, guarantee the faithful performance of such contract, and the amount and requirement therefor shall be set out in the specifications;

(8) May enter into open contracts for the acquisition of property commonly used by the various agencies, based upon actual or estimated requirements;

Unless an acquiring agency can show a substantial difference between the required capabilities and the capabilities provided by such property available on open contract, all agencies must utilize such property available on such contracts and failure to comply with this provision will subject the officers responsible for the acquisition to the penalties set forth in this chapter;

(9) May enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the state in the event cancellation is necessitated by a lack of financing for any such contract or contracts;

(10) Is authorized and empowered to formulate rules in the conduct of the office of the division of purchasing, subject to the approval of the director of the department of administration;

(11) In accordance with established rules of the division, mMay accept competitive sealed proposals and enter into negotiations~~;--only for services which need not be bid~~ for acquisitions for which competitive sealed bidding is not practicable or advantageous to the state;

(12) May inspect property delivered by a contractor to determine whether it meets minimum bid specifications;

(13) May classify, after review with the various agencies, the requirements of the state for all property which may be acquired and adopt standards of quality for property, and establish standard specifications for acquisition. Each standard specification shall, until

revised or rescinded, apply alike in terms and effect to each future acquisition of the classified property.

SECTION 3. That Section 67-5718, Idaho Code, be, and the same is hereby amended to read as follows:

67-5718. REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE -- PROCEDURE FOR BIDDING. The administrator of the division of purchasing shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been filed in his office, and such requisition must bear the certificate of the head of the agency making the requisition that there are proper funds or sufficient balance in appropriations out of which the amount of the requisition may lawfully be paid, except as provided to the contrary under provisions of this chapter allowing emergency purchases.

If the property to be acquired may reasonably be expected to cost in excess of twenty-five thousand dollars ($25,000) if purchased, or one thousand dollars ($1,000) per month if procured, there must be accompanying the requisition a copy of the specifications proposed for use in the acquisition. Upon receipt of the requisition, notice must be commenced within a reasonable period of time and must allow not less than ten (10) days from notice to bid opening date.

Provided, however, that in cases where the total value of the property to be acquired is not in excess of twenty-five thousand dollars ($25,000) if purchased, or one thousand dollars ($1,000) per month if procured, the administrator shall notify registered vendors in such manner as he deems appropriate. To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from registered vendors having a significant Idaho economic presence as defined in the Idaho Code. If he finds that it is impractical or impossible to obtain three (3) bids for the proposed transaction, he may acquire the property in any manner he deems best. For any acquisition not otherwise requiring specifications, the same may be required by ~~regulation~~ rule drawn by the administrator.

Provided further, however, that in connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

Notice shall be sent to each registered vendor of the property to be acquired, except that if there are more than ten (10) registered vendors for the property to be acquired, the administrator of the division of purchasing may, in his discretion, limit the notices sent to ten (10). Nothing shall prevent all registered vendors from bidding on the property to be acquired. The administrator shall cause all invitations to bid to be posted in a conspicuous place in his office.

The notice shall describe the property to be acquired in sufficient detail to apprise a bidder of the exact nature or functionality of the property required; and shall give the time when, and the place where, bids will be opened. The bid opening date shall be set forth in the specifications. Each bid shall be in writing, sealed and marked, "sealed bid for ...., to be opened ...., 19.." and shall be mailed or delivered to the office of the administrator of the division of pur-

chasing at Boise, Idaho.

All sealed bids received shall be opened at the time and place specified in the invitation for bids, and in the public view, and a record of each bid shall then and there be made. Contracts shall be awarded to and orders placed with the lowest responsible bidder. If the competitive sealed proposal method is used, award shall be made to the lowest responsible bidder on the basis of initial proposals received or following receipt and evaluation of best and final offers. The administrator shall have the right to reject any and all bids pursuant to rules ~~and regulations~~ established for the division.

Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code.

Approved March 12, 1996.

CHAPTER 199
(H.B. No. 628)

AN ACT

RELATING TO PLANNING AND ZONING; AMENDING SECTION 67-6521, IDAHO CODE, TO PROVIDE REMEDIES FOR AN AFFECTED PERSON WHO CLAIMS THAT A ZONING ACTION OR PERMITTING ACTION WAS IN ESSENCE AN EMINENT DOMAIN ACTION.

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

SECTION 1. That Section 67-6521, Idaho Code, be, and the same is hereby amended to read as follows:

67-6521. ACTIONS BY AFFECTED PERSONS.

(1) (a) As used herein, an affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development.

(b) Any affected person may at any time prior to final action on a permit required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section 67-6512, Idaho Code; provided, however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

(~~1~~i) Grant or deny a permit; or

(~~2~~ii) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by rule and regulation a time period within which a recommendation or decision must be made.

(d) An affected person aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title

67, Idaho Code.

(2) (a) Authority to exercise the regulatory power of zoning in land use planning shall not simultaneously displace coexisting eminent domain authority granted under section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

(b) An affected person claiming "just compensation" for a perceived "taking," the basis of the claim being that a specific zoning action or permitting action restricting private property development is actually a regulatory action by local government deemed "necessary to complete the development of the material resources of the state," or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of section 14, article I, of the constitution of the state of Idaho relating to eminent domain. Under these circumstances, the affected person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect by local government to provide "just compensation" under the provisions of section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

Approved March 12, 1996.

CHAPTER 200
(H.B. No. 656)

AN ACT

RELATING TO THE PERMANENT BUILDING FUND ADVISORY COUNCIL; AMENDING SECTION 67-5710, IDAHO CODE, TO PROVIDE THAT APPOINTMENTS OF MEMBERS SHALL BE FOR A FIXED TERM, TO PROVIDE FOR STAGGERED TERMS, TO PROVIDE EXPIRATION DATES OF THE CURRENT MEMBERS' TERMS AND TO PROVIDE THAT MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

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

SECTION 1. That Section 67-5710, Idaho Code, be, and the same is hereby amended to read as follows:

67-5710. PERMANENT BUILDING FUND ADVISORY COUNCIL -- APPROVAL OF USE OF FUND -- DUTIES OF ADMINISTRATOR OF PUBLIC WORKS. There is hereby created in the division of public works a permanent building fund advisory council which shall be appointed by the governor. This council shall be composed of one (1) member of the senate, one (1) member of the house of representatives, a citizen engaged in the contracting business, a citizen engaged in the banking business, and a citizen who is a member of the business community not engaged in contracting or banking. The senate member and house of representative member shall be appointed for a fixed term of two (2) years. All other council members shall be appointed for a fixed term of three (3) years. The terms of office of members of the council holding office

prior to July 1, 1996, shall expire on the following dates: contracting business member on July 1, 1996; senate member and house of representative member on December 1, 1996; business community member on July 1, 1997; and banking member on July 1, 1998. On or after July 1, 1996, the governor shall appoint members of the council as terms of existing members expire. All members of the council shall serve at the pleasure of the governor. The administrator of public works and the responsible heads of the agencies for which appropriations for construction, renovations, remodelings or repairs are made pursuant to chapter 11, title 57, Idaho Code, shall consult, confer and advise with the permanent building fund advisory council in connection with all decisions concerning the administration of these appropriations and the planning and construction or execution of work or works pursuant thereto. The approval of the permanent building fund advisory council shall be a condition precedent to the undertaking of planning or construction.

The administrator of public works is hereby directed to work in close cooperation with the responsible heads of institutions and agencies for which appropriations are made herein and no building proposals shall be approved by the administrator of public works nor any planning or work undertaken by that officer pursuant to these appropriations without the prior approval of the responsible chief officer of the institutions and agencies for whom appropriations are made herein.

Approved March 12, 1996.

CHAPTER 201
(H.B. No. 672)

AN ACT

RELATING TO PLANNING AND PLANNING AND ZONING COMMISSION PLANNING DUTIES; AMENDING SECTION 67-6508, IDAHO CODE, TO PROVIDE THAT THE TRANSPORTATION ANALYSIS SHALL BE PREPARED IN COORDINATION WITH THE LOCAL JURISDICTION(S) HAVING AUTHORITY OVER THE PUBLIC HIGHWAYS AND STREETS.

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

SECTION 1. That Section 67-6508, Idaho Code, be, and the same is hereby amended to read as follows:

67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regu-

lations and actions unless the plan specifies reasons why a particular component is unneeded.

(a) Property Rights -- An analysis of provisions which may be necessary to insure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code.

(b) Population -- A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.

(c) School Facilities and Transportation -- An analysis of public school capacity and transportation considerations associated with future development.

(d) Economic Development -- An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.

(e) Land Use -- An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

(f) Natural Resource -- An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines.

(g) Hazardous Areas -- An analysis of known hazards as may result from susceptibility to surface ruptures from faulting, ground shaking, ground failure, landslides or mudslides; avalanche hazards resulting from development in the known or probable path of snowslides and avalanches, and floodplain hazards.

(h) Public Services, Facilities, and Utilities -- An analysis showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations and fire fighting equipment, health and welfare facilities, libraries, solid waste disposal sites, schools, public safety facilities and related services. The plan may also show locations of civic centers and public buildings.

(i) Transportation -- An analysis, prepared in coordination with the local jurisdiction(s) having authority over the public highways and streets, showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on building line setbacks, control of access, street naming and numbering, and a proposed system of public or other transit lines and related facilities including rights-of-way, terminals, future corridors, viaducts and grade separations. The component may also include port, harbor, aviation, and other related transportation facilities.

(j) Recreation -- An analysis showing a system of recreation areas, including parks, parkways, trailways, river bank greenbelts, beaches, playgrounds, and other recreation areas and programs.

(k) Special Areas or Sites -- An analysis of areas, sites, or

structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.

(l) Housing -- An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, sanitary, and adequate housing, including the provision for low-cost conventional housing, the siting of manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient to maintain a competitive market for each of those housing types and to address the needs of the community.

(m) Community Design -- An analysis of needs for governing landscaping, building design, tree planting, signs, and suggested patterns and standards for community design, development, and beautification.

(n) Implementation -- An analysis to determine actions, programs, budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan.

Nothing herein shall preclude the consideration of additional planning components or subject matter.

Approved March 12, 1996.

CHAPTER 202
(H.B. No. 686)

AN ACT

RELATING TO INCOME TAXATION; AMENDING SECTION 63-3024A, IDAHO CODE, TO PROVIDE THAT AN INDIVIDUAL FOR WHOM A CREDIT OR REFUND IS CLAIMED MUST BE A RESIDENT OF IDAHO.

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

SECTION 1. That Section 63-3024A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3024A. CREDITS AND REFUNDS. (a) Any resident individual not entitled to the credit allowed in subsection (b)(1), who is required to file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of fifteen dollars ($15.00) for each personal exemption for which a deduction is permitted by section 151(b) and (c) of the Internal Revenue Code if such deduction is claimed on the taxpayer's Idaho income tax <u>return, and if the individual for whom the deduction is claimed is a resident of the state of Idaho.</u> If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer.

(b) (1) A resident individual who has reached his sixty-fifth birthday before the end of his taxable year, who is required to

file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of thirty dollars ($30.00) for each personal exemption representing himself, a spouse over the age of sixty-five (65), or a dependent over the age of sixty-five (65), but shall be allowed a credit against taxes due under the Idaho income tax act equal to fifteen dollars ($15.00) for each personal exemption representing a spouse or dependent under the age of sixty-five (65). If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer.

(2) A resident individual who has reached his sixty-fifth birthday and is not required by law to file an Idaho income tax return and who has received no credit or refund under any other subsection of this section, shall be entitled to a refund of thirty dollars ($30.00). Any refund shall be paid to such individual only upon his making application therefor at such time and in such manner as may be prescribed by the state tax commission.

(c) A resident individual of the state of Idaho who is:

(i) blind, or

(ii) a disabled American veteran of any war engaged in by the United States, whose disability is recognized as a service connected disability of a degree of ten per cent (10%) or more, or who is in receipt of a pension for nonservice connected disabilities, in accordance with laws and regulations administered by the United States veterans administration, substantiated by a statement as to status signed by a responsible officer of the United States veterans administration, or

(iii) over sixty-two (62) years of age, and has been allowed none, or less than all, of the credit provided by subsection (a) or subsection (b) of this section, shall be entitled to a payment from the refund fund in an amount equal to fifteen dollars ($15.00), or the balance of his unused credit, whichever is less, upon making application therefor at such time and in such manner as the state tax commission may prescribe.

(d) Any part-year resident entitled to a credit under this section shall receive a proportionate credit, in the manner above provided, reflecting the part of the year in which he was domiciled in this state.

(e) No credit or refund may be claimed for an exemption which represents a person who has himself filed an Idaho income tax return claiming a deduction for his own personal exemption, and in no event shall more than one (1) taxpayer be allowed a credit or refund for the same exemption, or under more than one (1) subsection of this section.

(f) The refunds authorized by this section shall be paid from the state refund fund in the same manner as the refunds authorized by section 63-3067, Idaho Code.

(g) An application for any refund which is due and payable under the provisions of this section must be filed with the state tax com-

mission within three (3) years of:

(i) the due date, including extensions, of the return required under section 63-3030, Idaho Code, if the applicant is required to file a return, or

(ii) the 15th day of April of the year following the year to which the application relates if the applicant is not required to file a return.

Approved March 12, 1996.

CHAPTER 203
(H.B. No. 690)

AN ACT

RELATING TO VOTER APPROVED VEHICLE REGISTRATION FEES; AMENDING SECTION 40-827, IDAHO CODE, TO REVISE THE PROCEDURE FOR CALLING AN ELECTION AND TO PROVIDE AN ALTERNATIVE DISTRIBUTION OF THE PROCEEDS OF A FEE INCREASE.

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

SECTION 1. That Section 40-827, Idaho Code, be, and the same is hereby amended to read as follows:

40-827. AUTHORIZATION FOR VOTERS TO APPROVE VEHICLE REGISTRATION FEE. (1) Notwithstanding the provisions of section 49-207, Idaho Code, the voters of any county may authorize the board of county commissioners to adopt an ordinance by majority vote of the board of county commissioners to implement and collect a motor vehicle registration fee not to exceed two (2) times the amount established in section 49-402, Idaho Code. The authorization to adopt, implement, and collect a vehicle registration fee may be made by the registered voters of the county only at a general election and a simple majority of the votes cast on the question shall be necessary to authorize the fee.

(2) In any election, the ordinance submitted to the county voters shall: (a) state the exact rate of the fee; and (b) state the duration of the fee.

No rate shall be increased and no duration shall be extended without the approval of the voters, by a simple majority of the votes cast.

An election to approve or disapprove the adoption of a vehicle registration fee increase may be called for by the adoption of an ordinance by majority vote of the board of county commissioners or shall be called upon a request in writing from the governing board of each of the local highway jurisdictions in the county or ten per cent (10%) or more of the number of qualified voters ~~residing~~ voting in the last general election in each county commissioner subdistrict.

(3) Any county adopting an ordinance for a vehicle registration fee increase shall contract with the department for the collection, distribution, and administration of the fee in a like manner, and under the definitions, rules, and regulations for the collection and

administration of other registration fees as set forth in chapter 4, title 49, Idaho Code. Each month, following receipt by the department of revenues from the implementation of a vehicle registration fee increase, the department shall remit the same to the county implementing such fee, less a deduction for such amount for the department's actual costs for collection and administration of the fee, but not to exceed one and one-half per cent (1 1/2%). The increased vehicle registration fee shall not become part of the state highway account or the state highway distribution account.

(4) The local ~~governmental units, with~~ highway jurisdictions~~,~~ in the county shall use the funds generated by the increased vehicle registration fee exclusively for the construction, repair, maintenance, and traffic supervision of the highways within their respective jurisdictions and the payment of interest and principal of obligations incurred for said purposes.

(5) Sections 49-404, 49-405, 49-408, 49-409, 49-410, 49-414, 49-415 and 49-416, Idaho Code, shall be subject to the provisions of this code section.

(6) Such funds generated from the optional vehicle registration fee increase shall be distributed as provided by written agreement approved by each of the local highway jurisdictions in the county or, if no agreement is adopted, as follows:

(a) Thirty per cent (30%) shall be apportioned among the cities, incorporated and specially chartered, in the county, in the same proportion as the population of the city bears to the total population of all the cities in the county, as shown by the last regular or special federal census.

(b) Seventy per cent (70%) shall be apportioned as follows:

(i) Twenty per cent (20%) shall be divided equally between the county highway department, where applicable, and each highway district in the county, where applicable;

(ii) Eighty per cent (80%) shall be divided between the county highway department where applicable, and each highway district in the county, where applicable, in the proportion that the number of miles of improved highways in each highway system of the county bears to the total number of improved miles of highways in the county.

Approved March 12, 1996.

CHAPTER 204
(H.B. No. 696)

AN ACT

RELATING TO MANAGEMENT OF WOOD AND MILL YARD DEBRIS; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-166, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-167, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-168, IDAHO CODE, TO PROVIDE FOR APPOINTMENT OF A COMMITTEE AND DESCRIB-

ING MEMBERSHIP, TERMS, AND COMPENSATION; AND AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-169, IDAHO CODE, TO PROVIDE DUTIES AND MEETINGS OF THE COMMITTEE.

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

SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-166, Idaho Code, and to read as follows:

39-166. LEGISLATIVE FINDINGS AND PURPOSE. The legislature of the state of Idaho finds that:

(1) Wood and mill yard debris is a byproduct of wood processing and manufacturing; and

(2) If properly managed, wood and mill yard debris can be put to uses that have economic and environmental benefits; and

(3) There is a need for guidance about how to manage, store, use or dispose of wood and mill yard debris so that nuisance and adverse environmental impacts are minimized; and

(4) This guidance will enable the department and local units of government to more effectively regulate the use or disposal of wood and mill yard debris.

The purpose of this act is to provide guidance for the sound use, storage, management and disposal of wood and mill yard debris by requiring the director of the department of health and welfare to appoint a committee to study the issues and to gather and disseminate information to persons and entities that deal with wood and mill yard debris.

SECTION 2. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-167, Idaho Code, and to read as follows:

39-167. DEFINITIONS. For purposes of this act:

(1) "Committee" means the wood and mill yard debris committee.

(2) "Director" means the director of the Idaho department of health and welfare.

(3) "Wood or mill yard debris" means solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include components of soil, rock, or moisture, and for which the use, management, storage or final disposition is approved pursuant to this act.

SECTION 3. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-168, Idaho Code, and to read as follows:

39-168. COMMITTEE -- MEMBERS -- TERMS. The director shall, in cooperation with the appropriate public health districts created pursuant to chapter 4, title 39, Idaho Code, appoint a committee to

develop guidance on the use, storage, management and disposal of mill yard or wood debris. This committee shall consist of seven (7) individuals and shall include:

(1) One (1) representative of the division of environmental quality, who will provide administrative and other support to the committee.

(2) Two (2) representatives of the public health districts which have mill yard or wood debris within their districts.

(3) Two (2) representatives from industries generating wood or mill yard debris.

(4) Two (2) members with demonstrated technical knowledge important to the work of the committee.

Committee members shall be appointed to serve three (3) year terms. No member may serve more than two (2) full terms. Members serve at the pleasure of the director.

Members of the committee shall serve without compensation pursuant to section 59-509(a), Idaho Code.

SECTION 4. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-169, Idaho Code, and to read as follows:

39-169. COMMITTEE DUTIES -- MEETINGS. The committee's duties shall include:

(1) Developing a manual providing guidance for the use, storage, management and disposal of wood or mill yard debris to prevent public nuisances and minimize or prevent harmful environmental impacts. Guidance provided by the manual may be incorporated or adopted by reference in the rules of the department or other appropriate state agencies.

(2) Considering and developing specific solutions to unforeseen wood or mill yard debris use, storage, management or disposal as needed.

(3) Developing and sharing knowledge related to the use, storage, management and disposal of wood or mill yard debris including ways to constructively use or reclaim the debris.

(4) Making recommendations for any necessary permits, rules or legislation related to the use, storage, management or disposal of wood or mill yard debris.

The committee shall meet at least two (2) times a year at a time and place most convenient to the majority of members.

Approved March 12, 1996.

CHAPTER 205
(H.B. No. 697)

AN ACT

RELATING TO DUTIES OF THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION

39-107a, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND WELFARE TO ACCEPT TRANSFER FROM THE UNITED STATES OF ANY REAL PROPERTY OR INTERESTS IN REAL PROPERTY ACQUIRED BY THE UNITED STATES FOR REMEDIATION PURPOSES CONCERNING THE BUNKER HILL SUPERFUND SITE, TO PROVIDE FOR NO LIABILITY OR CLAIMS REGARDING THE PROPERTY AND TO PROVIDE FOR USE OF RECEIPTS FROM DISPOSAL OF THE PROPERTY.

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

SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-107a, Idaho Code, and to read as follows:

39-107a. REAL PROPERTY IN BUNKER HILL CLEANUP SITE. Notwithstanding any other provision of law to the contrary, the department of health and welfare may accept transfer from the United States of any real property or interest in real property acquired by the United States for remediation purposes concerning the Bunker Hill Superfund Site pursuant to 42 U.S.C. section 9604(j). The state of Idaho shall incur no liability nor be subject to any claims related to the existence, release or threatened release of any hazardous substance or contaminant or pollutant on, or from, any such real property. Any such real property which has a public use or commercial value and which is not useful or usable by the department of health and welfare shall be subject to sections 58-331 through 58-335, Idaho Code, except that any receipts from the disposal of such property shall be deposited in the Bunker Hill Cleanup Trust Fund established by the Trust Fund Declaration of the state of Idaho dated May 2, 1994 (Attachment N, Consent Decree, United States of America v. Asarco, Inc. No. CV-94-0206-N-HLR (D. Idaho)) for the purpose of funding institutional control or operation and maintenance activities regarding the site.

Approved March 12, 1996.

CHAPTER 206
(H.B. No. 741)

AN ACT

RELATING TO LABOR RELATIONS FOR FIREFIGHTERS; AMENDING SECTION 44-1804, IDAHO CODE, TO PROVIDE THAT IT SHALL BE THE OBLIGATION OF THE CITY, COUNTY, FIRE DISTRICT OR OTHER POLITICAL SUBDIVISION THROUGH ITS PROPER CORPORATE AUTHORITIES OR THEIR DESIGNEES TO MEET AND CONFER IN GOOD FAITH WITH THE REPRESENTATIVE OR REPRESENTATIVES OF THE BARGAINING AGENT WITHIN A TIME CERTAIN; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 44-1804, Idaho Code, be, and the same is

hereby amended to read as follows:

44-1804. OBLIGATION OF CORPORATE AUTHORITIES TO BARGAIN IN GOOD FAITH -- ENTERING INTO WRITTEN CONTRACT. It shall be the obligation of the city, county, fire district or other political subdivision through its proper corporate authorities or their designees, to meet and confer in good faith with the representative or representatives of the bargaining agent within ten (10) days after receipt of written notice from said bargaining agent of the request by the firefighters for a meeting for collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiations between the bargaining agent and the proper corporate authorities to be reduced to a written contract.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 12, 1996.

CHAPTER 207
(H.B. No. 742)

AN ACT

RELATING TO CARE FACILITIES FOR THE ELDERLY; AMENDING SECTION 39-3302, IDAHO CODE, TO FURTHER DEFINE TERMS AND MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3303, IDAHO CODE, TO CLARIFY AUTHORITY FOR ASSESSMENT FOR DETERMINATION OF PAYMENT LEVELS; AMENDING SECTION 39-3307, IDAHO CODE, TO PROVIDE THAT ADMISSION OF DEPARTMENT CLIENTS SHALL BE GOVERNED BY RULE; REPEALING SECTION 39-3308, IDAHO CODE; AMENDING CHAPTER 33, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3308, IDAHO CODE, TO PROVIDE DEVELOPMENT OF UNIFORM ASSESSMENT CRITERIA AND SPECIFY MINIMUM CONTENT; REPEALING SECTION 39-3309, IDAHO CODE; AMENDING CHAPTER 33, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3309, IDAHO CODE, TO PROVIDE THE MINIMUM CONTENT OF A NEGOTIATED SERVICE AGREEMENT; AMENDING SECTION 39-3310, IDAHO CODE, TO PROVIDE A REFERENCE TO A NEGOTIATED SERVICE AGREEMENT; AMENDING SECTION 39-3311, IDAHO CODE, TO PROVIDE APPLICATION OF A PHYSICIAN'S ORDER; REPEALING SECTION 39-3312, IDAHO CODE; AMENDING SECTION 39-3313, IDAHO CODE, TO PROVIDE THAT ADMISSION AGREEMENTS MAY BE INTEGRATED WITH THE NEGOTIATED SERVICE AGREEMENT AND MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3315, IDAHO CODE, TO INCLUDE A RESIDENT ASSESSMENT AND MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3316, IDAHO CODE, TO PROVIDE A REFERENCE TO A NEGOTIATED SERVICE AGREEMENT, TO GOVERNMENT MANAGEMENT OF PERSONAL FUNDS AND MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3320, IDAHO CODE, TO PROVIDE CONDITIONS FOR WAIVER OF THE PROVISIONS OF THIS SECTION; AMENDING SECTION 39-3321, IDAHO CODE, TO PROVIDE FURTHER QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATORS/OPERATORS; AMENDING SECTION 39-3322, IDAHO CODE, TO GOVERN QUALIFICATIONS AND

REQUIREMENTS FOR FACILITY STAFF; REPEALING SECTION 39-3323, IDAHO CODE; AMENDING SECTION 39-3351, IDAHO CODE, TO GOVERN EXEMPTIONS; AMENDING SECTION 39-3353, IDAHO CODE, TO GOVERN PENALTIES; AMENDING SECTION 39-3355, IDAHO CODE, TO FURTHER GOVERN INSPECTIONS AND MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3383, IDAHO CODE, TO PROVIDE REFERENCE TO A NEGOTIATED SERVICE AGREEMENT; AMENDING SECTION 39-3385, IDAHO CODE, TO PROVIDE REFERENCE TO A WRITTEN SERVICE PLAN; AMENDING CHAPTER 33, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3393, IDAHO CODE, TO PROVIDE APPLICATIONS OF THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 39-3501, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION 39-3502, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3503, IDAHO CODE, TO CLARIFY AUTHORITY FOR ASSESSMENT FOR DETERMINATION OF PAYMENT LEVELS; AMENDING SECTION 39-3505, IDAHO CODE, TO PROVIDE TRANSITION FOR RULES; AMENDING SECTION 39-3507, IDAHO CODE, TO PROVIDE THAT ADMISSION OF DEPARTMENT CLIENTS SHALL BE GOVERNED BY RULE; REPEALING SECTION 39-3508, IDAHO CODE; AMENDING CHAPTER 35, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3508, IDAHO CODE, TO PROVIDE DEVELOPMENT OF UNIFORM ASSESSMENT CRITERIA AND SPECIFY MINIMUM CONTENT; REPEALING SECTION 39-3509, IDAHO CODE; AMENDING CHAPTER 35, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3509, IDAHO CODE, TO PROVIDE THE MINIMUM CONTENT OF A NEGOTIATED SERVICE AGREEMENT; AMENDING SECTION 39-3510, IDAHO CODE, TO PROVIDE REFERENCE TO A NEGOTIATED SERVICE AGREEMENT; AMENDING SECTION 39-3511, IDAHO CODE, TO PROVIDE APPLICATION OF A PHYSICIAN'S ORDER; REPEALING SECTION 39-3512, IDAHO CODE; AMENDING SECTION 39-3513, IDAHO CODE, TO PROVIDE THAT ADMISSION AGREEMENTS MAY BE INTEGRATED WITH THE NEGOTIATED SERVICE AGREEMENT; AMENDING SECTION 39-3515, IDAHO CODE, TO INCLUDE A RESIDENT ASSESSMENT; AMENDING SECTION 39-3516, IDAHO CODE, TO PROVIDE A REFERENCE TO A NEGOTIATED SERVICE AGREEMENT AND TO GOVERN MANAGEMENT OF PERSONAL FUNDS; AMENDING SECTION 39-3520, IDAHO CODE, TO PROVIDE CONDITIONS FOR WAIVER OF THE PROVISIONS OF THE SECTION; AMENDING SECTION 39-3521, IDAHO CODE, TO PROVIDE FURTHER QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATORS/OPERATORS; AMENDING SECTION 39-3522, IDAHO CODE, TO GOVERN QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF; REPEALING SECTION 39-3523, IDAHO CODE; AMENDING SECTION 39-3530, IDAHO CODE, TO INCREASE THE MEMBERSHIP OF THE RESIDENTIAL CARE COUNCIL FOR THE ELDERLY; AMENDING SECTION 39-3551, IDAHO CODE, TO GOVERN EXEMPTIONS; AMENDING SECTION 39-3553, IDAHO CODE, TO GOVERN PENALTIES; AMENDING SECTION 39-3555, IDAHO CODE, TO FURTHER GOVERN INSPECTIONS; AMENDING SECTION 39-3573, IDAHO CODE, TO PROVIDE REFERENCE TO A NEGOTIATED SERVICE AGREEMENT; AMENDING SECTION 39-3574, IDAHO CODE, TO CLARIFY REFERENCE TO A WRITTEN SERVICE PLAN; AND AMENDING CHAPTER 35, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3580, IDAHO CODE, TO PROVIDE APPLICATIONS OF THE PROVISIONS OF THIS CHAPTER.

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

SECTION 1. That Section 39-3302, Idaho Code, be, and the same is hereby amended to read as follows:

39-3302. DEFINITIONS. As used in this chapter:

(1) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(2) "Administrator/operator" means any person who has responsibility for day-to-day administration or operation of a residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

(4) "Adult foster care family" means all individuals related by blood or marriage, other than residents, residing in the adult foster care home.

(5) "Adult foster care home" means a family home in which two (2) or less adults are placed to live who are not able to reside in their own home and who require family care, help in daily living, protection, security, and encouragement toward independence (may be referred to as a "home").

(6) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of mentally ill, developmentally disabled, or elderly residents.

(7) "Assessment" means the conclusion reached using uniform criteria developed by the department and relevant councils for determining a person's need for care and services.

(8) "Board" means the board of health and welfare.

(~~8~~9) "Board and care council" means the interdisciplinary group appointed by the director to advise the agency on matters of policy relating to board and care facilities.

(~~9~~10) "Certificate" means a one (1) year certificate issued by the certifying agent of the department to adult foster care homes complying with this chapter.

(~~10~~11) "Certifying agent" means a person representing the areas of social services, mental health or developmental disabilities, acting under the authority of the department to participate in the certification, inspection, and regulation of an adult foster care home.

(~~11~~12) "Client" means any person who receives financial aid and/or services from an organized program of the department.

(~~12~~13) "Continuing" means personal assistance services required over an extended period of time.

(~~13~~14) "Department" means the Idaho department of health and welfare.

(~~14~~15) "Director" means the director of the Idaho department of health and welfare.

(~~15~~16) "Facility" means a residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled or an adult foster care home.

(~~16~~17) "Foster care provider" means an adult member of the foster care family responsible for maintaining the adult foster care home. The foster care provider and the legal owner may not necessarily be the same person.

(~~17~~18) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board, or

other agency thereof.

(18~~8~~9) "Him or his" means him or her.

(~~19~~20) "License" means a basic permit to operate a residential care facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled.

(20~~1~~1) "Licensee" means the holder of a license to operate a residential care facility under this chapter.

(21~~1~~2) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(23) "Negotiated service agreement" means the agreement reached by the resident and/or their representative and the facility, based on the assessment, physician's orders if any, admission records if any, and desires of the clients, and which outlines services to be provided and the obligations of facility and resident.

(22~~4~~4) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(23~~5~~5) "Personal assistance" means the provision by the staff of the facility of one or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

~~(24) "Plan of care" means a written description of the functional capabilities of an individual, the individual's need for personal assistance and supervision, and the services to be provided to meet the individual's needs.~~

(25~~6~~6) "Political subdivision" means a city or county.

(26~~7~~7) "Representative of the department" means an employee of the department.

(27~~8~~8) "Resident" means an adult who resides in a residential care facility or an adult foster care home who may be mentally ill, developmentally disabled, physically disabled and/or elderly and for whom appropriate care is given.

(28~~9~~9) "Residential care facility" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more developmentally disabled, physically disabled and/or mentally ill adults not related to the owner.

(~~29~~30) "Room and board" means lodging and meals.

(30~~1~~1) "Qualified mental health professional" means a person who is qualified, by training and experience as defined by ~~regulations~~ rules promulgated by the board, to provide services to the mentally ill.

(31~~1~~2) "Qualified mental retardation professional" means a person who is qualified, by training and experience as defined by ~~regulations~~ rules promulgated by the board, to provide services to the mentally retarded.

~~(32) "Service coordinator" means an employee of the department who is qualified, by training and experience as defined by regulations promulgated by the board, and designated at the regional level to~~

~~develop or coordinate plans of care for clients of the department.~~

(33) "Substantial compliance" means there are no deficiencies which would endanger the health, safety, or welfare of the residents.

(34) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts, and assistance with activities of daily living. The operator is responsible for providing appropriate supervision based on each resident's ~~plan of care~~ negotiated service agreement.

(35) "Supportive services" means the specific services that are provided to the resident in the community and that are required by the ~~plan of care~~ negotiated service agreement or reasonably requested by the resident.

SECTION 2. That Section 39-3303, Idaho Code, be, and the same is hereby amended to read as follows:

39-3303. PAYMENT LEVELS. Clients of the department who are mentally ill, developmentally disabled or physically disabled and are receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a residential care facility will be assessed by a ~~service coordinator~~ the department. Based upon the assessed need ~~and plan of care~~, the specific types of services and supports required will determine the level of payment to be received by the resident according to the following criteria:

(1) Level I. The client requires room, board, and supervision and may require one or more of the following:

(a) Minimal assistance with activities of daily living and non-medical personal assistance.

(b) Minimal assistance with mobility, i.e., client is independently mobile.

(c) Minimal assistance in an emergency, i.e., client is capable of self-preservation in an emergency.

(d) Minimal assistance with medications, i.e., client does not require medication management or supervision.

(e) Minimal behavior management substantiated by the client's history.

(2) Level II. The client requires room, board, and supervision and may require one or more of the following:

(a) Moderate assistance with activities of daily living and non-medical personal assistance.

(b) Moderate assistance with mobility, but easily mobile with assistance.

(c) Moderate assistance in an emergency, but client is capable of self-preservation with assistance.

(d) Moderate assistance with medications.

(e) Moderate assistance with behavior management.

(3) Level III. The client requires room, board, and staff up and awake on a twenty-four (24) hour basis and may require one or more of the following:

(a) Extensive assistance with activities of daily living.

(b) Extensive personal assistance.

(c) Extensive assistance with mobility and may be immobile without extensive assistance.

(d) Extensive assistance in an emergency and may be incapable of self-preservation without assistance.

(e) Extensive assistance with and monitoring of medications.

(f) Extensive assistance with training and/or behavior management.

(4) Other levels and amounts as determined by the department pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 3. That Section 39-3307, Idaho Code, be, and the same is hereby amended to read as follows:

39-3307. ADMISSIONS. (1) A residential care facility shall not admit or retain any resident requiring a level of services or type of service for which the facility is not licensed or which the facility does not provide, or if the facility does not have the staff, appropriate in numbers and with appropriate skills, to provide.

(2) ~~The facility shall not admit any client of the department without a written statement from the service coordinator that the resident requires residential care based on an assessment, prior to admission, of the resident's medical/social/skills information.~~

~~(3) The facility shall not admit any nonclient of the department without a written order by the attending physician for admission to the residential care facility which shall include orders for medications, treatments and activity level.~~

~~(4)~~ The department shall develop ~~regulations~~ rules governing admissions to residential care facilities.

SECTION 4. That Section 39-3308, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Chapter 33, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-3308, Idaho Code, and to read as follows:

39-3308. ASSESSMENT. The department shall develop uniform assessment criteria to assess function and cognitive disability. The conclusions shall be deemed the assessment and shall be used to provide appropriate placement and funding for service needs. The assessment shall also be used to ensure funding is cost-effective and appropriate when compared to other state programs relevant to the needs of the client being assessed. The department shall develop rules regarding:

(1) Qualifications of persons making the assessments.

(2) Department's responsibility for state pay clients.

(3) Time frames for completing an assessment.

(4) Information to be included in an assessment.

(5) Use of an assessment in developing the negotiated service agreement.

(6) Use of assessments in determining facility staffing ratios.

(7) Use of assessments for determining the ability of provider and facility to meet residents' needs and special training or licenses that may be required in caring for certain residents.

SECTION 6. That Section 39-3309, Idaho Code, be, and the same is hereby repealed.

SECTION 7. That Chapter 33, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-3309, Idaho Code, and to read as follows:

39-3309. NEGOTIATED SERVICE AGREEMENT. (1) Each resident shall be provided a negotiated service agreement to provide for coordination of services and for guidance of the staff and management of the facility where the person resides. Upon completion, the agreement shall clearly identify the resident and describe the services to be provided to the resident and how such services are to be delivered.

(2) A negotiated service agreement shall be based on the person's:

(a) Assessment;

(b) Service needs for activities of daily living;

(c) Need for limited nursing services;

(d) Need for medication assistance;

(e) Frequency of needed services;

(f) Level of assistance, i.e., standby, reminding, total;

(g) Signature and approval of agreement; and

(h) Signing date that the plan was approved and date plan will be reviewed.

(3) The residential contractor shall consult the resident, the resident's family, friends, case manager and/or consumer coordinator in the development of the resident's service agreement.

(4) A copy of the agreement shall be given to the resident and a copy placed in the resident's records file no later than two (2) weeks from admission.

(5) A resident shall be given the choice and control of how and what services the facility will provide, or external vendors will provide, to the extent the resident can make choices.

(6) On an exception basis, a record shall be made of any changes or inability to provide services outlined in the negotiated service agreement.

(7) The agreement shall include a statement regarding when there is no need for access to external services.

SECTION 8. That Section 39-3310, Idaho Code, be, and the same is hereby amended to read as follows:

39-3310. PERIODIC REVIEW. The ~~plan--of--care~~ negotiated service agreement may be reviewed as necessary but must be reviewed at least every six (6) months.

SECTION 9. That Section 39-3311, Idaho Code, be, and the same is hereby amended to read as follows:

39-3311. PHYSICIAN'S ORDER ~~FOR--NONCLIENTS-OF-THE-DEPARTMENT~~. A physician's order shall include the following:

(1) A history and physical documenting any medical or health

problems of the resident which are relevant to the services needed by the resident.

(2) A description of the functional abilities of the resident including his specific strengths and limitations.

(3) The specific needs of the resident for personal assistance.

SECTION 10. That Section 39-3312, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Section 39-3313, Idaho Code, be, and the same is hereby amended to read as follows:

39-3313. ADMISSION AGREEMENTS. Upon admission to a residential care facility, the facility and the resident shall enter into an admission agreement. The agreement shall be in writing and shall be signed by both parties. The board shall promulgate rules ~~and--regulations~~ governing admission agreements which may be integrated with the negotiated service agreement.

SECTION 12. That Section 39-3315, Idaho Code, be, and the same is hereby amended to read as follows:

39-3315. ADMISSION RECORDS. Records required for admission to a facility shall be maintained and updated for administrative purposes only and shall be confidential. Their availability, subject to Idaho department of health and welfare rules ~~and-regulations~~, title 5, chapter 1, shall be limited to administration, professional consultants, the resident's physician, and representatives of the licensing agency. They shall include at least the following information:

(1) Name and social security number.

(2) Permanent address if other than the facility.

(3) Marital status and sex.

(4) Birthplace and date of birth.

(5) Name, address and telephone number of responsible agent or agency.

(6) Personal physician and dentist.

(7) Admission date and by whom admitted.

(8) Results of a physical or health status examination performed by a licensed physician or nurse practitioner within six (6) months prior to admission.

(9) A list of medications, treatments and diet prescribed for the resident which is signed and dated by the physician giving the order(s).

(10) The results of an assessment of any developmentally disabled or mentally ill person which support the ability of the facility to meet the needs of the resident.

(11) Psychosocial history, current within six (6) months prior to admission, completed by a licensed social worker, psychologist, psychiatrist, or licensed physician for clients of the department. For residents who are either developmentally disabled or mentally ill, the psychosocial history shall be performed by either a qualified mental retardation professional or qualified mental health professional.

(12) Religious affiliation if resident chooses to so state.

(13) Interested relatives and friends other than those in subsection (5) of this section. Names, addresses and telephone numbers of family members and/or significant others.

(14) Resident assessment.

SECTION 13. That Section 39-3316, Idaho Code, be, and the same is hereby amended to read as follows:

39-3316. RESIDENT RIGHTS. A residential care facility must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each facility must maintain and keep current a record of the following information on each resident:

(a) A copy of the resident's current ~~plan-of-care-or~~ negotiated service agreement and physician's order.

(b) Written acknowledgement that the resident has received copies of the rights.

(c) A record of all personal property and funds which the resident has entrusted to the facility, including copies of receipts for the property.

(d) Information about any specific health problems of the resident which may be useful in a medical emergency.

(e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.

(f) Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record.

(g) The current admission agreement between the resident and the facility.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

1. The right to a diet which is consistent with any religious or health-related restrictions.

2. The right to refuse a restricted diet.

3. The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:

1. The right to be treated in a courteous manner by staff.

2. The right to receive a response from the facility to any request of the resident within a reasonable time.

(4) Personal possessions. Each resident shall have the right to:

(a) Wear his own clothing.

(b) Determine his own dress or hair style.

(c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.

(d) Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property.

(5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department ~~regulations~~ rules.

(a) A facility shall not require a resident to deposit his personal funds with the facility.

(b) Once the facility accepts the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this subparagraph.

(6) Management of personal funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(a) The facility must deposit any amount of a resident's personal funds in excess of one hundred dollars ($100) in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest bearing account or petty cash fund.

(b) The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(c) Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the department, the remaining balance of funds shall be refunded to the department.

(7) Access and visitation rights. Each facility must permit:

(a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician.

(b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.

(c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.

(d) Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(8) Employment. Each resident shall have the right to refuse to perform services for the facility except as contracted for by the resident and the operator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect, and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician and dentist.

(b) The right to select the pharmacy or pharmacist of his choice.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in resident and family groups. Each resident shall have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(15) Participation in other activities. Each resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(16) Examination of survey results. Each resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the department with respect to the facility and any plan of correction in effect with respect to the facility.

(17) Other rights. Each resident shall have any other right established by the department.

SECTION 14. That Section 39-3320, Idaho Code, be, and the same is hereby amended to read as follows:

39-3320. RESIDENT COUNCILS. (1) Every licensed residential care facility over fifteen (15) beds shall assist the residents in establishing and maintaining a resident council. The council shall be composed of residents of the facility and may include their family members. The council may extend membership to advocates, friends and others.

(2) The council shall have the following duties:

(a) To assist the facility in developing a grievance procedure.

(b) To communicate resident opinions and concerns.

(c) To obtain information from the facility and disseminate the information to the residents.

(d) To identify problems and participate in the resolution of those problems.

(e) To act as a liaison with the community.

(3) ~~Every--licensed--facility--of-less-than-fifteen-(15)-beds,-at the-request-of-the-majority-of-its-residents,-shall-be-subject-to--the provisions--of--this-section.~~ This section may be waived provided that the operator meets regularly with residents and that residents decline to participate in a formal council and appropriate documentation exists to indicate the residents' decision.

SECTION 15. That Section 39-3321, Idaho Code, be, and the same is hereby amended to read as follows:

39-3321. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR/OPERATOR. Each residential care facility must employ at least one (1) full-time administrator licensed by the board responsible for licensing residential care administrators for the state of Idaho who:

(1) ~~Is-twenty-one-(21)-years-of-age-or-older.~~

~~(2)--Has--successfully-completed-a-basic-initial-training-and-participates-in-ongoing-training-programs-approved-by-the-department--and designed--to--assure--the--individual's--competence--to--carry-out-the requirements-of-this-chapter.~~

~~(3)--Meets-such-minimum-educational-standards-as-prescribed-by-the department.~~

~~(4)~~ Is of good moral and responsible character and has not been convicted of any felony or defrauding the federal government.

(~~5~~2) Has sufficient physical, emotional, and mental capacity to carry out the requirements of this chapter.

(~~6~~3) Has sufficient management and administrative ability to carry out the requirements of this chapter.

Multiple facilities under one (1) administrator may be allowed by the department based on an approved plan of operation.

SECTION 16. That Section 39-3322, Idaho Code, be, and the same is hereby amended to read as follows:

39-3322. QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF. Each ~~residential-care~~ facility must employ sufficient trained staff to fully meet the needs of its residents and the requirements of this chapter. ~~The-department-shall-develop-a-staff-to-resident-ratio-deemed to-meet-this-requirement.-There-must-be-at-least-one-(1)-staff--person immediately--available--to-the-residents-at-all-times-and-when-a-resident-is-present-in-the-facility,-there-must-be-at-least-one-(1)--staff person--also--present--in-the-facility.~~ The facility shall have sufficient staff to provide care during all hours required in each resident's negotiated service plan. Additional staff may be required if physical plant and disability of residents indicate that staff assistance in emergencies is required. Benchmarks shall be established in the assessment criteria where the need for certified nursing assistants or licensed nurses is indicated. Residential care facilities

shall not retain residents who require routine nursing care on a daily basis other than for short exceptional stays pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 17. That Section 39-3323, Idaho Code, be, and the same is hereby repealed.

SECTION 18. That Section 39-3351, Idaho Code, be, and the same is hereby amended to read as follows:

39-3351. EXEMPTIONS. The provisions of this chapter do not apply to any of the following:

(1) Any health facility as defined by chapter 13, title 39, Idaho Code.

(2) Any house, institution, hotel, congregate housing project for the elderly, retirement home or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that have residents ~~independently~~ accessing supportive services~~;--provided, however,--that--no-resident-thereof-requires-any-continuing-element-of care-and-supervision-or-protective-supervision-as--determined--by--the director~~ from an entity approved to provide such services in Idaho and holding no legal ownership interest in the entity operating the facility.

(3) Any arrangement for the receiving and care of persons by a relative.

(4) Any similar facility determined by the director.

SECTION 19. That Section 39-3353, Idaho Code, be, and the same is hereby amended to read as follows:

39-3353. PLACEMENT OF PERSONS INTO AN UNLICENSED RESIDENTIAL CARE FACILITY. ~~(1)~~ No person or public agency employee shall place, refer, or recommend placement of a person into a residential care facility which is operating without a license.

~~(2)--Any-person-or-public-agency-employee-who-knows-that--a--residential--care-facility-is-operating-without-a-license-shall-report-the name-and-address-of-the--facility--to--the--licensing--agency--of--the department.~~ Failure to comply with the provisions of this subsection shall constitute a misdemeanor.

SECTION 20. That Section 39-3355, Idaho Code, be, and the same is hereby amended to read as follows:

39-3355. INSPECTIONS. (1) The licensing agency shall cause to be made such inspections and investigations as it may deem necessary to determine compliance with this chapter and applicable rules~~,--regulations~~ and standards.

(2) All inspections for such purposes will be made unannounced and without prior notice at intervals determined by the licensing agency.

(3) ~~Inspections-shall-be-conducted-at-least-once-each-twelve-(12) months.~~

~~(4)--Inspections--shall--be-conducted-by-the-agency-designated-for licensing.~~

~~(5)~~ An inspector shall have full access and authority to examine, among other things, quality of care and service delivery, a facility's records, resident accounts, physical premises, including buildings, grounds and equipment, and any other areas necessary to determine compliance with this chapter and applicable rules~~,--regulations~~ and standards.

(6~~4~~) An inspector shall have authority to interview the licensee, administrator/operator, staff and residents. Interviews with residents shall be confidential and conducted privately unless otherwise specified by the resident.

(~~7~~5) The licensing agency shall notify the facility, in writing, of all deficiencies and shall approve a reasonable length of time for compliance by the facility.

(8~~6~~) Current lists of deficiencies, including plans of correction, shall be available to the public upon request in the individual facilities or by written request to the regional office of the department or the licensing agency.

SECTION 21. That Section 39-3383, Idaho Code, be, and the same is hereby amended to read as follows:

39-3383. ~~PLAN--OF--CARE~~ NEGOTIATED SERVICE AGREEMENT. The ~~plan-of care~~ negotiated service agreement as set out in section 39-3308, Idaho Code, shall govern the content, preparation and review of the ~~plan--of care~~ negotiated service agreement for residents of adult foster care homes.

SECTION 22. That Section 39-3385, Idaho Code, be, and the same is hereby amended to read as follows:

39-3385. WRITTEN SERVICE ~~AGREEMENT~~ PLAN. The department and the foster care providers serving clients of the department shall negotiate a written ~~agreement~~ plan annually. The purpose of the ~~agreement~~ plan shall be to ensure that a client receives services necessary to maintain him at the highest level of independence. The ~~agreement~~ plan is to establish a basis for coordination and communication between the foster family and the department. The ~~agreement~~ plan shall be maintained in the home.

SECTION 23. That Chapter 33, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-3393, Idaho Code, and to read as follows:

39-3393. APPLICATION OF PROVISIONS. The provisions of section 39-3308, Idaho Code, governing residential care facilities, shall also apply to adult foster care homes. Any individual providing care and housing commercially to the developmentally disabled or the mentally ill shall, at a minimum, meet the requirements of this chapter or other provisions of law governing care and housing for the mentally ill, developmentally disabled or physically disabled if those provi-

sions are more restrictive.

SECTION 24. That Section 39-3501, Idaho Code, be, and the same is hereby amended to read as follows:

39-3501. LEGISLATIVE INTENT AND DECLARATION. The purpose of a residential care facility for the elderly in Idaho is to provide a humane, safe, and home-like housing and living arrangement for persons who are elderly who need some assistance with activities of daily living and personal care ~~but do not require the level of care provided by~~ and to delay the need for a more expensive nursing ~~facilities~~ facility or other ~~institutions~~ institutional care as long as possible. Occupancy in a residential care facility for the elderly will be considered the person's primary residence.

It is the intent of the legislature that residential care facilities for the elderly be available to meet the needs of those ~~for whom they care~~ residing in these facilities by recognizing the capabilities of individuals to direct their care and self-medication or to use supervised self-medication techniques when ordered and approved by an individual licensed to prescribe medication.

Nothing in this chapter is intended to reduce or eliminate any duty of the department or any other public or private entity for provision of services for any resident.

SECTION 25. That Section 39-3502, Idaho Code, be, and the same is hereby amended to read as follows:

39-3502. DEFINITIONS. As used in this chapter:

(1) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(2) "Administrator/operator" means any person who has responsibility for day-to-day administration or operation of a residential care facility for the elderly.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

(4) "Adult foster care family" means all individuals related by blood or marriage, other than residents, residing in the adult foster care home.

(5) "Adult foster care home" means a family home in which two (2) or fewer adults are placed to live who are not able to reside in their own home and who require family care, help in daily living, protection and security (may be referred to as a "home").

(6) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by the facility.

(7) "Assessment" means the conclusion reached using uniform criteria developed by the department and relevant councils for determining a person's need for care and services.

(8) "Board" means the board of health and welfare.

(~~8~~9) "Certificate" means a one (1) year certificate issued by the certifying agent of the department to adult foster care homes comply-

ing with this chapter.

(~~9~~10) "Certifying agent" means a person representing the areas of social services or mental health, acting under the authority of the department to participate in the certification, inspection, and regulation of an adult foster care home.

(~~10~~1) "Client" means any person who receives financial aid and/or services from an organized program of the department.

(~~11~~2) "Continuing" means personal assistance services required over an extended period of time.

(~~12~~3) "Department" means the Idaho department of health and welfare.

(~~13~~4) "Director" means the director of the Idaho department of health and welfare.

(~~14~~5) "Facility" means a residential care facility for the elderly.

(~~15~~6) "Foster care provider" means an adult member or members of the foster care family responsible for maintaining the adult foster care home. The foster care provider(s) and the legal owner may not necessarily be the same person.

(~~16~~7) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board or other agency thereof.

(~~17~~8) "Him or his" means him or her.

(~~18~~9) "License" means a basic permit to operate a residential care facility for the elderly.

(~~19~~20) "Licensee" means the holder of a license to operate a residential care facility for the elderly under this chapter.

(~~20~~1) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(~~21~~2) "Mixed populations" means that two (2) or more of the following populations: mentally ill, developmentally disabled, physically disabled, and/or elderly, are provided care and/or housing within the facility.

(23) "Negotiated service agreement" means the agreement reached by the resident and/or their representative and the facility, based on the assessment, physician's orders if any, admission records if any, and desires of the client, and which outlines services to be provided and the obligations of facility and resident.

(~~22~~4) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(~~23~~5) "Personal assistance" means the provision by the staff of the facility of one (1) or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

~~(24) "Plan of care" means a written description of the functional capabilities of an individual, the individual's need for personal assistance and supervision, and the services to be provided to meet~~

~~the individual's needs.~~

(2~~5~~6) "Political subdivision" means a city or county.

(26~~7~~) "Representative of the department" means an employee of the department.

(27~~8~~) "Resident" means an individual who, by reason of age or infirmity, requires personal assistance and who is not related by blood or marriage to the licensee of the facility.

(28~~9~~) "Residential care council for the elderly" means the interdisciplinary group appointed by the director to advise the agency and legislature on matters of policy relating to residential care facilities for the elderly.

(~~29~~30) "Residential care facility for the elderly" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more elderly adults not related to the owner.

(30~~1~~) "Room and board" means lodging and meals.

~~(31) "Service coordinator" means an employee of the department who is qualified, by training and experience as defined by rules promulgated by the board, and designated at the regional level to develop or coordinate plans of care for clients of the department.~~

(32) "Substantial compliance" means there are no deficiencies which would endanger the health, safety or welfare of the residents.

(33) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts and assistance with activities of daily living. The operator is responsible for providing appropriate supervision based on each resident's ~~plan of care~~ negotiated service agreement.

(34) "Supportive services" means the specific services that are provided to the resident in the community and that are required by the ~~plan of care~~ negotiated service agreement or reasonably requested by the resident.

SECTION 26. That Section 39-3503, Idaho Code, be, and the same is hereby amended to read as follows:

39-3503. PAYMENT LEVELS. Clients of the department receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a residential care facility for the elderly or an adult foster care home will be assessed by ~~a service coordinator~~ the department. Based upon the assessed need ~~and plan of care~~, the specific types of services and supports required will determine the level of payment to be received by the resident according to the following criteria:

(1) Level I. The client requires room, board, and supervision and may require one (1) or more of the following:

(a) Minimal assistance with activities of daily living and nonmedical personal assistance.

(b) Minimal assistance with mobility, i.e., client is independently mobile.

(c) Minimal assistance in an emergency, i.e., client is capable of self-preservation in an emergency.

(d) Minimal assistance with medications, i.e., client does not

require medication management or supervision.

(e) Minimal behavior management substantiated by the client's history.

(2) Level II. The client requires room, board and supervision and may require one (1) or more of the following:

(a) Moderate assistance with activities of daily living and non-medical personal assistance.

(b) Moderate assistance with mobility, but easily mobile with assistance.

(c) Moderate assistance in an emergency, but client is capable of self-preservation with assistance.

(d) Moderate assistance with medications.

(e) Moderate assistance with behavior management.

(3) Level III. The client requires room, board, and staff up and awake on a twenty-four (24) hour basis and may require one (1) or more of the following:

(a) Extensive assistance with activities of daily living.

(b) Extensive personal assistance.

(c) Extensive assistance with mobility and may be immobile without extensive assistance.

(d) Extensive assistance in an emergency and may be incapable of self-preservation without assistance.

(e) Extensive assistance with and monitoring of medications.

(f) Extensive assistance with training and/or behavior management.

(4) Other levels and amounts as determined by the department pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 27. That Section 39-3505, Idaho Code, be, and the same is hereby amended to read as follows:

39-3505. RULES. The board shall have the authority to adopt, amend, repeal and enforce such reasonable rules as may be necessary or proper to carry out the purpose and intent of this chapter which are designed to protect the health, safety and individual rights of residents in residential care facilities for the elderly and provide adequate nutrition, supervision, and therapeutic recreational activities and to enable the department to exercise the powers and perform the duties conferred upon it in this chapter, not inconsistent with any statute of this state. Providers who care for a mixed population shall comply with the rules that are the most restrictive based on the populations being served. These rules shall be promulgated in accordance with the provisions of the Idaho administrative procedure act. Rules will be adopted July 1, 1994~~5~~6, but prior to that time, the existing rules as provided ~~in~~ by this section ~~39-3305, Idaho Code,~~ will apply ~~to residential care facilities for the elderly~~.

SECTION 28. That Section 39-3507, Idaho Code, be, and the same is hereby amended to read as follows:

39-3507. ADMISSIONS. (1) A residential care facility for the elderly shall not admit or retain any resident requiring a level of

services or type of service for which the facility is not licensed or which the facility does not provide, or if the facility does not have the staff, appropriate in numbers and with appropriate skills, to provide.

(2) ~~The facility shall not admit any client of the department without a written statement from the service coordinator that the resident requires residential care based on an assessment, prior to admission, of the resident's medical/social/skills information.~~

~~(3) The facility shall not admit any nonclient of the department without a written order by the attending physician for admission to the residential care facility for the elderly which shall include orders for medications, treatments and activity level.~~

~~(4)~~ The department shall develop rules governing admissions to residential care facilities for the elderly.

SECTION 29. That Section 39-3508, Idaho Code, be, and the same is hereby repealed.

SECTION 30. That Chapter 35, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-3508, Idaho Code, and to read as follows:

39-3508. ASSESSMENT. The department shall develop uniform assessment criteria to assess functional and cognitive disability. The conclusions shall be deemed the assessment and shall be used to provide appropriate placement and funding for service needs. The assessment shall also be used to ensure funding is cost-effective and appropriate when compared to other state programs relevant to the needs of the client being assessed. The department shall develop rules regarding:

(1) Qualifications of persons making assessments.

(2) Department's responsibility for state pay clients.

(3) Time frames for completing an assessment.

(4) Information to be included in an assessment.

(5) Use of an assessment in developing the negotiated service agreement.

(6) Use of assessments in determining facility staffing ratios.

(7) Use of assessments for determining the ability of provider and facility to meet residents' needs and special training or licenses that may be required in caring for certain residents.

SECTION 31. That Section 39-3509, Idaho Code, be, and the same is hereby repealed.

SECTION 32. That Chapter 35, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-3509, Idaho Code, and to read as follows:

39-3509. NEGOTIATED SERVICE AGREEMENT. (1) Each resident shall be provided a negotiated service agreement to provide for coordination of services and for guidance of the staff and management of the facility where the person resides. Upon completion, the agreement shall clearly

identify the resident and describe the services to be provided to the resident and how such services are to be delivered.

(2) A negotiated service agreement shall be based on the person's:

(a) Assessment;

(b) Service needs for activities of daily living;

(c) Need for limited nursing services;

(d) Need for medication assistance;

(e) Frequency of needed services;

(f) Level of assistance, i.e., standby, reminding, total;

(g) Signature and approval of agreement; and

(h) Signing date that the plan was approved and date plan will be reviewed.

(3) The residential contractor shall consult the resident, the resident's family, friends, case manager and/or consumer coordinator in the development of the resident's service agreement.

(4) A copy of the agreement shall be given to the resident and a copy placed in the resident's records file no later than two (2) weeks from admission.

(5) A resident shall be given the choice and control of how and what services the facility will provide, or external vendors will provide, to the extent the resident can make choices.

(6) On an exception basis, a record shall be made of any changes or inability to provide services outlined in the negotiated service agreement.

(7) The agreement shall include a statement regarding when there is no need for access to external services.

SECTION 33. That Section 39-3510, Idaho Code, be, and the same is hereby amended to read as follows:

39-3510. PERIODIC REVIEW. The ~~plan--of--care~~ <u>negotiated service agreement</u> may be reviewed as necessary but must be reviewed at least every six (6) months.

SECTION 34. That Section 39-3511, Idaho Code, be, and the same is hereby amended to read as follows:

39-3511. PHYSICIAN'S ORDER ~~FOR-NONCLIENTS-OF--THE--DEPARTMENT~~. A physician's order shall include the following:

(1) A history and physical documenting any medical or health problems of the resident which are relevant to the services needed by the resident.

(2) A description of the functional abilities of the resident including his specific strengths and limitations.

(3) The specific needs of the resident for personal assistance.

SECTION 35. That Section 39-3512, Idaho Code, be, and the same is hereby repealed.

SECTION 36. That Section 39-3513, Idaho Code, be, and the same is hereby amended to read as follows:

39-3513. ADMISSION AGREEMENTS. Upon admission to a residential care facility for the elderly, the facility and the resident shall enter into an admission agreement. The agreement shall be in writing and shall be signed by both parties. The board shall promulgate rules governing admission agreements which may be integrated with the negotiated service agreement.

SECTION 37. That Section 39-3515, Idaho Code, be, and the same is hereby amended to read as follows:

39-3515. ADMISSION RECORDS. Records required for admission to a facility shall be maintained and updated for administrative purposes only and shall be confidential. Their availability, subject to Idaho department of health and welfare rules, title 5, chapter 1, shall be limited to administration, professional consultants, the resident's physician, and representatives of the licensing agency. They shall include at least the following information:

(1) Name and social security number.

(2) Permanent address if other than the facility.

(3) Marital status and sex.

(4) Birthplace and date of birth.

(5) Name, address and telephone number of responsible agent or agency.

(6) Personal physician and dentist.

(7) Admission date and by whom admitted.

(8) Results of a physical or health status examination performed by a licensed physician or nurse practitioner within six (6) months prior to admission.

(9) A list of medications, treatments and diet prescribed for the resident which is signed and dated by the physician giving the order(s).

(10) Religious affiliation if resident chooses to so state.

(11) Interested relatives and friends other than those in subsection (5) of this section. Names, addresses and telephone numbers of family members and/or significant others.

(12) Resident assessment.

SECTION 38. That Section 39-3516, Idaho Code, be, and the same is hereby amended to read as follows:

39-3516. RESIDENT RIGHTS. A residential care facility for the elderly must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each facility must maintain and keep current a record of the following information on each resident:

(a) A copy of the resident's current ~~plan-of-care--or~~ negotiated service agreement and physician's order.

(b) Written acknowledgement that the resident has received copies of the rights.

(c) A record of all personal property and funds which the resident has entrusted to the facility, including copies of receipts for the property.

(d) Information about any specific health problems of the resi-

dent which may be useful in a medical emergency.

(e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.

(f) Any other health-related, emergency or pertinent information which the resident requests the facility to keep on record.

(g) The current admission agreement between the resident and the facility.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

(i) The right to a diet which is consistent with any religious or health-related restrictions.

(ii) The right to refuse a restricted diet.

(iii) The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:

(i) The right to be treated in a courteous manner by staff.

(ii) The right to receive a response from the facility to any request of the resident within a reasonable time.

(4) Personal possessions. Each resident shall have the right to:

(a) Wear his own clothing.

(b) Determine his own dress or hair style.

(c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.

(d) Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property.

(5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.

(a) A facility shall not require a resident to deposit his personal funds with the facility.

(b) Once the facility accepts the written authorization of the resident, the facility must hold, safeguard and account for such personal funds under a system established and maintained by the facility in accordance with this subparagraph.

(6) Management of personal funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(a) The facility must deposit any amount of a resident's personal funds in excess of one hundred dollars ($100) in an interest bearing account, or accounts, that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest bearing account or petty cash fund.

(b) The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident, or a legal representative of the resident, reasonable access to such record.

(c) Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds, and a final accounting of such funds, to the individual administering the resident's estate. For clients of the department, the remaining balance of funds shall be refunded to the department.

(7) Access and visitation rights. Each facility must permit:

(a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designee, or by the resident's individual physician.

(b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.

(c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.

(d) Reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(8) Employment. Each resident shall have the right to refuse to perform services for the facility except as contracted for by the resident and the operator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician and dentist.

(b) The right to select the pharmacy or pharmacist of his choice.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be)

furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in resident and family groups. Each resident shall have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(15) Participation in other activities. Each resident shall have the right to participate in social, religious and community activities that do not interfere with the rights of other residents in the facility.

(16) Examination of survey results. Each resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the department with respect to the facility and any plan of correction in effect with respect to the facility.

(17) Other rights. Each resident shall have any other right established by the department.

SECTION 39. That Section 39-3520, Idaho Code, be, and the same is hereby amended to read as follows:

39-3520. RESIDENT COUNCILS. (1) Every licensed residential care facility for the elderly over fifteen (15) beds shall assist the residents in establishing and maintaining a resident council. The council shall be composed of residents of the facility and may include their family members. The council may extend membership to advocates, friends and others.

(2) The council shall have the following duties:

(a) To assist the facility in developing a grievance procedure.

(b) To communicate resident opinions and concerns.

(c) To obtain information from the facility and disseminate the information to the residents.

(d) To identify problems and participate in the resolution of those problems.

(e) To act as a liaison with the community.

(3) ~~Every--licensed--facility--of-less-than-fifteen-(15)-beds,-at the-request-of-the-majority-of-its-residents,-shall-be-subject-to--the provisions--of--this--section~~ This section may be waived provided that the operator meets regularly with residents and that residents decline to participate in a formal council and appropriate documentation exists to indicate the residents' decision.

SECTION 40. That Section 39-3521, Idaho Code, be, and the same is hereby amended to read as follows:

39-3521. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR/OPERATOR. Each residential care facility for the elderly must employ at least one (1) full-time administrator licensed by the board responsible for licensing residential care administrators for the state of Idaho who:

(1) ~~Is-twenty-one-(21)-years-of-age-or-older;~~

~~(2)--Has successfully completed a basic initial training and--participates--in ongoing training programs approved by the department and designed to assure--the--individual's--competence--to--carry--out--the requirements of this chapter.~~

~~(3)--Meets such minimum educational standards as prescribed by the department.~~

~~(4)~~ Is of good moral and responsible character and has not been convicted of any felony or defrauding the federal government.

(~~5~~2) Has sufficient physical, emotional and mental capacity to carry out the requirements of this chapter.

(~~6~~3) Has sufficient management and administrative ability to carry out the requirements of this chapter.

Multiple facilities under one (1) administrator may be allowed by the department based upon an approved plan of operation.

SECTION 41. That Section 39-3522, Idaho Code, be, and the same is hereby amended to read as follows:

39-3522. QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF. Each ~~residential--care~~ facility ~~for--the elderly~~ must employ sufficiently trained staff to fully meet the needs of its residents and the requirements of this chapter. ~~The department shall develop a staff-to-resident ratio deemed to meet this requirement. There must be at least one--(1)--staff--person--immediately available to the residents at all times and when a resident is present in the facility, there must be at least one (1) staff person also present in the facility~~ The facility shall have sufficient staff to provide care during all hours required in each resident's negotiated service plan. Additional staff may be required if physical plant and disability of residents indicate that staff assistance in emergencies is required. Benchmarks shall be established in the assessment criteria where the need for certificated nursing assistants or licensed nurses is indicated. Residential care facilities shall not retain residents who require routine nursing care on a daily basis other than for short exceptional stays pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 42. That Section 39-3523, Idaho Code, be, and the same is hereby repealed.

SECTION 43. That Section 39-3530, Idaho Code, be, and the same is hereby amended to read as follows:

39-3530. RESIDENTIAL CARE COUNCIL FOR THE ELDERLY. (1) The department shall establish a residential care council for the elderly consisting of ~~seven (7)~~ eight (8) members appointed by the director. The director, or his designee, shall serve as chairman of the council. The members of the council shall be:

(a) The state ombudsman for the elderly or his designee.

(b) The director of the bureau of facility standards or his designee.

(c) An advocate for individuals who are elderly in the state.

(d) ~~Three (3)~~ Four (4) administrators or licensees of licensed residential care facilities for the elderly, one (1) of whom shall

represent facilities licensed for nine (9) beds or less, one (1) of whom shall represent facilities licensed for ten (10) to sixty (60) beds, ~~and~~ one (1) of whom shall represent facilities licensed for sixty-one (61) beds or more, and one (1) of whom represents a combination of nursing facility and residential care facility.

(2) In appointing the first members of the council who are not state agency representatives, the director shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years and two (2) members for a term of three (3) years. After the initial appointments, members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.

SECTION 44. That Section 39-3551, Idaho Code, be, and the same is hereby amended to read as follows:

39-3551. EXEMPTIONS. The provisions of this chapter do not apply to any of the following:

(1) Any health facility as defined by chapter 13, title 39, Idaho Code.

(2) Any house, institution, hotel, congregate housing project for the elderly, retirement home or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that have residents ~~independently~~ accessing supportive services~~;-provided however,-that-no-resident-thereof-requires-any-continuing--element--of care--and--supervision--or-protective-supervision-as-determined-by-the director~~ from an entity approved to provide such services in Idaho and holding no legal ownership interest in the entity operating the facility.

(3) Any arrangement for the receiving and care of persons by a relative.

(4) Any similar facility determined by the director.

SECTION 45. That Section 39-3553, Idaho Code, be, and the same is hereby amended to read as follows:

39-3553. PLACEMENT OF PERSONS INTO AN UNLICENSED RESIDENTIAL CARE FACILITY FOR THE ELDERLY. ~~(1)~~ No person or public agency employee shall place, refer or recommend placement of a person into a residential care facility for the elderly which is operating without a license.

~~(2)--Any-person-or-public-agency-employee-who-knows-that--a--residential--care--facility-for-the-elderly-is-operating-without-a-license shall-report-the-name-and-address-of-the--facility--to--the--licensing agency--of--the--department.~~ Failure to comply with the provisions of this subsection shall constitute a misdemeanor.

SECTION 46. That Section 39-3555, Idaho Code, be, and the same is hereby amended to read as follows:

39-3555. INSPECTIONS. (1) The licensing agency shall cause to be

made such inspections and investigations as it may deem necessary to determine compliance with the provisions of this chapter and applicable rules.

(2) All inspections for such purposes will be made unannounced and without prior notice at intervals determined by the licensing agency.

~~(3) Inspections shall be conducted at least once each twelve (12) months.~~

~~(4) Inspections shall be conducted by the agency designated for licensing.~~

~~(5)~~ An inspector shall have full access and authority to examine, among other things, quality of care and service delivery, a facility's records, resident accounts, physical premises, including buildings, grounds and equipment, and any other areas necessary to determine compliance with the provisions of this chapter and applicable rules.

(~~6~~4) An inspector shall have authority to interview the licensee, administrator/operator, staff and residents. Interviews with residents shall be confidential and conducted privately unless otherwise specified by the resident.

(~~7~~5) The licensing agency shall notify the facility, in writing, of all deficiencies and shall approve a reasonable length of time for compliance by the facility.

(~~8~~6) Current lists of deficiencies, including plans of correction, shall be available to the public upon request in the individual facilities or by written request to the regional office of the department or the licensing agency.

SECTION 47. That Section 39-3573, Idaho Code, be, and the same is hereby amended to read as follows:

39-3573. ~~PLAN OF CARE~~ NEGOTIATED SERVICE AGREEMENT. The ~~plan of care~~ negotiated service agreement as set out in section 39-3508, Idaho Code, shall govern the content, preparation and review of the ~~plan of care~~ negotiated service agreement for residents of adult foster care homes.

SECTION 48. That Section 39-3574, Idaho Code, be, and the same is hereby amended to read as follows:

39-3574. WRITTEN SERVICE ~~AGREEMENT~~ PLAN. The department and the foster care providers serving clients of the department shall negotiate a written ~~agreement~~ plan annually. The purpose of the ~~agreement~~ plan shall be to ensure that a client receives the level of care based upon the ~~plan of care~~ negotiated service agreement as described in sections 39-3503 and 39-3508, Idaho Code. The ~~agreement~~ plan is to establish a basis for coordination and communication between the foster family and the department. The ~~agreement~~ plan shall be maintained in the home.

SECTION 49. That Chapter 35, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-3580, Idaho Code, and to read as follows:

39-3580. APPLICATION OF PROVISIONS. The provisions of section 39-3508, Idaho Code, governing residential care facilities, shall also govern adult foster care homes. Any individual providing care and housing commercially to the elderly general public shall at a minimum meet the requirements of this chapter or other provision of law governing care and housing for the elderly if those provisions are more restrictive.

Approved March 12, 1996.

CHAPTER 208
(H.B. No. 756)

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING SECTION 63-923, IDAHO CODE, TO STRIKE AN OBSOLETE REFERENCE AND PROVIDE A CORRECT REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-2220A, IDAHO CODE, TO CLARIFY EXCLUSIONS FROM THE LIMITATION; AMENDING SECTION 22-2406, IDAHO CODE, TO DELETE OBSOLETE REFERENCES; AMENDING SECTION 31-1420, IDAHO CODE, TO PROVIDE APPLICATION OF THE THREE PERCENT PROPERTY TAX CAP TO CONSOLIDATED FIRE DISTRICTS AND TO DELETE OBSOLETE REFERENCES; AMENDING SECTION 31-4603, IDAHO CODE, TO DELETE OBSOLETE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-4706, IDAHO CODE, TO DELETE OBSOLETE REFERENCES; AMENDING SECTION 33-1003, IDAHO CODE, TO DELETE OBSOLETE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-1408, IDAHO CODE, TO DELETE OBSOLETE REFERENCES; AMENDING SECTION 33-2110A, IDAHO CODE, TO DELETE OBSOLETE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 33-2112, 46-1008, 50-1512, 50-2908, 59-1394, 63-1605, 63-1607 AND 63-2202A, IDAHO CODE, TO DELETE OBSOLETE REFERENCES; AMENDING SECTION 21-807, IDAHO CODE, TO CHANGE REFERENCES FROM MILLS TO PERCENT OF MARKET VALUE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTIONS 31-4318, 39-1333 AND 50-1004, IDAHO CODE, TO CHANGE REFERENCES FROM MILLS TO PERCENT OF MARKET VALUE; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Section 63-923, Idaho Code, be, and the same is hereby amended to read as follows:

63-923. LIMITATION ON AD VALOREM TAXES -- VALUE OF REAL AND PERSONAL PROPERTY -- SPECIAL TAX LEVIES.

(1) (a) Except as provided in section ~~63-2224~~ 63-2220A, Idaho Code, during any one tax year, the maximum amount of all ad valorem taxes from all sources on any property subject to appraisal, assessment, and taxation within the state of Idaho shall not exceed one percent (1%) of the market value for assessment purposes of such property, including the current market values of all residential improvements, notwithstanding any exemption of a por-

tion of such values from ad valorem taxation.

(b) The limitation provided for in paragraph (a) of this subsection shall not apply to ad valorem taxes or special assessments to pay the principal of and the interest and redemption charges on any indebtedness incurred prior to the time this section becomes effective, nor shall the limitation provided for in paragraph (a) apply to ad valorem taxes to pay the principal of and the interest and redemption charges on any indebtedness incurred on or after November 7, 1978, as prescribed by the constitution of the state of Idaho, nor shall the limitation provided for in paragraph (a) apply to special assessments levied on or after November 7, 1978, as provided by law.

(2) The market value for assessment purposes of real and personal property subject to appraisal by the county assessor shall be determined by the county assessor according to the rules ~~and--regulations~~ prescribed by the state tax commission, as provided in section 63-202, Idaho Code, but where real property is concerned it shall be the actual and functional use of the real property. All taxable property shall be annually appraised or indexed to reflect that valuation.

(3) If any section, part, clause or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

SECTION 2. That Section 63-2220A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2220A. LIMITATION ON BUDGET REQUESTS -- LIMITATION ON TAX CHARGES -- EXCEPTIONS. (1) Except as provided in subsection (2) of this section for tax year 1995, and each year thereafter, no taxing district shall certify a budget request for an amount of ad valorem tax revenues to finance ~~the-ad-valorem-portion-of-its~~ an annual budget that exceeds the greater of:

(a) The dollar amount of ad valorem taxes certified for its annual budget for any one (1) of the three (3) tax years preceding the current tax year, whichever is greater, which amount may be increased by a growth factor of not to exceed three percent (3%) plus the amount of revenue that would have been generated by applying the levy of the previous year, not including any levy ~~for voter-approved-bonds,-override-levies,-supplemental-levies,--plant facilities--reserve--fund--levies--or-school-emergency-fund-levies~~ described in subsection (3) of this section, to any increase in market value subject to taxation resulting from new construction as evidenced by the value of either: (i) property subject to the occupancy tax pursuant to chapter 39, title 63, Idaho Code, for the preceding tax year; or (ii) new construction based upon a quantitative formula approved by the state tax commission which uses the value of building permits for the preceding year; and by the value of annexation during the previous calendar year, as certified by the county assessor;

(b) The dollar amount of ad valorem taxes certified for its annual budget during the last year in which a levy was made; or

(c) The dollar amount of the actual budget request, if the taxing district is newly created; or

(d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code; or

(e) In the case of a nonschool district for which less than the maximum allowable increase in the dollar amount of ad valorem taxes is certified for annual budget purposes in any one (1) year, such a district may, in any following year, recover the foregone increase by certifying, in addition to any increase otherwise allowed, an amount not to exceed one hundred percent (100%) of the increase originally foregone. Said additional amount shall be included in future calculations for increases as allowed.

(2) No board of county commissioners shall set a levy, nor shall the state tax commission approve a levy for annual budget purposes which exceeds the limitation imposed in subsection (1) of this section, unless authority to exceed such limitation has been approved by a majority of the taxing district's electors voting on the question at an election called for that purpose and held pursuant to section 34-106, Idaho Code, provided however, that such voter approval shall be for a period of not to exceed two (2) years.

(3) The amount of ad valorem tax revenues to finance an annual budget does not include revenues from non-ad valorem tax sources, and does not include revenue from levies that are voter approved for bonds, override levies or supplemental levies, plant facilities reserve fund levies, school emergency fund levies or for levies applicable to newly annexed property or for levies applicable to new construction as evidenced by the value of property subject to the occupancy tax pursuant to chapter 39, title 63, Idaho Code, for the preceding tax year ~~and does not include plant facility reserve fund levies or school emergency fund levies~~.

SECTION 3. That Section 22-2406, Idaho Code, be, and the same is hereby amended to read as follows:

22-2406. COUNTY POWERS. (1) The county control authority is authorized to:

(a) Have noxious weeds controlled without cost to the landowner, notwithstanding any other provision of this chapter relating to payment of cost; and

(b) Quarantine any tract of land under its jurisdiction when it appears there is an infestation of noxious weeds beyond the ability of the landowner to control and put into immediate operation the required means for the control or containment of such noxious weeds including necessary destruction of crops; and

(c) Serve individual notice on the landowner and where possible on the operator of the land prior to the entry upon such land declaring a quarantine and specifying the date of the proposed entry and the proposed cost to the violator, and advise the same person of the completion of the control operation and the required reimbursement thereof. If the landowner is not known or readily available, notice shall be deemed satisfied after eight (8) days from postmark of registered mail to the address as shown on the assessment roll of the county; and

(d) Stop movement of noxious weed infested items. Such items shall not be moved from designated premises except in accordance

with the written permission of the county control authority; and
(e) Purchase or provide for equipment and materials for the control of noxious weeds, independently or in combination with other control authorities, and use such equipment or materials upon any lands within the state; and
(f) Levy annually upon all taxable property of said county a tax for the control of noxious weeds to be collected and apportioned to the county noxious weed fund, which levy shall not exceed six hundredths per cent (.06%) of the market value for assessment purposes of said property in said county, and which levy shall be exempt from the provisions of sections 63-923 ~~and 63-2220~~, Idaho Code; and
(g) Utilize any other methods or local options that may be available for the purpose of funding a coordinated noxious weed control program on the county level; and
(h) Use the noxious weed fund, which may be a revolving fund, only for noxious weed purposes. In addition to any appropriated funds designated for the control of noxious weeds, the county control authority shall have the power to receive and disburse funds from any source as a continuing appropriation at any time for the purpose of controlling noxious weeds; and
(i) Propose and accept plans for noxious weed control which may be extended over a period of years by agreement with the landowner. The agreement shall be a contract and the control authority shall have the power and duty to enforce the terms of any such agreement; and
(j) Designate weeds, in addition to the state noxious weed list, as noxious within their county, but such additional species are not subject to provisions of the state noxious weed laws.
(2) The county weed superintendent is authorized to:
(a) Enter upon all lands within the county where there are noxious weeds to ascertain conditions, if a reasonable attempt has been made to contact the landowner and where possible the operator of the land prior to entry and there is probable cause for entry; and
(b) Stipulate items as requiring treatment to prevent dissemination of noxious weeds, in accordance with the applicable regulations.

SECTION 4. That Section 31-1420, Idaho Code, be, and the same is hereby amended to read as follows:

31-1420. LEVY. (1) Each year, immediately prior to the annual county levy of taxes, the board of commissioners of each fire protection district, organized and existing under this act, may levy a tax upon all the taxable property within the boundaries of such district sufficient to defray the cost of equipping and maintaining the district, not exceeding sixteen hundredths percent (.16%) of market value for assessment purposes, provided, districts having a population in excess of two thousand five hundred (2,500) may levy a total tax of twenty-four hundredths percent (.24%) of market value for assessment purposes, to be used for the purposes of this act and for no other purpose. The levy shall be made by resolution entered upon the minutes

of the board of commissioners of the fire protection district, and it shall be the duty of the secretary of the district, immediately after entry of the resolution in the minutes, to transmit to the county auditor, county assessor and state board of equalization certified copies of the resolution providing for such levy. Said taxes shall be collected as provided by section 63-918, Idaho Code.

(2) If two (2) or more fire protection districts consolidate into one (1) district, the provisions of section 63-2220A, Idaho Code, shall apply to the consolidated district's budget request ~~during--the first--tax-year-following-consolidation,-and-the-current-year-tax-rate of-the-district-with-the-higher-levy-of-any-fire--protection--district being--consolidated--shall--be-the-rate-used-for-the-purposes-of~~ as if the former district which, in the year of the consolidation, has the higher levy subject to the limitations of section 63-2220A, Idaho Code, had annexed the other district or districts. In addition, the consolidated district shall receive the benefit of foregone increases accumulated by the former districts under section 63-2220(1)(~~i~~e), Idaho Code.

~~If-a-fire-protection-district-annexes-territory,-the-provisions-of section--63-2220,--Idaho--Code,--shall--apply--to-that-fire-protection district's-budget-request-during-the-first-tax-year--following--annexation,-and-the-current-year-tax-rate-of-the-annexing-district-shall-be the-rate-used-for-the-purposes-of-section-63-2220(1)(i),-Idaho-Code.~~

SECTION 5. That Section 31-4603, Idaho Code, be, and the same is hereby amended to read as follows:

31-4603. PROCEDURE FOR ESTABLISHMENT. (1) If a board of county commissioners desires to establish a county justice fund, it shall publish notice of intent to do so in conjunction with the proposed budget publication required in section 31-1604, Idaho Code, and shall depict such proposal in the proposed county budget in a manner consistent with the provisions of section 31-1603, Idaho Code.

(2) Establishment of a county justice fund shall proportionately reduce the allowable ad valorem tax charges for remaining expenses in the county current expense fund. For purposes of achieving a proportionate reduction, the following procedure shall be followed:

(a) Prior to the September budget hearing required by section 31-1604, Idaho Code, and upon the request of the board of county commissioners, the budget officer shall identify and separate the appropriations for the services and operations outlined in section 31-4602, Idaho Code, from the previous year's budget, including estimated portions of the general reserve appropriation and court-ordered expenditures for such purposes. Such figure, and the percentage that such figure constitutes of the whole of the current expense fund expenditures, shall be certified by the clerk of the county and shall be transmitted to the board of county commissioners.

(b) The board of county commissioners shall review the submittal by the clerk and shall, upon completion of such review, adopt a resolution creating a county justice fund, which resolution shall certify, to the accuracy of two (2) decimal places, the percentage that authorized justice fund appropriations in the prior budget

year are of total current expense fund appropriations for that year. If the board of county commissioners believes the previous year's budget is not typical, it may petition the state tax commission for an administrative ruling setting the percentage of justice fund expenditures based upon a more extended history of such budgeted expenditures.

(c) The percentage derived by completion of the steps called for in subsection (2)(b) of this section shall be multiplied by the total of ad valorem tax charges levied to support the current expense fund as a whole. The product of this multiplication shall be subtracted from the entire ad valorem tax charge for the current expense fund and shall constitute the justice fund allocation. The remainder, after the justice fund allocation has been subtracted, shall constitute a new ad valorem tax base for the current expense fund~~, which current expense and justice fund bases shall continue to be subject to the provisions of section 63-2220, Idaho Code~~. Allowable ad valorem tax charges for the current expense fund in the year the justice fund is created shall be determined upon the base established in this section. In subsequent years, after a county has established a justice fund, the maximum levy authority for the current expense fund shall be twenty hundredths percent (.20%) of market value for assessment purposes as provided for in section 63-903, Idaho Code.

(3) Additional revenues, other than those derived from ad valorem taxation, shall be allocated to the current expense fund or the justice fund, respectively, in accordance with their association with the functions performed by offices supported by the respective funds. Where revenues sources are not clearly attributable to either justice or current expense fund activities, they shall be apportioned to the current expense fund or justice fund by the board of county commissioners to meet the greatest funding need in each local jurisdiction.

SECTION 6. That Section 31-4706, Idaho Code, be, and the same is hereby amended to read as follows:

31-4706. BUDGET OF FUNDS FOR COUNTY MUSEUM PURPOSES -- MAINTENANCE OF IDLE PROPERTY. For the purpose of determining what funds must be raised by taxes for county museum purposes, the county museum board shall meet at such time as may be provided by law for the preparation of budgets, and shall make a budget of the amounts required for museum purposes, including all salaries to be paid for the current year, and shall deduct therefrom any balance remaining in its treasury, and shall then certify to the board of county commissioners the amount of said budget. The board of county commissioners may make a levy upon all taxable property in the county in the amount requested by the county museum budget. No levy for the purposes of this chapter shall exceed three-hundredths percent (.03%) on each dollar of market value for assessment purposes of taxable property in the county. When such taxes have been collected, the same shall be paid to the treasurer of the county museum board to be used for the purposes authorized by this chapter. Upon the creation and appointment of the museum board by the county commissioners, it hereby becomes a taxing unit separate and distinct from any other taxing unit or tax levy within the county~~, and~~

~~the district's first levy shall be subject to the provisions of section 63-2220(1)(iii), Idaho Code,~~ under the provisions of the Idaho budget law and as such is empowered to issue tax anticipation notes or warrants as provided by law for maintaining, carrying on, conducting, payment of obligations and all other necessary expenses, incurred or to be incurred in maintaining a museum. It may be the duty of the county commissioners of any county, where property for county museum purposes is located, to levy an amount sufficient to maintain and protect such museum grounds and property.

SECTION 7. That Section 33-1003, Idaho Code, be, and the same is hereby amended to read as follows:

33-1003. SPECIAL APPLICATIONS OF EDUCATIONAL SUPPORT PROGRAM. 1. Decrease in Average Daily Attendance. -- Any school district which has a decrease in total average daily attendance of one percent (1%) of its average daily attendance in the then current school year from the total average daily attendance used for determining the allowance in the educational support program for the school year immediately preceding, the allowance of funds from the educational support program may be based on the average daily attendance of the school year immediately preceding, less one percent (1%). When this provision is applied, the decrease in average daily attendance shall be proportionately distributed among the various categories of support units that are appropriate for the district.

2. Application of Support Program to Separate Schools in District.

a. Separate Elementary School. -- Any separate elementary school shall be allowed to participate in the educational support program as though the school were the only elementary school operated by the district.

b. Hardship Elementary School. -- Upon application of the board of trustees of a school district, the state board of education is empowered to determine that a given elementary school or elementary schools within the school district, not otherwise qualifying, are entitled to be counted as a separate elementary school as defined in section 33-1001, Idaho Code, when, in the discretion of the state board of education, special conditions exist warranting the retention of the school as a separate attendance unit and the retention results in a substantial increase in cost per pupil in average daily attendance above the average cost per pupil in average daily attendance of the remainder of the district's elementary grade school pupils.

c. Separate Secondary School. -- Any separate secondary school shall be allowed to participate in the educational support program as though the school were the only secondary school operated by the district.

d. Minimum Pupils Required. -- Any elementary school having less than ten (10) pupils in average daily attendance shall not be allowed to participate in the state or county support program unless the school has been approved for operation by the state board of education.

3. Remote Schools. -- The board of trustees of any Idaho school

district which operates and maintains a school which is remote and isolated from the other schools of the state because of geographical or topographical conditions may petition the state board of education to recognize and approve the school as a remote and necessary school. The petition shall be in form and content approved by the state board of education and shall provide such information as the state board of education may require. Petitions for the recognition of a school as a remote and necessary school shall be filed annually at least ninety (90) days prior to the date of the annual meeting of the board of trustees as established in section 33-510, Idaho Code.

Within forty-five (45) days after the receipt of a petition for the recognition of a remote and necessary school, the state board of education shall either approve or disapprove the petition and notify the board of trustees of its decision. Schools which the state board of education approves as being necessary and remote shall be allowed adequate funding within the support program for an acceptable educational program for the students of the school. In the case of a remote and necessary secondary school, grades 7-12, the educational program shall be deemed acceptable when, in the opinion of the state board of education, the accreditation standard relating to staff size, established in accordance with section 33-119, Idaho Code, has been met. The final determination of an acceptable program and adequate funding in the case of a remote and necessary elementary school shall be made by the state board of education.

4. Support ~~p~~Program ~~w~~When ~~d~~District ~~b~~Boundaries are ~~c~~Changed.

a. In new districts formed by the division of a district, the support program computed for the district divided in its last year of operation, shall be apportioned to the new districts created by the division, in the proportion that the average daily attendance of pupils, elementary and secondary combined, residing in the area of each new district so created, is to the average daily attendance of all pupils, elementary and secondary combined, in the district divided in its last year of operation before the division.

b. When boundaries of districts are changed by excision or annexation of territory, the support program of any district from which territory is excised for the last year of operation before such excision shall be divided, and apportioned among the districts involved, as prescribed in subsection 4a. hereof.

c. In new districts formed by consolidation of former districts, the support program allowance for a seven (7) year period following the formation of the new district, shall not be less than the combined support program allowances of the component districts in the last year of operation before consolidation.

5. For the fiscal year which commences on July 1, 1986, and for each succeeding fiscal year, any school district whose adjusted market value for assessment purposes decreases forty percent (40%) or more from the previous year's adjusted market value for assessment purposes as such valuation existed on December 31, is eligible to receive an adjustment to its educational support program entitlement, subject to qualifications as follows:

~~(a)~~. The adjusted market value for assessment purposes has decreased forty percent (40%) or more from the previous year's

adjusted market value for assessment purposes as such valuation existed on December 31; and

~~(b)~~. The school levy to be certified for the general maintenance and operation fund shall be no less than four-tenths of one percent (.4%); and

~~(c). The revenue generated by the four-tenths of one percent (.4%) tax levy is less than what could have been authorized under the provisions of section 63-2220(1)(i)(a), Idaho Code; and~~

~~(d)~~ An eligible school district has made application to the state department of education for an adjustment to entitlement from the state educational support program on or before June 1 of the fiscal year. Such application must document the need for additional funds and must include a district plan to minimize impact of a reduced local tax base.

~~The application for adjustment to the educational support program shall be reviewed by the state department of education and any adjustment shall not be greater than fifty percent (50%) of the difference between the maximum revenue authorized under section 33-802(2)(a), Idaho Code, and the revenue that could have been authorized under the provisions of section 63-2220, Idaho Code.~~

SECTION 8. That Section 33-1408, Idaho Code, be, and the same is hereby amended to read as follows:

33-1408. SPECIAL LEVY FOR TUITION. Any school district is hereby authorized to make a levy above the maintenance and operation levy otherwise authorized by law for the purpose of paying tuition costs of its students who, under authorization of the board of trustees of the district, attend school in another district either in or out of Idaho, except for those costs reimbursed by the state under border contracts. Any levy made under the provisions of this section shall be exempt from the limitation imposed by section 63-923(1), Idaho Code~~, and from the provisions of section 63-2220, Idaho Code~~.

SECTION 9. That Section 33-2110A, Idaho Code, be, and the same is hereby amended to read as follows:

33-2110A. TUITION OF OUT OF DISTRICT IDAHO STUDENTS, COUNTY TAXES AND OTHER FINANCIAL SUPPORT. (1) Any student residing in the area of a county outside of a community college district or in a county without a community college district, who has been a resident of the county and state as defined by section 33-2110B, Idaho Code, immediately prior to the date of his first enrollment in a community college, which residence may not be acquired while attending and enrolled in a community college, may enroll in any community college in the state, and the county of his residence shall pay that portion of his tuition as hereinafter set out. The tuition which shall be paid by the resident county shall be that portion of the tuition uniformly established by a community college district for all out of district students, both in state as well as out of state, pursuant to section 33-2110, Idaho Code, after deducting therefrom the amount of tuition paid by a resident student at the community college; however, the liability of the resident county shall not exceed two-thirds (2/3) the total tuition

and fees charged and in no instance shall it exceed five hundred dollars ($500) each semester for a two-(2) semester year for a full-time student. The student shall pay the tuition and fees charged a student resident in the district, and the balance, if any, of the nonresident student tuition above the maximum liability of the county of his residence. No county shall be liable for out of district tuition unless the board of county commissioners of that county has first verified to the community college in writing the fact that the student is a resident of the county. Upon verification, the county shall thereafter be liable for the out of district tuition so long as the student is duly enrolled and attending the college subject to the following limitations:

(a) Liability shall be for six (6) semesters or the term of the curriculum for which the student is enrolled, whichever is lesser.

(b) Liability shall terminate if the student's domiciliary residence changes and that change continues for twelve (12) months.

(2) The nonresident tuition shall be established annually not later than August 1st and shall be forthwith filed with the state board of education, together with a statement supporting the computation thereof. Each community college, by September 30 and March 1 of each year, shall bill the county of residence of each nonresident student enrolled at the commencement of each semester, and each board of county commissioners shall allow and order paid any bill for tuition at the first regular meeting following receipt of the bill, but not exceeding forty-five (45) days after receipt. Upon failure of a county to pay the tuition, a community college district may commence action in the district court of the state of Idaho for the county to collect the same.

(3) For the payment of tuition of nonresident students as herein provided, there shall be allocated in each county without a community college district to a county community college fund, and paid to the county treasurer to be held in that fund, fifty per cent (50%) of all moneys apportioned to the county out of liquor funds of the state of Idaho as set forth in chapter 4, title 23, Idaho Code, and that amount shall be deducted from the amount that would otherwise be allocated to the county; and if liquor funds are not sufficient to pay the tuition, commencing for the calendar year 1966, the board of county commissioners shall levy upon the taxable property within each county without a community college district, and, in a county with such a district, upon the taxable property within the county lying outside of the community college district, an ad valorem tax not to exceed six hundredths per cent (.06~~00~~%) of market value for assessment purposes, to be certified as set out in section 33-2111, Idaho Code. Such levy shall be exempt from the limitation imposed by section 63-923(1), Idaho Code~~, and the moneys derived from such levy shall be exempt from the limitation imposed by section 63-2220, Idaho Code~~. The proceeds of the levy shall be placed in the county community college fund. Apportionment of liquor funds herein provided shall commence for the fiscal quarter ending September 30, 1965, and accruing during that quarter.

(4) Based upon the enrollment established by the first semester's tuition bills received by September 30, the board of county commissioners shall establish immediately a total community college annual tuition budget for two (2) semesters which shall be equal to twice the

amount of the tuition bills plus a contingency factor of ten per cent (10%). This budget shall be adjusted after March 1 based on any change of enrollment shown by the second semester tuition bills. If enrollment is from none to not more than four (4) students, a minimum budget of five (5) students at five hundred dollars ($500) each shall be established. In the event all tuition bills received have been paid, notwithstanding any other provision hereof, (a) any liquor funds received, which in the quarter when received to any extent are in excess of the budget, to the extent of that excess shall not be paid over to the county treasurer to be held in the community college fund, and (b) any funds received from the levy on taxable property, which when received to any extent are in excess of the budget after the application of liquor funds thereto, to the extent of that excess shall not be paid over to the community college fund. Excess liquor funds shall be paid pursuant to law as if this section were not applicable and excess funds shall be paid to the general fund of the county. In the event the total liquor fund payable hereunder to the county community college fund together with the receipts from the levy on taxable property for each fiscal year are insufficient to pay tuition bills, which deficiency is caused by a levy of less than the maximum allowed hereunder, or by enrollment in excess of the budget herein provided, the budget for each following year shall be increased to the maximum allowed by the maximum tax levy authorized to pay any deficiency at the earliest time. If the deficiency is due to the lack of funds in a fiscal year when the maximum levy authorized shall have been made, for the next fiscal year thereafter the number of students from that county shall be limited by the board of county commissioners to the extent necessary to pay the deficiency not later than the end of the following year. Provided nevertheless, for the two (2) semesters commencing September, 1965 the board of county commissioners shall limit the community college budget and total students to estimated liquor funds available on quarterly disbursements through June 30, 1966. Any limitation of students authorized shall be accomplished (a) on the basis of student grades and financial need, and (b) by each community college notifying the county of residence of each student's application and the county shall accept or reject the application at least five (5) days prior to the tuition billing dates set out herein. A community college shall nevertheless have a right to require any student residing outside the district to pay nonresident tuition if the county of his residence is more than twenty-five per cent (25%) in arrears of a total county tuition bill for one (1) year as of the beginning of the subsequent semester, but tuition shall be refunded to such students when paid by the county.

SECTION 10. That Section 33-2112, Idaho Code, be, and the same is hereby amended to read as follows:

33-2112. ADDITIONAL TAX LEVY FOR GYMNASIUM AND GROUNDS. The board of trustees of any community college district may levy a tax not exceeding one one-hundredth percent (.01%) on each dollar of the assessed value of the taxable property within the district for the maintenance and care of the gymnasium and college grounds of the district, in addition to other taxes authorized by law for the mainte-

nance and support of the community college. Such levy shall be exempt from the limitation imposed in section 63-923(1), Idaho Code~~, and the moneys derived from such levy shall be exempt from the limitation imposed by section 63-2220, Idaho Code~~.

SECTION 11. That Section 46-1008, Idaho Code, be, and the same is hereby amended to read as follows:

46-1008. THE GOVERNOR AND DISASTER EMERGENCIES. (1) Under this act, the governor may issue executive orders, proclamations and amend or rescind them. Executive orders and proclamations have the force and effect of law.

(2) A disaster emergency shall be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the governor finds that the threat or danger has passed, or the disaster has been dealt with to the extent that emergency conditions no longer exist, and when either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation; provided, however, that no state of disaster emergency may continue for longer than thirty (30) days unless the governor finds that it should be continued for another thirty (30) days or any part thereof. The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened, the area subject to the proclamation, and the conditions which are causing the disaster. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and unless the circumstances attendant upon the disaster prevent or impede, be promptly filed with the bureau of disaster services, the office of the secretary of state and the office of the recorder of each county where the state of disaster emergency applies.

(3) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local and intergovernmental disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this act or any other provision of law relating to disaster emergencies.

(4) During the continuance of any state of disaster emergency the governor is commander-in-chief of the militia and may assume command of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster emergency.

(5) In addition to any other powers conferred upon the governor

by law, he may:

(a) suspend the provisions of any regulations prescribing the procedures for conduct of public business that would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(b) utilize all resources of the state, including, but not limited to, those sums in the disaster emergency account as he shall deem necessary to pay obligations and expenses incurred during a declared state of disaster emergency;

(c) transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(d) subject to any applicable requirements for compensation under section 46-1012, Idaho Code, commandeer or utilize any private property, real or personal, if he finds this necessary to cope with the disaster emergency;

(e) direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(f) prescribe routes, modes of transportation, and destinations in connection with evacuation;

(g) control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(h) suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(i) make provision for the availability and use of temporary emergency housing.

(6) Whenever an emergency or a disaster has been declared to exist in Idaho by the president under the provisions of the disaster relief act of 1974 (public law 93-288, 42 USC 5121) the governor may:

(a) enter into agreements with the federal government for the sharing of disaster recovery expenses involving public facilities;

(b) require as a condition of state assistance that a local taxing district be responsible for paying forty per cent (40%) of the nonfederal share of costs incurred by the local taxing district which have been determined to be eligible for reimbursement by the federal government, provided that the total local share of eligible costs for a taxing district shall not exceed ten per cent (10%) of the taxing district's tax charges authorized by section 63-923(1) ~~and section 63-2220~~, Idaho Code;

(c) obligate the state to pay the balance of the nonfederal share of eligible costs within local taxing entities qualifying for federal assistance; and

(d) enter into agreements with the federal government for the sharing of disaster assistance expenses to include individual and family grant programs (42 USC 5178).

SECTION 12. That Section 50-1512, Idaho Code, be, and the same is hereby amended to read as follows:

50-1512. TAX LEVY -- SALARY DEDUCTIONS. Any city having estab-

lished a policeman's retirement fund may levy a tax of not to exceed eight hundredths per cent (.08%) of market value for assessment purposes of property within the corporate limits of the city, except where pursuant to section 50-1525, Idaho Code, it is found that the levy is not sufficient to meet the fund's future liability, in which case the levy may be increased to provide for the actuarial soundness of the fund. ~~The levy, as authorized herein, shall be exempt from the provisions of section 63-2220, Idaho Code.~~ Said taxes shall be placed by the city treasurer in a fund to be known as the "policeman's retirement fund." Sums certain, as determined by the governing body, not to exceed eight per cent (8%) per month, may be deducted from the salary of each police officer and placed in said "policeman's retirement fund" by the treasurer. When all claims against the fund have been satisfied, the authority to levy according to this section shall terminate.

SECTION 13. That Section 50-2908, Idaho Code, be, and the same is hereby amended to read as follows:

50-2908. DETERMINATION OF TAX LEVIES -- CREATION OF SPECIAL FUND. (1) For purposes of calculating the rate at which taxes shall be levied by or for each taxing district in which a revenue allocation area is located, the county commissioners shall, with respect to the taxable property located in such revenue allocation area, use the equalized assessed value of such taxable property as shown on the base assessment roll rather than on the current equalized assessed valuation of such taxable property.

(2) With respect to each such taxing district, the tax rate calculated under subsection (1) of this section shall be applied to the current equalized assessed valuation of all taxable property in the taxing district, including the taxable property in the revenue allocation area. The tax revenues thereby produced shall be allocated as follows:

(a) To the taxing district shall be allocated and shall be paid by the county treasurer:

(i) All taxes levied by the taxing district or on its behalf on taxable property located within the taxing district but outside the revenue allocation area;

(ii) A portion of the taxes levied by the taxing district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount produced by applying the taxing district's tax rate determined under subsection (1) of this section to the equalized assessed valuation, as shown on the base assessment roll, of the taxable property located within the revenue allocation area; and

(iii) If such taxing district is a school district, a further portion of the taxes levied by such district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount equal to the percentage specified in section 33-1002(7)(a), Idaho Code, multiplied by the difference between the current equalized assessed valuation of such taxable property and the equalized assessed valuation of such taxable property as shown on the base assess-

ment roll.

(b) To the urban renewal agency shall be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.

(3) Upon enactment of an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency shall create a special fund or funds to be used for the purposes enumerated in this chapter. The revenues allocated to the urban renewal agency pursuant to this chapter, shall be paid to the agency by the treasurer of the county in which the revenue allocation district is located and shall be deposited by the agency into one or more of such special funds. The agency may, in addition, deposit into such special fund or funds such other income, proceeds, revenues and funds it may receive from sources other than the revenues allocated to it under subsection (2)(b) of this section.

(4) For the purposes of sections 63-621 through 63-626, Idaho Code, during the period when revenue allocation under this chapter is in effect, and solely with respect to any taxing district in which a revenue allocation area is located, the county commissioners shall, in fixing any tax levy, take into consideration the equalized assessed valuation of the taxable property situated in the revenue allocation area as shown in the base assessment roll, rather than the current equalized assessed value of such taxable property.

(5) For all other purposes, including, without limitation, for purposes of sections 33-802, 33-1002~~,~~ and 63-923 ~~and--63-2220~~, Idaho Code, reference in the Idaho Code to the term "market value for assessment purposes" (or any other such similar term) shall mean market value for assessment purposes as defined in section 63-202, Idaho Code.

SECTION 14. That Section 59-1394, Idaho Code, be, and the same is hereby amended to read as follows:

59-1394. EXCESS COSTS -- ADDITIONAL CONTRIBUTIONS. (1) In addition to the employee and employer contributions required by chapter 14, title 72, Idaho Code, additional contributions shall be required to fund the provisions of section 59-1397, Idaho Code. These costs shall be borne by employers and by the state of Idaho as hereinafter provided.

(a) Fifty percent (50%) of the gross receipts by the state of the tax on fire insurance premiums, as provided by section 41-402, Idaho Code, is hereby perpetually appropriated to the public employee retirement account for the purpose of partially funding the benefit payment requirements imposed by the provisions of chapter 14, title 72, Idaho Code.

(b) The board shall conduct studies from time to time of the benefits prescribed by section 59-1397, Idaho Code, to determine the additional contributions required to fund the rights conferred by chapter 14, title 72, Idaho Code, above and beyond the initial contribution from the fire insurance premium tax required by subsection (1) (a) of this section. If such studies indicate the value of the benefits exceeds the required contributions otherwise prescribed, the board shall establish an additional contribution

rate necessary to bring the amounts into balance. The cost of such additional contribution shall be borne equally by the employers through additional contributions and the state of Idaho through the fire insurance premium tax. In addition to appropriation of the fire insurance premium tax contained in subsection (1) (a) of this section, the amount of the gross receipts by the state of the tax on fire insurance premiums, as provided by section 41-402, Idaho Code, necessary to match dollar for dollar the additional contribution required of employers is hereby perpetually appropriated commencing July 1, 1980 to the public employee retirement account for the purpose of subsection (1) (b) of this section. If the matching funds herein provided equal one hundred percent (100%) of the gross receipts from the fire insurance premium tax, the employers shall contribute the balance of the monies required to meet the required contribution rate. The additional contribution rate from the employers commencing October 1, 1980 shall be ten percent (10%) of the pay period salary of each paid firefighter until next determined by the board. If the additional contribution rate is to be satisfied by an ad valorem tax levy, such levy shall be exempt from the limitation imposed by section 63-923(1), Idaho Code~~,-and-from-the--provisions--of--section--63-2220,--Idaho Code~~.

(2) Nothing herein contained shall prevent the board from contracting with employers to provide a schedule of contributions which will retire any excess cost over a given period of time, not to exceed fifty (50) years. In the event that such agreements are reached, the amount of the fire insurance premium tax necessary to match additional employer contributions is continuously appropriated for that purpose.

SECTION 15. That Section 63-1605, Idaho Code, be, and the same is hereby amended to read as follows:

63-1605. LOCAL IMPACT FUND. In each county in which a local impact committee is formed, under the provisions of this chapter, there is hereby created and established in the county treasury a local impact fund to which all prepaid ad valorem taxes shall be credited as received.

Moneys in the local impact fund may be expended or transferred to a taxing district only upon the approval of the board of county commissioners with the advice of the local impact committee, any other provisions of law notwithstanding.

The preparation of a budget for the moneys in the fund shall be controlled by the provisions of this chapter, any other provision of law notwithstanding.

The expenditure of moneys from the fund, or the transfer of moneys in the fund to a taxing district, shall be exempt from the provisions of chapter 16, title 31, Idaho Code, from the provisions of section 63-923, Idaho Code~~,-and-from-the-provisions-of-section-63-2220,-Idaho Code~~.

The moneys received by any taxing district from the local impact fund shall be exempt from the provisions of sections 63-923 ~~and 63-2220~~, Idaho Code.

SECTION 16. That Section 63-1607, Idaho Code, be, and the same is hereby amended to read as follows:

63-1607. CREDIT FOR PREPAID TAXES. During the last one-half (1/2) of the impact period and for not to exceed three (3) years thereafter, each taxpayer who has prepaid taxes shall be allowed a credit for such taxes paid during the first one-half (1/2) of the impact period. The credit shall be allowed against the actual taxes assessed to the taxpayer by the taxing district which received prepaid taxes from the local impact fund, and shall be calculated to provide an approximately equal credit during each year that the credit is allowed. ~~Allowances necessary as a credit for prepaid taxes shall not be included as a part of the dollar limitations required by section 63-2220, Idaho Code.~~ Any extension of time during which the credit may be allowed shall require the approval of the local impact committee.

SECTION 17. That Section 63-2202A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2202A. REFUND OR CREDIT OF TAXES. (1) When any court or the board of tax appeals orders a refund of any taxes imposed under chapters 1 through 22 of this title, the board of county commissioners of the county or counties which collected the taxes may either refund taxes or apply the amount to be refunded as a credit against taxes due from the taxpayer in the following year. The board of county commissioners may use a combination of both a payment and a credit to effect the refund.

(2) In the event a refund is paid, payments must be made by warrants drawn on the county's current expense fund by the county auditor. The auditor shall apportion the amount of taxes cancelled as credit to the tax collector. The auditor shall charge the various funds and taxing districts with their proportionate share of the refund and credit the current expense account.

(3) If a credit is given the following year, the credit shall be allowed against actual taxes assessed to the taxpayer by the taxing districts which received the taxes ordered to be refunded.

(4) Amounts equal to the refunds or credits allowed in this section may be included in amounts certified pursuant to sections 63-621 through 63-625, Idaho Code~~, but shall not be a part of the operating budget within the meaning of section 63-2220, Idaho Code~~.

(5) As used in this section, "refund" includes tax described in subsection (1) of this section found by the court or the board of tax appeals to have been overpaid and not lawfully due, interest due on the refund of such tax, costs and other amounts ordered paid by a court or the board of tax appeals.

SECTION 18. That Section 21-807, Idaho Code, be, and the same is hereby amended to read as follows:

21-807. POWERS OF BOARD. The board of any authority established under the provisions of this act shall have power:

(1) To sue and be sued;

(2) To acquire, hold, and dispose of personal property;

(3) To acquire, in the name of the authority by purchase or condemnation, real property or rights or easements therein necessary or convenient for its purposes, and, except as may otherwise be provided herein, to use the same in acquiring property, any such authority may exercise the right of eminent domain as provided in chapter 7, title 7, Idaho Code;

(4) To establish rules and regulations for the management and regulation of its affairs, and to make rules and regulations for the use of projects, and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such authority;

(5) To appoint a chairman from the membership of the board, and to appoint officers, agents, and employees and fix their compensation;

(6) To make contracts, leases, and all other instruments necessary or convenient to the purposes of the authority;

(7) To design, construct, maintain, operate, improve, and reconstruct such projects as shall be necessary and convenient to the maintenance and development of aviation services to and for the region in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project and also to contract for the construction, operation, or maintenance of any parts thereof, or for services to be performed thereon, and to rent parts thereof and grant concessions thereon; all on such terms and conditions as the authority may determine;

(8) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: public recreation, business, trade or other exhibitions, sporting or athletic events, public meetings, conventions, and all other kinds of assemblages, and in order to obtain additional revenues, space, and facilities for business and commercial purposes. Whenever the board deems it to be in the public interest, the board may lease any such project or any part or parts thereof, or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the board shall determine;

(9) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such board. All fees, rentals, charges, and other revenues derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking fund payments therefor. The board may treat one (1) or more projects as a single enterprise in respect of revenues, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(10) Subject to and consistent with the percentages of financial participation determined by the board and approved by the electors of the region, as provided in sections 21-804 and 21-805 ~~hereof~~, Idaho Code, or as determined by the board as provided in subsection (14) of this section, to certify annually to the boards of county commissioners of the participating counties in the region the amount of tax to be levied to fund the ad valorem tax portion of the budget for the airport authority's purposes. The ad valorem tax portion of the budget shall not exceed ~~two-and-one-half-(2-1/2)-mills-on-the-dollar-upon-the~~

~~assessed--valuation--of--all~~ five hundredths percent (.05%) of market value for assessment purposes of the taxable property in such county, and the boards of county commissioners shall levy and collect the taxes to fund the ad valorem tax portion of the budget so certified at the same time and in the same manner as other county taxes are levied and collected, and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenues of the authority are deposited;

(11) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such periods of time and for such consideration as the board shall determine;

(12) To accept grants, loans, or contributions from the United States, the state of Idaho, or any agency or instrumentality of either of them, or from any private group or individual, and to expend the proceeds thereof consistent with the laws of the United States and of the state of Idaho;

(13) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and to do all things necessary or convenient to carry out the powers expressly conferred on such authorities by this act;

(14) To determine the degree of financial participation of each county participating in the regional airport authority after such authority has been established as provided in section 21-805, Idaho Code.

SECTION 19. That Section 31-4318, Idaho Code, be, and the same is hereby amended to read as follows:

31-4318. LEVY OF TAX. The board is empowered to levy a tax for the uses and purposes of the district in an amount not exceeding six hundredths percent (.06%) of the market value for assessment purposes on all of the taxable property within the district or in an amount not exceeding ~~ten--(10)--mills~~ in any one (1) year ~~on each one dollar ($1.00) of the assessed valuation upon~~ one percent (1%) of market value for assessment purposes of all of the taxable property within a district created pursuant to section 31-4304A, Idaho Code. The board shall by resolution fix the levy to be made for such district for such year and the secretary shall transmit a certified copy of such resolution to the county commissioners at the time and in the manner provided by sections 63-621 through 63-624, Idaho Code. Such taxes shall be collected as provided by section 63-918, Idaho Code, and remitted to the treasurer of the district as provided by section 63-2104, Idaho Code.

SECTION 20. That Section 39-1333, Idaho Code, be, and the same is hereby amended to read as follows:

39-1333. LEVY AND COLLECTION OF TAXES -- INITIAL FINANCING. To levy and collect taxes, as herein provided, the board shall, in each

year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy, which when levied upon every dollar of assessed valuation of taxable property within the district, and with other revenues, will raise the amount required by the district annually to supply funds to pay for expenses of organization, purchase of necessary equipment, operation, maintenance and upkeep of the works and equipment of the district, provided, however, that said levy shall not exceed ~~three--(3)--mills--on--a-dollar-on~~ six hundredths percent (.06%) of market value for assessment purposes of all taxable property within the district for the purposes hereinbefore set forth, and provided further, that no levy shall be made in excess of ~~two-(2)-mills on-the-dollar~~ four hundredths percent (.04%) of market value for assessment purposes for the purposes set forth in this section, unless the board of trustees of the district shall grant a public hearing, after notice of the time, place and purpose of said hearing has been published in a newspaper of general circulation in the district. Provided, that in the first year after organization, the board of a district may, for the purpose of organization, to finance general preliminary expenses of the district or for any other purpose of the hospital district law, and before making a tax levy, incur an indebtedness not exceeding in the aggregate a sum equal to ~~three-(3)-mills-on-each one-dollar~~ three tenths percent (.3%) of market value for assessment purposes of all real and personal property within the district. To repay any such organizational indebtedness incurred, on or after March 21, 1985, the board shall have authority to levy and collect an additional tax not to exceed ~~one-(1)-mill-per-annum-on-the-dollar-on~~ one tenth percent (.1%) of market value for assessment purposes of all taxable property within the district. Such additional levy shall not be used for any purpose other than repayment of the organizational indebtedness and interest thereon. Such additional levy may be imposed until the organizational indebtedness and interest thereon is paid in full.

SECTION 21. That Section 50-1004, Idaho Code, be, and the same is hereby amended to read as follows:

50-1004. SPECIAL TAX ASSESSMENT -- WARRANT REDEMPTION FUND. At the time of passing the annual appropriation ordinance, said city councils, unless provision shall have been made as provided by law for the funding, refunding, purchase, redemption or exchange of the outstanding city warrant indebtedness, must, whenever any city shall have warrants outstanding and unpaid, for the payment of which there are no funds in the city treasury, in addition to other taxes provided by law, if such warrants amount to a sum equal to five per cent (5%) or more of the value of the taxable property of such city, levy and include a special tax assessment of not to exceed ~~ten--(10)--mills--on the--dollar~~ two tenths per cent (.2%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to four per cent (4%) and less than five per cent (5%) of such taxable property, they must levy and include a special tax or assessment of not to exceed ~~eight-(8)-mills-on-the-dollar~~ sixteen hundredths per cent (.16%) of market value for assessment purposes in

such annual appropriation bill; if such warrants amount to a sum equal to three per cent (3%) and less than four per cent (4%) of such taxable property, they must levy and include a special tax or assessment of not to exceed ~~six (6) mills on the dollar~~ twelve hundredths per cent (.12%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to two per cent (2%) and less than three per cent (3%) of such taxable property, they must levy and include a special tax or assessment of not to exceed ~~four (4) mills on the dollar~~ eight hundredths per cent (.08%) of market value for assessment purposes in such annual appropriation bill; and if such warrants amount to one per cent (1%) and less than two per cent (2%) of such taxable property they must levy and include a special tax or assessment of not to exceed ~~two (2) mills on the dollar~~ four hundredths per cent (.04%) of market value for assessment purposes in such annual appropriation bill; and if such warrants amount to less than one per cent (1%) of such taxable property, then they must levy and include such special tax or assessment on the dollar in such annual appropriation bill as shall be sufficient to pay such warrants.

All moneys arising from such special tax or assessment shall be placed in a special fund to be known as the "Warrant Redemption Fund" and the redemption of such warrants shall be paid exclusively from this fund.

All moneys in the city treasury at the end of each fiscal year not needed for that year's expenses and applicable thereto, and not subject to the provisions of section 50-1005A, Idaho Code, shall be transferred to said "Warrant Redemption Fund," if such there be.

SECTION 22. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1995, except for cities which levy property taxes for the current budget year, for which this act shall be in full force and effect on and after January 1, 1996. The remaining sections of this act shall be in full force and effect on and after July 1, 1996.

Approved March 12, 1996.

CHAPTER 209
(H.B. No. 763)

AN ACT

RELATING TO APPRAISEMENT, LEASE AND SALE OF PUBLIC LANDS; AMENDING SECTION 58-335A, IDAHO CODE, TO ALLOW THE IDAHO TRANSPORTATION DEPARTMENT TO DISPOSE OF SURPLUS REAL PROPERTY OF THE DEPARTMENT, TO PROVIDE FOR EXCHANGE OF SURPLUS REAL PROPERTIES FOR PURPOSES OF ACQUIRING HIGHWAY RIGHTS-OF-WAY, TO PROVIDE OWNERS OF PROPERTY ADJOINING SURPLUS PROPERTY OF THE DEPARTMENT THE OPTION TO PURCHASE SURPLUS PROPERTY, AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 58-335A, Idaho Code, be, and the same is hereby amended to read as follows:

58-335A. OTHER LANDS EXEMPT FROM ACT. The provisions of sections 58-331 through 58-335, Idaho Code, shall not apply to surplus real properties of the Idaho transportation department ~~having an--appraised value--of--twenty-five--thousand--dollars--($25,000)-or-less~~, with the exclusion of office and maintenance yard sites. The Idaho transportation board shall promulgate rules ~~and-regulations~~ to govern the sale of surplus real properties under this section, provided that in no case shall a property be sold for a value less than that established through the appraisal process.

For the purpose of acquiring highway rights-of-way, the Idaho transportation board is authorized to exchange surplus real property of the department for other parcels of real property. In exchanging real properties, the board shall cause both parcels of real property to be appraised, and either the owner or the department shall pay to the other the difference in value.

Before the department disposes of surplus property at public sale, if the property is valued at less than ten thousand dollars ($10,000), the department shall first notify any person who owns real property which is contiguous with the surplus property of the department that he has first option to purchase the surplus property for an amount not less than the established value. If more than one (1) adjoining owner wants to purchase the property, a private auction shall be held for such parties. If no owner of adjoining property exercises his option to buy, the department may proceed to public sale.

Approved March 12, 1996.

CHAPTER 210
(H.B. No. 765)

AN ACT

RELATING TO SALES TAXES; AMENDING SECTION 63-3620, IDAHO CODE, TO MODIFY THE PROCEDURE BY WHICH SELLER'S PERMITS MAY BE REVOKED, MAKING GRAMMATICAL CHANGES AND REPEALING OBSOLETE LANGUAGE; AMENDING SECTION 63-3620A, IDAHO CODE, TO MODIFY THE PROCEDURE BY WHICH SELLER'S PERMITS MAY BE REVOKED AND TO PROVIDE FOR THE EXPIRATION OF PERMITS; AMENDING SECTION 63-3631, IDAHO CODE, TO MODIFY THE PROCEDURE BY WHICH SELLER'S PERMITS MAY BE REVOKED.

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

SECTION 1. That Section 63-3620, Idaho Code, be, and the same is hereby amended to read as follows:

63-3620. PERMITS -- ISSUANCE -- REVOCATION -- RESALE CERTIFICATES -- PENALTIES. (a) Every ~~person--desiring--to--engage--in--or--conduct~~ retailer engaged in business in this state, before conducting business ~~as--a--seller~~ within this state, shall file with the state tax commis-

sion an application for a seller's permit. Every application for a permit shall be made upon a form prescribed by the state tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state tax commission may require. The applications, or any information contained thereon, may be made available by the tax commission to authorized representatives of state or federal agencies. The application shall be signed by the owner if he is a natural person~~;--in-the-case-of-an-association-or partnership-by-a-member-or-partner;--in-the-case-of-a--corporation,--by an--executive--officer~~ or ~~other-person~~ by an individual authorized by the ~~corporation~~ seller to sign the application. ~~Initial~~ Except as provided in subsection (e) of this section, permits shall be issued without charge.

(b) The person signing the application shall certify that the applicant will actively engage in or conduct a business making sales subject to tax under this chapter.

(c) After compliance by the applicant with the requirements set out above and in section 63-3625, Idaho Code, the state tax commission shall grant and issue to each applicant a permit. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued. The permit or a copy thereof shall at all times be conspicuously displayed at each place where the person to whom it is issued conducts business.

(d) A seller whose permit has been previously suspended or revoked shall pay the state tax commission a fee of ten dollars ($10.00) for the renewal or issuance of a permit in the event of a first revocation and twenty-five dollars ($25.00) for renewal after each successive revocation unless the suspension or revocation is for inactivity pursuant to section 63-3620A, Idaho Code.

(e) Whenever any person fails to comply with any provision of this ~~act~~ chapter relating to the sales tax or any rules ~~or-regulations~~ of the state tax commission relating to the sales tax prescribed and adopted under this ~~act~~ chapter, the state tax commission~~,--upon--hearing,--after-giving-the-person-ten-(10)-days-notice-in-writing-specifying-the-time-and-place-of-hearing-and-requiring-him-to-show-cause--why his-permit-or-permits-should-not-be-revoked,~~ may revoke or suspend any one or more of the permits held by the person. ~~The-state-tax-commission-shall-give-to-the-person-written--notice--of--the--suspension--or revocation-of-any-of-his-permits.-The-notices-may-be-served-personally or--by--mail-in-the-manner-prescribed-for-service-of-notice-of-a-deficiency-determination.~~ Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code. The state tax commission shall not issue a new permit after the revocation of a permit unless the commission is satisfied that the former holder of the permit will comply with the provisions of this ~~act~~ chapter relating to the sales tax and the ~~regulations~~ rules of the state tax commission.

(f) A person who engages in business as a seller in this state without a permit or permits, or after a permit has been suspended, and each officer of any corporation which so engages in business is guilty of a misdemeanor punishable by a fine not in excess of one hundred

dollars ($100), and each day shall constitute a separate offense.

(g) (i) For the purpose of the proper administration of this ~~act~~ chapter and to prevent evasion of the sales tax, it shall be presumed that all sales are subject to the tax. The burden of proving that a sale is not a sale at retail is upon the person who makes the sale unless he obtains from the purchaser a resale certificate, or has a resale certificate on file from the purchaser, to the effect that the property is purchased for resale. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

(ii) A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

(iii) The resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(h) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(i) Any person who gives a resale certificate for property which he knows at the time of purchase is not to be resold or rented by him in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one

thousand dollars ($1,000), or by imprisonment for a period not in excess of one (1) year, or by both such fine and imprisonment.

~~(j)--If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods--with other--fungible--goods--not so purchased but with such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased--until--a--quantity--of--commingled goods--equal to the quantity of purchased goods so commingled has been sold.~~

SECTION 2. That Section 63-3620A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3620A. REVOCATION, SUSPENSION OR ~~CANCELLATION~~ EXPIRATION OF PERMITS HELD BY ~~PERSONS NOT ACTIVELY~~ ENGAGED IN BUSINESS. (1) A permit shall be held only by persons actively engaged in making sales subject to tax under this chapter. Any person not so engaged shall forthwith surrender his permit to the state tax commission for cancellation. The state tax commission may revoke the permit of a person not actively engaged in making sales subject to tax under this chapter.

(2) Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(3) A permit held by a person who, for a period of twelve (12) consecutive months, reports no sales shall expire automatically upon the state tax commission providing notice of the expiration to the last known address of the person to whom the permit was issued.

(4) The state tax commission may provide by ~~regulation~~ rule for the temporary suspension of permits held by persons engaged in seasonal business or who may otherwise temporarily not be actively engaged in the business of making sales subject to tax under this chapter.

~~(3)--A person holding a seller's--permit--who,--for--a--period--of twelve (12) consecutive months, reports no sales subject to tax may be deemed by the state tax commission to be a person not actively engaged in making sales subject to tax under this chapter.~~

SECTION 3. That Section 63-3631, Idaho Code, be, and the same is hereby amended to read as follows:

63-3631. REDETERMINATION. (1) Any person against whom a deficiency determination is made under section 63-3629, Idaho Code, or in regard to whom the state tax commission proposes to revoke or suspend a permit under section 63-3620, 63-3620A or 63-3623B, Idaho Code, or any person directly interested, may petition for a redetermination within the time period allowed by section 63-3045, Idaho Code. If a petition for redetermination is not filed within the time period allowed, the determination becomes final as provided in section 63-3045B, Idaho Code.

(2) The state tax commission may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the state

tax commission at or before the hearing.

(3) A person petitioning for a redetermination under subsection (a1) of this section may, in support of his petition, submit resale certificates as provided in section 63-3620 or section 63-3621, Idaho Code, or an exemption certificate as provided in section 63-3622, Idaho Code, only if such certificates are presented to the tax commission within ninety (90) days of the date of the notice of deficiency determination to which the petition relates.

Approved March 12, 1996.

CHAPTER 211
(H.B. No. 793)

AN ACT

RELATING TO CONDITIONS WHEN TWO OR MORE APPLICANTS APPLY FOR A STATE LAND LEASE; AMENDING SECTION 58-310B, IDAHO CODE, TO CLARIFY CRITERIA THAT MAY BE CONSIDERED BY THE STATE BOARD OF LAND COMMISSIONERS IN DECIDING WHO IS QUALIFIED TO BID IN CONFLICT AUCTIONS AND TO WHOM THE LEASE SHOULD BE AWARDED; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 58-310B, Idaho Code, be, and the same is hereby amended to read as follows:

58-310B. TWO OR MORE APPLICANTS FOR SAME LAND -- AUCTION OF LEASE. (1) The legislature of the state of Idaho finds:

(a) That state endowment lands are a valuable resource to the people of Idaho, supporting employment opportunities and creating a significant source of income to the state and endowed state institutions;

(b) That many state endowment lands have few alternative uses, except for grazing livestock, that provide a stable long-term source of income to the endowed institutions of the state and contribute to tax revenues from all sources;

(c) That maximum long-term financial returns to the institutions to which granted are best obtained through stable leases;

(d) That long-term productivity of state endowment grazing lands and maximum long-term financial returns to the endowed institutions and the state are encouraged when lessees engage in cooperative grazing planning and management with the state of Idaho and federal land management agencies;

(e) That the promotion of good stewardship through the cooperative development and implementation of written grazing management plans, which meet department standards, on state endowment lands should be encouraged.

(2) It is hereby declared that the purposes of this section are:

(a) To support the endowed institutions and the state by encouraging a healthy Idaho livestock industry so as to generate related

business and employment opportunities on a state and local level, thus supporting additional sales, income and property taxes;

(b) To enhance the long-term financial returns to the endowed institutions and the state from the state endowment lands available for grazing leases.

(3) When two (2) or more qualified applicants, as determined by the state board of land commissioners apply to lease the same endowment land that is currently leased for grazing, the director of the department of lands, or his agent, shall hold an auction.

(a) At least fourteen (14) days prior to the date of such auction, the director, or his agent, shall give notice by letter, which notice shall be sent in the course of regular mail to each of the qualified applicants for the lease, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address exactly as it is given in the application.

(b) Each qualified applicant who appears in person or by proxy at the time and place so designated in said notice shall be deemed to have participated in the auction. To be awarded the lease, a qualified applicant must participate in the auction.

(4) To be a qualified applicant and therefore entitled to participate at an auction for a lease under this section:

(a) The conflict applicant must have provided payment of one (1) year's rental on the lease payable at the time of application to lease;

(b) The applicant must be capable of and willing to fulfill all provisions of any existing written grazing management plan which meets department standards associated with the parcel;

(c) The conflict applicant's proposed use of the state land must be compatible with the purpose and terms of a written grazing management plan which meets department standards;

(d) The applicant must have filed applications in the manner and at the time provided for by statute and rules duly promulgated thereunder.

(e) Nothing herein shall limit the state board of land commissioner's discretion to consider other qualification criteria, including but not limited to applicable criteria contained in subsection (6) of this section.

(5) The state board of land commissioners is expressly authorized to reject conflict applications, filed under section 58-307, Idaho Code, and this section, to lease parcels of grazing land.

(6) Criteria ~~to~~ that may be considered by the state board of land commissioners, in deciding ~~who shall be a qualified applicant--and~~ to whom the lease should be awarded, include, but are not limited to, the following:

(a) Whether the participant ~~is qualified to bid, as provided for in~~ satisfies the requirements of subsection (4) of this section;

(b) Whether the current lessee owns or controls sufficient real property to adequately feed the livestock in the lessee's agricultural operation when the lessee is not utilizing the state lands for grazing purposes;

(c) The importance of the state grazing lands to be leased upon the current lessee's total annual livestock operation, and the

ability of the lessee to remain economically viable without the lease;

(d) The future revenues reasonably anticipated to be generated for the beneficiaries of the endowment and the state as a result of awarding the lease to one (1) applicant over others. ~~including, but not limited to,~~ If a conflict auction has been held, the board also may consider the premium bids resulting from the auction.

(e) ~~The board shall also consider t~~The indirect benefits to the beneficiaries of the endowment from tax revenues from all sources generated by the lessee's proposed activities on the leasehold and those activities related thereto, and the long-term stability or appreciation of such tax revenues; ~~and~~

(~~e~~f) The impact ~~that each proposed leasehold operation will have on any adjacent public~~ on endowment land or the return to the endowment if the leasehold is not managed in conjunction with adjacent grazing lands ~~and related grazing management units~~;

(~~f~~g) Whether the current lessee has managed the conflicted parcels in accordance with a written cooperative grazing management plan which meets department standards;

(~~g~~h) Whether the current lessee has applied in writing to the director for the development and implementation of a written cooperative grazing management plan which meets department standards;

(~~h~~i) Nothing herein shall limit the state board of land commissioner's discretion to consider other criteria in deciding to whom the lease should be awarded.

(7) (a) For the purposes of subsection (6)(~~g~~h) of this section, the qualified applicant status of a current lessee having applied in writing to the director for the cooperative development and implementation of a written grazing management plan, meeting department standards, shall remain in force until the director notifies the lessee in writing that the department is ready to develop a written grazing management plan;

(~~i~~b) The failure of the lessee to enter into a cooperative grazing management plan within eighteen (18) months following the director's written notice shall constitute a breach of the lease;

(~~j~~c) Upon written request by the lessee, filed before the expiration of the eighteen (18) month period, the department may authorize additional time to complete the plan, provided that development of the written grazing management plan is progressing to the satisfaction of the director;

(~~k~~d) The department shall prioritize all written requests to establish grazing management plans, with such priority list in writing to be made available at appropriate department offices.

(~~7~~8) (a) If the board awards the lease for the conflicted parcels to the former lessee, any existing written grazing management plan shall be incorporated by reference in the lease;

(b) If the board awards the lease for the conflicted parcel(s) to the former lessee who, prior to said award, has applied in writing to the director for the development and implementation of a written grazing management plan which meets department standards, then said written grazing management plan shall, upon its development, be incorporated by reference into the lease as a matter of law, as if it had existed and been approved when the board awarded the

lease;

(c) If the board awards the lease for the conflicted parcels to a conflict applicant, a written cooperative grazing management plan which meets department standards shall, upon its development, be incorporated by reference into the lease as a matter of law, as if it had existed and been approved when the board awarded the ~~lessee~~ lease.

(~~8~~9) The state board of land commissioners shall review all bids and shall have the power to reject any and all bids made at such auctions, when in their judgment:

(a) There has been fraud or collusion;

(b) The criteria listed in subsection (6) of this section have not been satisfied so as to support the findings and purposes of this section; or

(c) For any other reasons which, in the judgment of the state board of land commissioners, justify the rejection of said bids.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 12, 1996.

CHAPTER 212
(H.B. No. 830)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF FAMILY AND COMMUNITY SERVICES AND THE DIVISION OF COMMUNITY REHABILITATION FOR FISCAL YEAR 1997; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUNDS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; EXEMPTING THE DEPARTMENT FROM APPROPRIATION TRANSFER LIMITATIONS; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SUBSTANCE ABUSE PREVENTION; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO CURRENT SERVICE PROVIDERS.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for the Division of Family and Community Services and the Division of Community Rehabilitation the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DIVISION OF FAMILY AND COMMUNITY SERVICES:					
A. CHILDREN'S SERVICES:					
FROM:					
General Fund	$ 7,445,300	$ 3,449,500		$ 2,091,700	$ 12,986,500
Cooperative Welfare Fund (Other)	378,500	1,394,000		977,200	2,749,700
Cooperative Welfare Fund (Federal)	11,180,000	1,636,100	$1,000,000	5,089,700	18,905,800
TOTAL	$19,003,800	$ 6,479,600	$1,000,000	$ 8,158,600	$ 34,642,000
B. SUBSTANCE ABUSE:					
FROM:					
General Fund				$ 600,500	$ 600,500
Cooperative Welfare Fund (Other)		$ 9,000			9,000
Alcoholism Treatment Fund	$ 193,400	149,000		1,413,100	1,755,500
Substance Abuse Treatment Fund				90,000	90,000
Cooperative Welfare Fund (Federal)	98,000	1,371,900		2,439,500	3,909,400
TOTAL	$ 291,400	$ 1,529,900		$ 4,543,100	$ 6,364,400
C. FAMILY SELF-SUPPORT:					
FROM:					
General Fund	$ 1,148,200	$ 753,700		$ 2,542,600	$ 4,444,500
Cooperative Welfare Fund (Other)		1,700			1,700
Cooperative Welfare Fund (Federal)	1,636,700	2,420,300		19,523,000	23,580,000
TOTAL	$ 2,784,900	$ 3,175,700		$22,065,600	$ 28,026,200
DIVISION TOTAL	$22,080,100	$11,185,200	$1,000,000	$34,767,300	$ 69,032,600
II. DIVISION OF COMMUNITY REHABILITATION:					
A. COMMUNITY DEVELOPMENTAL DISABILITIES:					
FROM:					
General Fund	$ 6,704,300	$ 1,473,400		$ 1,530,400	$ 9,708,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Other)	1,066,500	815,400		31,400	1,913,300
Cooperative Welfare Fund (Federal)	1,150,300	653,200	$ 46,700	1,780,100	3,630,300
TOTAL	$ 8,921,100	$ 2,942,000	$ 46,700	$ 3,341,900	$ 15,251,700
B. IDAHO STATE SCHOOL AND HOSPITAL:					
FROM:					
General Fund	$ 4,929,200	$ 918,000		$ 101,800	$ 5,949,000
Cooperative Welfare Fund (Other)	701,100	79,100		9,600	789,800
Medical Assistance Fund		3,500			3,500
Cooperative Welfare Fund (Federal)	11,575,500	1,379,800		129,600	13,084,900
TOTAL	$17,205,800	$ 2,380,400		$ 241,000	$ 19,827,200
C. COMMUNITY MENTAL HEALTH SERVICES:					
FROM:					
General Fund	$ 8,180,500	$ 1,153,600		$ 585,300	$ 9,919,400
Cooperative Welfare Fund (Other)	3,528,200	808,700		7,400	4,344,300
Cooperative Welfare Fund (Federal)	130,600	988,900		93,400	1,212,900
TOTAL	$11,839,300	$ 2,951,200		$ 686,100	$ 15,476,600
D. STATE HOSPITAL NORTH:					
FROM:					
General Fund	$ 3,617,600				$ 3,617,600
Cooperative Welfare Fund (Other)	276,500	$ 11,300			287,800
Alcoholism Treatment Fund	319,900				319,900
State Hospital North Income Fund	337,700	731,000	$ 89,400	$ 90,000	1,248,100
Cooperative Welfare Fund (Federal)	72,700				72,700
TOTAL	$ 4,624,400	$ 742,300	$ 89,400	$ 90,000	$ 5,546,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
E. STATE HOSPITAL SOUTH:					
FROM:					
General Fund	$ 7,486,600			$ 66,800	$ 7,553,400
Cooperative Welfare Fund (Other)	2,824,700	$ 750,500		10,800	3,586,000
State Hospital South Income Fund	901,500	792,400	$ 49,900	62,400	1,806,200
TOTAL	$11,212,800	$ 1,542,900	$ 49,900	$ 140,000	$ 12,945,600
DIVISION TOTAL	$53,803,400	$10,558,800	$186,000	$ 4,499,000	$ 69,047,200
GRAND TOTAL	$75,883,500	$21,744,000	$1,186,000	$39,266,300	$138,079,800

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare for the Division of Family and Community Services and the Division of Community Rehabilitation any unexpended and unencumbered balances of the Cooperative Welfare Fund, as appropriated for the Division of Family and Community Services and the Division of Community Rehabilitation for fiscal year 1996, to be used for nonrecurring expenditures only for the period July 1, 1996, through June 30, 1997. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare for the Division of Family and Community Services and the Division of Community Rehabilitation is hereby authorized to expend all receipts collected in the Division of Family and Community Services and the Division of Community Rehabilitation as noncognizable funds for the period July 1, 1996, through June 30, 1997.

SECTION 5. To provide maximum flexibility in dealing with Medicaid and Welfare Reform issues along with other federal funding impacts, the Department of Health and Welfare is hereby exempted from the provisions of Section 67-3511(1) and (2), Idaho Code, for all moneys appropriated to it for the period July 1, 1996, through June 30, 1997. Transfers of moneys between programs in the same appropriation bill and transfers of moneys between programs in different appropriation bills are still subject to the approval of the Division of

Financial Management.

SECTION 6. It is legislative intent that, of those moneys appropriated for Substance Abuse Prevention, $100,000 be used to purchase radio and television advertising, targeted to adolescents, with factual messages concerning alcohol, drugs, and tobacco. At least half of this amount is to be used for messages on alcohol.

SECTION 7. To the extent possible, it is legislative intent to purchase, through the Community Developmental Disabilities Services and the Community Mental Health Division budgets, the services known as Work Services; Community Supported Employment for the Developmentally Disabled; and Community Supported Employment for the Chronically Mentally Ill, the Traumatically Brain Injured, and the Severe Learning Disabled from the current service providers. The Department of Health and Welfare is encouraged to employ any means it deems appropriate to review and analyze the methods of procurement of services and make any recommendations to the Fifty-fourth Idaho Legislature for consideration.

Approved March 12, 1996.

CHAPTER 213
(H.B. No. 725)

AN ACT

RELATING TO SEED ARBITRATION; AMENDING SECTION 22-436, IDAHO CODE, TO CLARIFY REQUIREMENTS TO QUALIFY FOR ARBITRATION, TO CLARIFY NOTIFICATION REQUIREMENTS, TO INCREASE MEMBERSHIP OF THE SEED ARBITRATION COUNCIL, TO CLARIFY PROCEDURES ASSOCIATED WITH COMMENCEMENT OF ARBITRATION, TO PROVIDE FOR ASSESSMENT AND COSTS OF INVESTIGATIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 22-436, Idaho Code, be, and the same is hereby amended to read as follows:

22-436. SEED ARBITRATION ~~REVIEW COUNCIL~~. (1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of ~~a--tuber,--plant,-or-plant-part-to-perform-as-represented,-or-when-any buyer-claims-to-have-been-damaged-by--the--failure--of~~ any seed for planting to produce or perform as represented by the required label to be attached to such seed under section 22-415, Idaho Code, or by warranty, or as a result of negligence, as a prerequisite to the buyer's right to maintain a legal action against the dealer or any other seller of such seed, the buyer shall first submit the claim to arbitration as provided in this section. The monetary value of the claim must exceed three thousand dollars ($3,000). Any applicable period of limitations with respect to such claim shall be tolled until ten (10) days after the filing of the report of arbitration with the director

of the department of agriculture as provided in subsection (5)(i) of this section.

(2) Notice of arbitration requirement. Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under section 22-415, Idaho Code, or otherwise attached to the seed bag or package. Arbitration shall not be required unless this notice is included. A notice in the following form, or equivalent language, shall be sufficient:

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint along with the filing fee with the Idaho Department of Agriculture within such time as to permit inspection of the crops, plants or trees ~~and notify seller of complaint~~. The buyer shall notify and serve a copy of the complaint upon the seller by certified mail.

(3) Effect of arbitration.

(a) Agreement to arbitrate. The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.

(b) Commencement of legal action. In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert such claim as a counterclaim or defense in any action brought by the seller, at any time after the receipt of the report of arbitration.

(c) Use as evidence. In any litigation involving a complaint which has been the subject of arbitration under this section, any party may introduce the report of arbitration as evidence of the findings of the report, and the court may give such weight to the arbitration council's findings and recommendations as to damages and costs, as the court may see fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council with respect to the failure of any party to cooperate in the arbitration proceedings including, any finding as to the effect of delay in filing the arbitration claim upon the arbitration council's ability to determine the facts of the case.

~~(d) Investigation cost. The costs of conducting the investigation will be borne by the nonprevailing party.~~

(4) Seed arbitration council. The director of the department of agriculture shall appoint an arbitration council composed of ~~five~~ six (~~5~~6) members and ~~four~~ five (~~4~~5) alternate members. An Idaho department of agriculture representative and an alternate shall serve as ~~a~~ permanent members. One (1) member and one (1) alternate shall be appointed upon the recommendation of each of the following:

(a) The associate dean of the college of agriculture; director of the Idaho agricultural experiment stations, college of agriculture, university of Idaho.

(b) The department head of plant, soil and entomological sci-

ences, college of agriculture, university of Idaho.

(c) The president of Idaho-eastern Oregon seed association.

(d) The president of the Idaho crop improvement association.

(e) The president of the Idaho farm bureau.

Initially, three (3) members and their alternates shall be appointed for four (4) year terms and three (3) members and their alternates shall be appointed for two (2) year terms. Thereafter, members and alternates shall be appointed for four (4) year terms.

Each alternate member shall serve only in the absence of the member for whom the person is an alternate. No member or alternate shall be involved in an investigation of a complaint if ~~they, their~~ he, his employer or employee is named in the filed complaint.

Either the buyer or the seller may challenge any member or alternate of the council if there is reason to believe that a conflict of interest exists. In the event that a member or alternate is challenged, the director of the department of agriculture shall appoint, with the consent of the buyer and seller, a replacement, who shall be knowledgeable about agricultural husbandry.

The council shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the council as the chairman may direct.

The purpose of the council is to conduct arbitration as provided in this section. The council may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director or such chairman in accordance with this section.

(5) Procedures.

(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a filing fee of one hundred dollars ($100) which is nonrefundable. The buyer shall serve a copy of the complaint upon the seller by certified mail. ~~Except in case of seed which has not been planted, the claim shall be filed~~ within such time as to permit ~~effective~~ inspection of the crops, plants ~~under field conditions~~ or trees by the seed arbitration council or its representatives and by the dealer or seller from whom the seed was purchased. If the seeds are not planted, the buyer shall serve a copy of the complaint upon the seller by certified mail not later than two (2) years after the purchase of the seed lot.

(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration council. The director shall refer the complaint and answer to the council for investigation, findings and recommendation.

(d) Investigation. Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.

(e) Scope of report. The report of the council shall include findings and recommendations as to investigation costs, if any, for settlement of a complaint.

(f) Authority of council. In the course of its investigation, the council or any of its members may:

(i) Examine the buyer and the seller on all matters which the council considers relevant.

(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.

(iii) Submit seed samples for testing by state seed laboratory or appropriate laboratory.

(iv) Hold informal hearings at such time and place as the chairman may direct upon reasonable notice to all parties.

(v) Upon the chairman's request, call any person~~(s)~~ in for comments knowledgeable on any matter~~(s)~~ under investigation.

(vi) Assess the cost of conducting the investigation to the nonprevailing party or between the parties of a given complaint when deemed appropriate.

(vii) Include as the cost of investigation: travel, lodging and meals as established by the state, for any witness called by the council, and other administrative and secretarial expenses.

(g) Delegation. The council may delegate all or any part of any investigation to one (1) or more of its members. Any such delegated investigation shall be summarized in writing and considered by the council in its report.

(h) Compensation. The members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

(i) Distribution of report. After the council has made its report the director shall promptly transmit the report by certified mail to all parties.

Approved March 12, 1996.

CHAPTER 214
(H.B. No. 744)

AN ACT

RELATING TO SEED POTATOES; AMENDING SECTION 22-414, IDAHO CODE, TO FURTHER DEFINE THE TERM "AGRICULTURAL SEEDS" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-436, IDAHO CODE, TO DELETE REFERENCE TO TUBER AND TO CORRECT CODIFIER'S ERRORS; AND AMENDING CHAPTER 5, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-510, IDAHO CODE, TO PROVIDE FOR SEED POTATO ARBITRATION BY PROVIDING A REQUIREMENT OF ARBITRATION, TO PROVIDE NOTICE OF REQUIRED ARBITRATION, TO PROVIDE ESTABLISHMENT OF AN ARBITRATION PANEL AND TO PROVIDE PROCEDURES.

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

SECTION 1. That Section 22-414, Idaho Code, be, and the same is hereby amended to read as follows:

22-414. DEFINITIONS. When used in this act:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of the chapter.

(2) "Agricultural seeds" includes the seeds of grass, forage, cereal and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural, turf, or field seeds, and mixtures of such seeds, but specifically does not include seed potatoes as defined in section 22-501, Idaho Code.

(3) "Certifying agency" means:

(a) An agency authorized under laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the U.S. secretary of agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country determined by the U.S. secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under paragraph (a) of this subsection.

(4) "Crop seed" means any agricultural, vegetable or flower seed, other than the pure seed, present in a lot of seed and which weighs less than five percent (5%) of the total weight of the lot.

(5) "Director" means the director of the department of agriculture of the state of Idaho.

(6) "Flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(7) "Grower's or collector's declaration" means a statement signed by the grower or collector giving for any lot of seed the lot number, the kind, the variety, origin, and weight.

(8) "Hard seed" means any viable agricultural, vegetable or flower seed that fails to germinate within the prescribed germination period due to an impermeable seed coat.

(9) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining one (1) of three (3) combinations:

(a) Two (2) or more inbred lines;

(b) One (1) inbred or a single cross with an open pollinated variety; or

(c) Two (2) varieties or species, except open pollinated varieties of corn (Zea mays).

The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(10) "Inert matter" means the collective parts of incomplete plants, seeds, seedlike structures and other nonseed particles present in a lot of seed.

(11) "In-state seed dealer" means any seed dealer with an established plant, warehouse or place of business in the state of Idaho.

(12) "Kind" means one (1) or more related species or subspecies which singly or collectively is known by one (1) common name, for

example, as wheat, oat, vetch, sweet clover, cabbage, or cauliflower.

(13) "Labeling" includes all labels, and other written, printed, or graphic representations in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

(14) "Lot of seed" means a definite quantity of seed identified by a lot number or other lot identification every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.

(15) "Noxious weed seeds" means the seeds of any plant which is determined by the director to be injurious to public health, crops, livestock, land or other property. They are divided into two (2) classes:

(a) "Prohibited noxious weed seeds" are the seeds which when established are highly destructive and difficult to control in this state by ordinary good cultural practices.

(b) "Restricted noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens but can be controlled by good cultural practices.

The director shall publish and maintain a list of all noxious weeds, which shall also be included in the rules ~~and regulations~~ of the department of agriculture. Pursuant to administrative rules, the director may add to or subtract from the list of seeds included under either definition. Any addition or subtraction is effective thirty (30) days after publication.

(16) "Origin" for an indigenous stand of trees is the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds or plants were originally introduced.

(17) "Out-of-state seed dealer" means any seed dealer selling or shipping seed into the state of Idaho without owning an established plant, warehouse or place of business in Idaho.

(18) "Person" shall include any individual, partnership, corporation, company, society or association.

(19) "Private hearing" may consist of a discussion of facts between the person charged with a violation of the provisions of this chapter and the enforcement officer.

(20) "Record" is all information relating to a shipment of seed and must include a file sample of each lot of seed, purity, and current germination test documentation. For tree and shrub seed, the record must also include all documents supporting the statement of origin and elevation of the seed.

(21) "Seed dealer" means any person that lets it be known by any means or manner that he has seed offered for sale.

(22) "Stop sale" means an administrative order restraining the sale, use, disposition, and movement of a designated seed lot.

(23) "Tree seed and shrub seed" includes seeds of woody plants commonly known and sold as tree seed and shrub seeds.

(24) "Variety" means a subdivision of a kind which is characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated from other sorts of the same kind.

(25) "Vegetable seeds" means the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds.

(26) "Weed seeds" means the seeds of all plants recognized as weeds by the director.

SECTION 2. That Section 22-436, Idaho Code, be, and the same is hereby amended to read as follows:

22-436. SEED ARBITRATION REVIEW COUNCIL. (1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of a ~~tuber,~~ plant, or plant part to perform as represented, or when any buyer claims to have been damaged by the failure of any seed for planting to produce or perform as represented by the required label to be attached to such seed under section 22-415, Idaho Code, or by warranty, or as a result of negligence, as a prerequisite to the buyer's right to maintain a legal action against the dealer or any other seller of such seed, the buyer shall first submit the claim to arbitration as provided in this section. Any applicable period of limitations with respect to such claim shall be tolled until ten (10) days after the filing of the report of arbitration with the director of the department of agriculture as provided in subsection (5)(i) of this section.

(2) Notice of arbitration requirement. Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under section 22-415, Idaho Code, or otherwise attached to the seed bag or package. Arbitration shall not be required unless this notice is included. A notice in the following form, or equivalent language, shall be sufficient:

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint along with the filing fee within such time as to permit inspection of the crops, plants or trees and notify seller of complaint by certified mail.

(3) Effect of arbitration.

(a) Agreement to arbitrate. The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.

(b) Commencement of legal action. In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert such claim as a counterclaim or defense in any action brought by the seller, at any time after the receipt of the report of arbitration.

(c) Use as evidence. In any litigation involving a complaint which has been the subject of arbitration under this section, any party may introduce the report of arbitration as evidence of the findings of the report, and the court may give such weight to the arbitration council's findings and recommendations as to damages and costs, as the court may see fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council with respect to the failure of any party to cooperate in the arbitration proceedings including, any finding as to the effect of delay in filing the arbitration claim

upon the arbitration council's ability to determine the facts of the case.

(d) Investigation cost. The costs of conducting the investigation will be borne by the nonprevailing party.

(4) Seed arbitration council. The director of the department of agriculture shall appoint an arbitration council composed of five (5) members and four (4) alternate members. An Idaho department of agriculture representative shall serve as a permanent member. One (1) member and one (1) alternate shall be appointed upon the recommendation of each of the following:

(a) The associate dean of the college of agriculture; director of the Idaho agricultural experiment stations, college of agriculture, university of Idaho.

(b) The department head of plant, soil and entomological sciences, college of agriculture, university of Idaho.

(c) The president of Idaho-eastern Oregon seed association.

(d) The president of the Idaho crop improvement association.

Each alternate member shall serve only in the absence of the member for whom the person is an alternate. No member or alternate shall be involved in an investigation of a complaint if they, their employer or employee is named in the filed complaint.

Either the buyer or the seller may challenge any member or alternate of the council if there is reason to believe that a conflict of interest exists. In the event that a member or alternate is challenged, the director of the department of agriculture shall appoint, with the consent of the buyer and seller, a replacement, who shall be knowledgeable about agricultural husbandry.

The council shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the council as the chairman may direct.

The purpose of the council is to conduct arbitration as provided in this section. The council may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director or such chairman in accordance with this section.

(5) Procedures.

(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a filing fee of one hundred dollars ($100) which is nonrefundable. The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in case of seed which has not been planted, the claim shall be filed within such time as to permit effective inspection of the plants under field conditions.

(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration council. The director shall refer the complaint and answer to the council for investigation, findings and recommendation.

(d) Investigation. Upon referral of a complaint for investigation

the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.

(e) Scope of report. The report of the council shall include findings and recommendations as to costs, if any, for settlement of a complaint.

(f) Authority of council. In the course of its investigation, the council or any of its members may:

(i) Examine the buyer and the seller on all matters which the council considers relevant.

(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.

(iii) Submit seed samples for testing by state seed laboratory or appropriate laboratory.

(iv) Hold informal hearings at such time and place as the chairman may direct upon reasonable notice to all parties.

(v) Upon the chairman's request, call person(s) in for comments knowledgeable on matter(s) under investigation.

(vi) Assess the cost of conducting the investigation to the nonprevailing party of a given complaint.

(g) Delegation. The council may delegate all or any part of any investigation to one (1) or more of its members. Any such delegated investigation shall be summarized in writing and considered by the council in its report.

(h) Compensation. The members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

(i) Distribution of report. After the council has made its report the director shall promptly transmit the report by certified mail to all parties.

SECTION 3. That Chapter 5, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-510, Idaho Code, and to read as follows:

22-510. SEED POTATO ARBITRATION. (1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of seed potatoes to perform as represented, or when any buyer claims to have been damaged by the failure of any seed potato to produce or perform as represented by the required label to be attached to such seed as prescribed in rules, or by warranty, or as a result of negligence, the buyer shall submit the claim to arbitration as provided in this section.

(2) Notice of required arbitration. In addition to the certification tag required under section 22-502, Idaho Code, conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on a notice of required arbitration tag, or otherwise attached to the seed bag or package. A notice in the following form, or equivalent language, shall be sufficient.

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of certain states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint, along with the filing fee, with the State Department of Agriculture within such time as to permit inspection of the crops and notify seller of complaint by certified mail.

Arbitration shall not be required unless this notice is attached to the seed bag or package.

(3) Establishment of arbitration panel. Any individual or organization recognized by the potato industry in Idaho may provide a nomination list of five (5) names to the director. From that list of nominations, the director shall comprise a list consisting of fifteen (15) names from which the arbitration panel may be established.

(4) Procedures:

(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a nonrefundable filing fee of one hundred dollars ($100). The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in cases of seed which has not been planted, the complaint shall be filed within such time as to permit effective inspection of the plants under field conditions.

(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration panel. The complaint and answer shall be referred to a three (3) person arbitration panel. Each party shall select one (1) arbitrator from the arbitration panel established under the provisions of subsection (3) of this section. Those arbitrators shall select a third arbitrator from the director's list of nominees. Upon request by the chairman, the department may provide administrative support to the arbitration panel.

(d) Findings and recommendations. The panel is empowered, upon review of the buyer's complaint and the seller's answer, to conduct an investigation and make findings and recommendations.

(e) Investigation. Upon referral of a complaint for investigation, the panel shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.

(f) Scope of report. The report of the panel shall include findings and recommendations as to costs, if any, for settlement of a complaint.

(g) Authority of panel. In the course of its investigation, the panel or any of its members may:

(i) Question the buyer and the seller and any other person having knowledge of the matter under investigation.

(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.

(iii) Submit seed samples for testing by the state seed laboratory or other appropriate laboratory.

(iv) Hold informal meetings or hearings at such time and place as the chairman may direct upon reasonable notice to all parties.

(v) Assess the cost of conducting the investigation to the nonprevailing party of a given complaint.

(h) After the investigation and the report of the panel has been released, either party may request at their own expense, a final determination by an independent mediator. If the parties cannot come to an agreement through mediation, no record of the arbitration findings will be discussed or used in a court of law against either side.

Approved March 12, 1996.

CHAPTER 215
(H.B. No. 745)

AN ACT

RELATING TO SEED POTATOES; AMENDING SECTION 22-501, IDAHO CODE, TO ADD NEW DEFINITIONS; AMENDING SECTION 22-502, IDAHO CODE, TO CORRECT THE REFERENCE TO THE IDAHO RULES OF CERTIFICATION; AMENDING SECTION 22-503, IDAHO CODE, TO SPECIFY REQUIREMENTS FOR POTATOES PLANTED AND/OR IMPORTED INTO IDAHO; AMENDING SECTION 22-504, IDAHO CODE, TO SPECIFY THE MISDEMEANOR PENALTY AMOUNTS, AND TO ADD CIVIL PENALTIES; AMENDING CHAPTER 5, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-505, IDAHO CODE, TO PROVIDE AUTHORITY FOR PROMULGATION OF RULES; AMENDING CHAPTER 5, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-506, IDAHO CODE, TO PROVIDE FOR AN ADVISORY COMMITTEE; AMENDING CHAPTER 5, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-507, IDAHO CODE, TO ENSURE THAT THE ACT DOES NOT INTERFERE WITH CHAPTER 10, TITLE 22, IDAHO CODE; AMENDING CHAPTER 5, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-508, IDAHO CODE, TO PROVIDE FOR EXEMPTIONS; AND AMENDING CHAPTER 5, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-509, IDAHO CODE, TO PROVIDE A TITLE.

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

SECTION 1. That Section 22-501, Idaho Code, be, and the same is hereby amended to read as follows:

22-501. DEFINITIONS. When used in this chapter:

(1) "Department" means the department of agriculture of the state of Idaho.

(2) "Certified potatoes" means potatoes certified according to chapter 15, title 22, Idaho Code, the seed and plant certification act or a similar act of another state or country.

(3) "Director" means the director of the Idaho department of agriculture.

(4) "Person" means any individual, partnership, corporation, firm, association or agent.

(5) "Potatoes" ~~when--used--in-this-act,-refers-to~~ means potatoes (Solanum tuberosum) that may be sold for or used as seed potatoes.

SECTION 2. That Section 22-502, Idaho Code, be, and the same is hereby amended to read as follows:

22-502. PACKING AND TAGGING. All potatoes sold or offered for sale as "Idaho certified seed potatoes" must be packed, tagged and sealed in accordance with the Idaho rules ~~approved-by-the-university of-Idaho~~ of certification as authorized under chapter 15, title 22, Idaho Code.

SECTION 3. That Section 22-503, Idaho Code, be, and the same is hereby amended to read as follows:

22-503. POTATOES ~~FROM-OTHER-STATES~~ FOR PLANTING. (1) All potatoes ~~sold-or-offered-for-sale~~ for planting in the state of Idaho ~~as--seed potatoes-from-any-other-state-or-territory-must~~ by any person from any state, territory, or country shall be certified ~~seed~~ and ~~must~~ shall be accompanied by a certificate of inspection ~~describing~~ including the description of the grade, the findings of all inspections of each lot of seed, noting the name and amount of disease observed, and ~~quality thereof~~ generation of the potatoes and ~~must~~ shall show that ~~said~~ the potatoes were packed, sealed, and tagged under the certification standards of the state, ~~or~~ territory, or country in which ~~the-same~~ they were produced~~,-which-certification-standards-must-be-equal-to-those-of Idaho-with-respect-to-disease-or-disorder-tolerances~~. The potatoes may not have a disease content that exceeds the standard for the last generation of certified seed potatoes according to the Idaho rules of certification as authorized under chapter 15, title 22, Idaho Code. Potatoes imported from any other state, country, or territory shall be certified and also be in compliance with other applicable rules of the department pertaining to potatoes.

(2) Idaho growers shall be allowed to plant uncertified potatoes grown by them provided that they are no more than two (2) generations from their own certified parent seed potatoes. After January 1, 1997, Idaho growers shall only be allowed to plant uncertified potatoes grown by them provided that they are no more than one (1) generation from their own certified parent seed potatoes. Uncertified potatoes planted by Idaho growers as provided for under this section must comply with all testing and any other conditions as set forth under this chapter and any rules promulgated pursuant to this chapter.

SECTION 4. That Section 22-504, Idaho Code, be, and the same is hereby amended to read as follows:

22-504. ~~VIOLATION--A--MISDEMEANOR~~ PENALTY FOR VIOLATIONS. (1) Any person who violates or fails to comply with any of the provisions of this ~~act~~ chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than ten dollars ($10.00) per hundred weight of potatoes in violation or be imprisoned in the county jail

for not more than six (6) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than ten dollars ($10.00) per hundred weight of potatoes in violation for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this chapter may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violations shall be remitted to the agricultural inspection account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

SECTION 5. That Chapter 5, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-505, Idaho Code, and to read as follows:

22-505. RULES. The department is hereby authorized to promulgate rules that may be necessary for the efficient enforcement of the provisions of this chapter including, but not limited to, requirements for planting, testing, sampling, inspection, and compliance verification procedures. The department may by rules, establish a schedule of fees for services performed by the department in the administration of the rules. Receipts of these fees shall be deposited in the agricultural inspections account created pursuant to section 22-105, Idaho Code.

SECTION 6. That Chapter 5, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-506, Idaho Code, and to read as follows:

22-506. ADVISORY COMMITTEE. In order to maintain close contact between the department and the potato industry there is hereby established an advisory committee to be appointed by the director. Any person or organization recognized by the potato industry may provide a nomination list of no more than two (2) individuals to the director. The committee shall be comprised of no more than twelve (12) individuals, one (1) of whom must be from the university of Idaho, and one (1)

from the department.

SECTION 7. That Chapter 5, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-507, Idaho Code, and to read as follows:

22-507. CROP MANAGEMENT AREAS. Nothing in this chapter shall be interpreted in such a manner as to interfere with the enforcement or implementation of provisions of chapter 10, title 22, Idaho Code, crop management zones, or rules promulgated thereunder.

SECTION 8. That Chapter 5, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-508, Idaho Code, and to read as follows:

22-508. EXEMPTIONS. Upon application to the director, potato plantings of one (1) acre or less per variety are exempted from the certification requirements of this chapter. However, such plantings may at the discretion of the director be subject to any laboratory testing or field inspections as provided for by rule, at the owner's expense.

SECTION 9. That Chapter 5, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-509, Idaho Code, and to read as follows:

22-509. TITLE. This chapter shall be known as: "The Idaho Seed Potato Act of 1996."

Approved March 12, 1996.

CHAPTER 216
(H.B. No. 633)

AN ACT

RELATING TO BOARDS AND COMMISSIONS; AMENDING TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 47, IDAHO CODE, PROVIDING A SHORT TITLE, PROVIDING A DECLARATION OF LEGISLATIVE POLICY AND PURPOSE, PROVIDING DEFINITIONS, ESTABLISHING THE IDAHO CANOLA AND RAPESEED COMMISSION, PROVIDING REQUIRED QUALIFICATIONS OF COMMISSION MEMBERS, PROVIDING FOR TERMS OF COMMISSION MEMBERS AND FOR APPOINTMENT BY THE GOVERNOR, PROVIDING FOR COMPENSATION OF COMMISSION MEMBERS, PROVIDING FOR A CHAIRMAN AND ADMINISTRATOR OF THE COMMISSION, PROVIDING FOR MEETINGS OF THE COMMISSION, PROVIDING THE DUTIES AND POWERS OF THE COMMISSION, PROVIDING THAT THE COMMISSION MAY ACCEPT GRANTS, DONATIONS, AND GIFTS OF FUNDS FROM ANY SOURCE, PROVIDING FOR BONDS OF AGENTS AND EMPLOYEES, PROVIDING FOR THE APPOINTMENT OF AN ADMINISTRATOR AND HIS DUTIES AND SALARY, PROVID-

ING FOR THE ESTABLISHMENT OF AN ADMINISTRATOR'S OFFICE, PROVIDING THAT THE STATE IS NOT LIABLE, PROVIDING FOR THE IMPOSITION OF TAX AND LATE FEES, PROVIDING FOR CREATION OF AN ESCROW ACCOUNT AND REFUNDS OF TAXES AND ASSESSMENTS, PROVIDING FOR A REFERENDUM, PROVIDING FOR DELIVERY OF INVOICES TO SELLERS, PROVIDING FOR DEPOSITS AND DISBURSEMENT OF FUNDS, PROVIDING FOR A TEMPORARY LINE OF CREDIT FOR START-UP COSTS, AND PROVIDING PENALTIES; AND AMENDING SECTION 9-340, IDAHO CODE, TO EXEMPT CERTAIN COMMISSION INFORMATION AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 47, Title 22, Idaho Code, and to read as follows:

CHAPTER 47
CANOLA AND RAPESEED RESEARCH AND DEVELOPMENT ACT

22-4701. SHORT TITLE. This act shall be known and may be cited as the "Canola and Rapeseed Research and Development Act."

22-4702. DECLARATION OF LEGISLATIVE POLICY AND PURPOSE OF ACT. It is in the best interests of the state of Idaho that its abundant natural resources be efficiently used and effectively managed for the benefit of its citizens. The canola and rapeseed industry is rapidly developing and significantly contributing to the economic welfare of Idaho. The products provided are an important and nutritious part of the human diet. Domestic demand exceeds what is produced in the United States. Moreover, the world market for oilseeds continues to expand. Idaho farmers are in an excellent position to take advantage of this demand. The university of Idaho leads the nation in research on canola and rapeseed. The research effort is critical to the competitiveness of Idaho growers and must be expanded and enhanced. It is the purpose of this act to promote the public health and welfare of the citizens of the state by implementing a program of research, promotion, and consumer and industry information designed to strengthen the position in the marketplace of the Idaho canola and rapeseed industry, to expand existing markets, and to develop new markets for canola and rapeseed and their products.

22-4703. DEFINITIONS. As used in this act, unless the context requires otherwise:

(1) "Canola or rapeseed" or "canola and rapeseed" means Brassica Sp. oilseeds, produced for use as oil, meal, planting seed, condiment, or other industrial or chemurgic uses, and includes mustard.

(2) "Commercial channels" means the sale of the seed of canola, rapeseed and mustard for food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, user, dealer, processor, cooperative, or to any person, public or private, who resells any canola, rapeseed or mustard or any product produced from canola, rapeseed or mustard.

(3) "Commission" means the Idaho canola and rapeseed commission.

(4) "Delivery" means placing of canola, rapeseed or mustard into the primary channels of trade.

(5) "First purchaser" means any person, partnership, association, corporation, cooperative, trust, estate, or any and all other business units, devices and arrangements that buys canola, rapeseed or mustard in this state in the first instance, or any lienholder, public or private, including the commodity credit corporation, who may possess canola, rapeseed or mustard from the grower under any lien.

(6) "Grower" means any landowner, or tenant of the landowner, personally engaged in growing canola, rapeseed or mustard, or both the owner and tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, estate, sharecropper, or any and all other business units, devices and arrangements.

(7) "Sale" includes any pledge, mortgage, or delivery of canola, rapeseed or mustard for sale after harvest to any person, public or private.

(8) "Seller" means any person or entity, including growers, who sells canola, rapeseed or mustard in the first instance.

22-4704. CANOLA AND RAPESEED COMMISSION CREATED -- MEMBERS. There is hereby created and established in the department of self-governing agencies the Idaho canola and rapeseed commission. The commission shall be composed of three (3) members appointed by the governor, one (1) from the northern district, one (1) from the southern district, and one (1) at-large member. Commission members shall be appointed by the governor from a list of names consisting of at least three (3) names for each appointive position. The list of names shall be provided to the governor by the pacific northwest rapeseed/canola association, inc., a canola and rapeseed grower association representing canola and rapeseed growers throughout the state of Idaho. Commission members shall hold office for a term of three (3) years. The commissioners may appoint a representative from the supporting canola or rapeseed industry, who is not a grower, to serve as an ex officio member of the commission without voting privileges. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall also be an ex officio member of the commission without voting privileges.

22-4705. QUALIFICATION OF MEMBERS. Members of the commission shall be nominated and appointed because of their ability and willingness to serve the interests of the state of Idaho and their knowledge of the state's natural resources. Members shall be citizens of the United States, over twenty-five (25) years of age, and residents of the state of Idaho who are actually engaged in the growing of canola or rapeseed in the state and have been for at least the three (3) years immediately preceding appointment. Members must derive a substantial portion of their income from growing canola or rapeseed in the state of Idaho. There shall be two (2) production districts from which members shall be appointed: the northern district being that portion of the state lying north of the Salmon River; and the southern district being that portion lying south of the Salmon River. There shall be one (1) member appointed from each district, and one (1) member appointed at-large from either district.

22-4706. TERMS OF MEMBERS. Beginning July 1, 1996, the first members of the commission shall be appointed by the governor for terms of one (1) to three (3) years each as follows: at-large member, one (1) year; southern district member, two (2) years; northern district member, three (3) years. At the expiration of their original terms, commission members shall be appointed for a term of three (3) years. No member shall serve more than two (2) consecutive full terms. Each member shall hold office until his successor is appointed and qualified. Appointments to fill vacancies shall be for the balance of the unexpired term.

22-4707. COMPENSATION OF MEMBERS. Members of the commission shall be compensated as provided in section 59-509(h), Idaho Code.

22-4708. CHAIRMAN AND ADMINISTRATOR OF COMMISSION. The commission shall elect a chairman who is a commission member and may employ an administrator who is not a member of the commission, or may contract with another state agricultural commission or similar agency for the administration of the canola and rapeseed commission's business.

22-4709. MEETINGS OF THE COMMISSION. The commission shall meet at least once every three (3) months regularly and at other times as required by the chairman. The chairman may call special meetings of the commission at any time or place.

22-4710. DUTIES AND POWERS OF THE COMMISSION. (1) The commission shall establish the policies to be followed in the accomplishment of and consistent with the general purposes of this act.

(2) In the administration of this act, the commission shall, in conjunction with the pacific northwest rapeseed/canola association, inc., have the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.

(b) To find new markets for canola or rapeseed and canola or rapeseed products.

(c) To give, publicize and promulgate reliable information showing the value of canola or rapeseed and canola or rapeseed products for any purpose for which they are found useful and profitable.

(d) To make public and encourage the widespread national and international use of the special kinds of canola and rapeseed and canola and rapeseed products produced from all varieties of canola and rapeseed grown in Idaho.

(e) To investigate and participate in studies of the problems peculiar to the growers of canola and rapeseed in Idaho.

(3) The commission shall have the duty, power and authority:

(a) To take action as the commission deems necessary or advisable to stabilize and protect the canola and rapeseed industry of the state and the health and welfare of the public.

(b) To sue and be sued.

(c) To enter into contracts as may be necessary or advisable.

(d) To appoint and employ officers, agents and other personnel, including experts in agriculture and the publicizing of agricultural products, and to prescribe their duties and fix their com-

pensation.

(e) To advertise as the commission deems advisable and to enter into contract and agreements for research and advertising within and without the state.

(f) To cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or by federal law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with those organizations or agencies for carrying on joint campaigns of research, education, publicity and reciprocal enforcement.

(g) To lease, purchase or own the real or personal property deemed necessary in the administration of this act.

(h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in this act.

(i) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and rules for the procedures and exercise of its powers and the performance of its duties.

(j) To incur indebtedness and carry on all business activities.

(k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.

(l) Except as otherwise provided in this act, information obtained from books, records, and accounts required to be maintained by this act and pertaining to individual production records of canola or rapeseed growers shall be kept confidential, and shall not be disclosed to the public by any person.

22-4711. COMMISSION ACCEPTING GRANTS, DONATIONS AND GIFTS. The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this chapter shall be paid into a bank account in the name of the Idaho canola and rapeseed commission and such moneys are hereby continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this act.

22-4712. BONDS OF AGENTS AND EMPLOYEES. The administrator, or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act.

22-4713. APPOINTMENT OF ADMINISTRATOR -- DUTIES AND SALARY. The commission may appoint an administrator to devote as much time to the administration of the act as deemed necessary by the commission. He shall proceed immediately to prepare the plans and general program necessary and proper to carry out the policies that are adopted by the commission. The administrator shall be paid a reasonable salary fixed by the commission, commensurate with his duties, and all necessary expenses. The administrator shall serve at the discretion of the com-

mission members.

22-4714. ESTABLISHMENT OF ADMINISTRATOR'S OFFICE. For the convenience of the majority of those most likely to be affected in the administration of this act, the administrator, upon recommendation of the commission, shall establish and maintain an office for the administrator within the geographic area served by the pacific northwest rapeseed/canola association, inc.

22-4715. STATE NOT LIABLE FOR ACTS OR OMISSIONS OF COMMISSION OR OF ITS EMPLOYEES. The state of Idaho is not liable for the acts or omissions of the commission or any of its members, or any officer, agent or employee of the commission.

22-4716. IMPOSITION OF TAX -- LATE FEES. (1) From and after the first day of July, 1996, there is hereby levied and imposed a tax of ten cents (10¢) per hundred weight on all canola or rapeseed sold or contracted in this state through commercial channels. The tax shall be due on or before the time when the canola or rapeseed is first sold or contracted in the commercial channels in this state and shall be paid at the times the commission may by rule prescribe, but not later than the 15th day of the month next succeeding the three (3) month period in which the canola or rapeseed is sold or contracted in commercial channels. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

(2) The tax shall be levied and assessed to the seller at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the seller at the time of sale, or in case of a lienholder who may possess the canola or rapeseed under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by the lien at the time the canola or rapeseed is pledged or mortgaged. The tax shall be deducted as provided in this section whether the canola or rapeseed is stored in this state or elsewhere. The commission may, however, permit any federal corporation, such as the commodity credit corporation, to waive its responsibility for the collection of the tax, provided the amount of the tax is one dollar ($1.00) or less.

(3) The tax constitutes a lien prior to all other liens and encumbrances upon the canola or rapeseed, except liens which are declared prior by operation of a statute of this state.

(4) Any person or firm who pays taxes to the commission at a date later than that prescribed in this section may be subject to assessment of a late payment penalty as set forth by rule of the commission. The penalty shall not exceed the rate of eighteen percent (18%) per annum on the amount due. In addition to the penalty, the commission may recover all costs and fees, including reasonable attorney's fees, incurred in collecting the tax and penalty provided for in this section.

(5) A sale shall be exempt from the tax imposed in this section if a substantially similar tax is imposed by and paid to another state or foreign country and used for similar purposes with respect to the same canola or rapeseed. The commission shall, by rule, identify what other taxes are substantially similar and are used for similar pur-

poses, and shall establish procedures for sellers to prove the payment of the other taxes.

22-4717. ASSESSMENT REFUNDS -- ESCROW ACCOUNT. (1) During the period beginning on July 1, 1996, and ending on the date on which a referendum is conducted pursuant to section 22-4718, Idaho Code, the commission shall establish an escrow account to be used for refunds of assessments collected pursuant to section 22-4716, Idaho Code, and shall place an amount equal to ten percent (10%) of the total amounts collected in the escrow account.

(2) The commission shall refund to a seller the assessments paid by or on behalf of the seller if the seller is required to pay the assessments, the seller does not support the program established under this act, and the seller demands the refund prior to the performance of the referendum described in this act.

(3) The refund demand shall be made in accordance with rules, in the form, and within the time period prescribed by the commission.

(4) The refund shall be made on submission of proof satisfactory to the commission that the seller paid the assessments described in section 22-4716, Idaho Code, and for which the refund is demanded.

(5) If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded by eligible sellers and the commission is not approved to continue pursuant to the referendum conducted pursuant to this act, the commission shall prorate the amount of the refunds among all eligible sellers who demand a refund.

(6) If the operation of the commission is approved in the referendum conducted pursuant to this act, all funds in the escrow account shall be returned to the commission for its use in accordance with this act.

22-4718. REFERENDUM. (1) During the period ending thirty (30) months after July 1, 1996, the commission shall conduct a referendum among sellers who, during a representative period as determined by the rules of the commission, have sold canola or rapeseed for the purpose of ascertaining whether the commission shall continue.

(2) Notice shall be given to sellers eligible to vote in the referendum in accordance with rules established by the commission.

(3) If a majority of the eligible sellers approve, the commission will be continued and the refund provisions will be terminated.

(4) If a majority of eligible sellers do not approve to continue the commission, collection of the tax under this act shall be terminated.

(5) If a majority of the eligible sellers approve of continuing the commission in the original referendum, at intervals of five (5) years, the commission shall conduct an advisory poll of qualified sellers as to the effectiveness and continuation of the commission.

22-4719. DELIVERY OF INVOICES TO SELLERS. (1) The purchaser, at the time of settlement, shall make and deliver separate invoices for each purchase to the seller.

(2) The invoices shall be on forms and in such numbers as prescribed and supplied by the commission and shall show at least:

(a) The name and address of the seller.

(b) The name and address of the purchaser.

(c) The number of pounds of canola or rapeseed sold.

(d) The date of purchase.

(3) The invoices shall be legibly written and shall have no corrections or erasures on the face thereof.

(4) Unlawful or willful alteration of an invoice shall constitute a misdemeanor.

22-4720. DEPOSITS AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate the banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year. From and after January 15, 1999, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of the audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

22-4721. TEMPORARY LINE OF CREDIT FOR START-UP COSTS. There is hereby established a temporary line of credit to be drawn from the state general fund to the commission in the amount of ten thousand dollars ($10,000). This sum is continuously appropriated for carrying out the purposes of this act. The temporary line of credit may be drawn upon by the commission only during the first eighteen (18) months after the effective date of this act and only for the purpose of financing the initial start-up of the commission. The commission may draw upon all or part of this temporary line of credit, as may be required. The money advanced from the state general fund shall be repaid with interest to the general fund within two (2) years from the date the commission first draws upon the temporary line of credit.

The interest of ten percent (10%) per annum shall be calculated upon the principal amount outstanding each month until repaid.

22-4722. PENALTIES. Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars ($300), or imprisonment not to exceed ninety (90) days, or both. Fines collected for violation of this act shall be paid into the "Idaho canola and rapeseed commission fund."

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

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

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

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

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

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

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

(e) Vital statistics records;

(f) Except as provided in this subsection, all information provided to a law enforcement agency for sex offender registration pursuant to the provisions of section 18-8306, Idaho Code:

(i) Such information shall be available upon request to a law enforcement agency; and

(ii) The information provided pursuant to the provisions of subsections (1) and (3) of section 18-8306, Idaho Code, shall be provided to any person upon written request. Such written request shall include the name, date of birth and social security number of the person for whom the information is requested.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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

(14) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted

or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

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

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

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

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(27) Records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile. If the juvenile is fourteen (14) years or older and is adjudicated guilty of an offense which would be a felony if committed by an adult, the name, offense of which the juvenile was adjudicated and disposition of the court shall be subject to disclosure. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

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

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable

for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative council prior to release of the related final audit and all other records or materials in the possession of the office of the legislative council that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

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

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

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

(38) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

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

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(39) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

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

(41) Records of laboratory test results provided by or retained by the department of agriculture's quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

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

(43) Records of the sheriff or department of law enforcement received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(4~~3~~4) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(4~~3~~5) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(46) Information obtained from books, records, and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho canola and rapeseed commission and pertaining to the individual production records of canola or rapeseed growers.

Approved March 13, 1996.

CHAPTER 217
(H.B. No. 474, As Amended in the Senate)

AN ACT

RELATING TO THE OFFICE OF THE STATE BOARD OF EDUCATION; AMENDING SECTION 33-102A, IDAHO CODE, TO REMOVE UNCONSTITUTIONAL LANGUAGE AND TO PROVIDE THAT NO EMPLOYEE OR CONTRACTOR OF THE EXECUTIVE OFFICER OF THE STATE BOARD OF EDUCATION OR THE OFFICE OF THE STATE BOARD OF EDUCATION SHALL SERVE AS A TENURED FACULTY MEMBER OF OR HAVE A CONTRACT WITH A STATE COLLEGE OR UNIVERSITY AND TO DEFINE A TERM.

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

SECTION 1. That Section 33-102A, Idaho Code, be, and the same is hereby amended to read as follows:

33-102A. OFFICE OF THE STATE BOARD -- EXECUTIVE OFFICER -- APPOINTMENT -- COMPENSATION -- DUTIES AND POWERS. There is hereby created as an executive agency of the state board of education the office of the state board of education~~,--council--for--higher--education~~. The ~~council--for--higher~~ state board of education is hereby authorized to appoint an executive officer of the ~~council~~ state board who shall serve at the pleasure of the ~~council~~ state board and shall receive such salary as fixed by the ~~council~~ state board. No employee or contractor of the executive officer of the state board of education or the office of the state board of education shall serve as a tenured faculty member of or have a contract with a state college or university. The executive secretary may be appointed as the executive offi-

cer. The executive officer shall, under the direction of the ~~council~~ state board, have such duties and powers as prescribed by the said board of regents and the ~~council for higher~~ state board of education, not otherwise assigned by law. As used in this section, a "contractor" shall mean a person who has signed or agreed to a contract with the state board of education or the executive officer of the state board of education for a period longer than six (6) months in duration.

Approved March 13, 1996.

CHAPTER 218
(H.B. No. 723)

AN ACT

RELATING TO ASSUMED BUSINESS NAMES; REPEALING CHAPTER 5, TITLE 53, IDAHO CODE; AMENDING TITLE 53, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 5, TITLE 53, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A STATEMENT OF PURPOSE, TO PROVIDE DEFINITIONS, TO PROVIDE THAT FILING OF A CERTIFICATE IS REQUIRED TO USE AN ASSUMED BUSINESS NAME, TO PROVIDE FOR CONTENTS OF CERTIFICATES, TO PROVIDE FOR EFFECT, DURATION AND CONTINUATION OF CERTIFICATES OF ASSUMED BUSINESS NAMES, TO PROVIDE FOR AMENDMENT OF CERTIFICATES, TO PROVIDE FOR CANCELLATION OF CERTIFICATES, TO PROVIDE CONSEQUENCES OF NONCOMPLIANCE, TO PROVIDE FEES AND TO PROVIDE DATES OF COVERAGE AND TRANSITION PERIODS; REPEALING SECTION 67-916, IDAHO CODE; AMENDING CHAPTER 9, TITLE 67, BY THE ADDITION OF A NEW SECTION 67-916, IDAHO CODE, TO PROVIDE FOR FEES AND THE COMMERCIAL AFFAIRS ADMINISTRATIVE FUND; AND PROVIDING AN EFFECTIVE DATE CONTINGENT UPON APPROPRIATION.

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

SECTION 1. That Chapter 5, Title 53, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 53, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 5, Title 53, Idaho Code, and to read as follows:

CHAPTER 5
ASSUMED BUSINESS NAMES

53-501. SHORT TITLE. This act shall be known and may be cited as "The Assumed Business Names Act of 1997."

53-502. PURPOSE. The purpose of this chapter is to ensure disclosure on the public record of the true names of persons who transact business in Idaho. Compliance with the provisions of this chapter does not confer any exclusive right to the use of an assumed business name in Idaho.

53-503. DEFINITIONS. When used in this chapter, the terms defined in this section shall have the following meanings:

(1) "Assumed business name" shall mean:

(a) Any name other than the true name of any formally organized or registered entity, under which name the entity holds itself out for the transaction of business in the state of Idaho; or

(b) Any name under which any individual, any group of individuals or other persons, or any entity other than a formally organized or registered entity, holds itself out for the transaction of business in the state of Idaho, if that name does not include in full the true names of all individuals and other persons who have a financial interest in the business which is or may be transacted.

(2) "Formally organized or registered entity" shall mean a legal entity which is created in, authorized to do business in, or given special powers or privileges by the state of Idaho or the federal government by virtue of filing its organizational document, application for authority to do business or registration statement with the secretary of state, the department of finance, the department of insurance, or an agency of the federal government, pursuant to law. Formally organized or registered entities include corporations, limited liability companies, limited partnerships, limited liability partnerships, foreign insurance companies, credit unions, national banks and other entities created pursuant to federal law.

(3) "Foreign," as applied to a formally organized or registered entity, shall mean organized under the laws of a jurisdiction other than Idaho or the federal government.

(4) "Individual" shall mean a natural person.

(5) "Person" shall mean an individual, a trust or estate, a partnership, or a formally organized or registered entity.

(6) "Transact business" shall mean to engage in any commercial or other activity which is intended to or likely to produce a financial benefit, whether it is for the purpose of profit to the person who engages in the activity or for the purpose of supporting a charitable, benevolent or other nonprofit function.

(7) "True name" shall have the following meanings:

(a) When applied to a formally organized or registered entity, the name by which the entity is identified on its organizational document, application for authority to do business or registration statement which is on file with the appropriate governmental entity. As to a foreign formally organized or registered entity which has been required to adopt an assumed business name on its application for authority to do business or its registration statement as a condition of obtaining authority to do business in Idaho, the term "true name" shall include the assumed business name which appears on the application for authority to do business or registration statement.

(b) When applied to an individual, the name which the individual uses to bind himself or herself to legal obligations, or to obtain privileges, licenses or benefits from government. The true name will include the surname and some combination of given names or initials, and may include other identifiers such as "Jr.," "3d" or "III".

53-504. FILING OF CERTIFICATE REQUIRED. (1) Any person who proposes to or intends to transact business in Idaho under an assumed business name shall, before beginning to transact business, file with the secretary of state a certificate of assumed business name in a form prescribed by the secretary of state. The form may be in any medium permitted by the secretary of state. The certificate shall be executed for the person by an individual who has actual authority to bind the person to legal obligations.

(2) A separate certificate of assumed business name must be filed for each assumed business name a person uses.

53-505. CONTENTS OF CERTIFICATE. The certificate of assumed business name shall include:

(1) The assumed business name as it is used in the transaction of business;

(2) The true names and business addresses of every person who has a financial or control interest in the business to be transacted under the assumed business name;

(3) The general type of business to be transacted under the assumed business name, using categories prescribed on the form by the secretary of state; and

(4) Other information as the secretary of state may require.

53-506. EFFECT OF FILING -- DURATION -- CONTINUATION. (1) A person may conduct business under an assumed business name if a certificate of assumed business name has been filed with the secretary of state and is in effect.

(2) A certificate of assumed business name is in effect upon filing for a period of five (5) years, unless a statement of continuation is filed with the secretary of state prior to the lapse of the five (5) year period.

(3) A statement of continuation may be filed with the secretary of state during the six (6) month period which ends on the last day of the five (5) year period of effectiveness of the certificate of assumed business name. The statement of continuation shall be in a form prescribed by the secretary of state. The form may be in any medium permitted by the secretary of state.

(4) The filing of a statement of continuation continues the period of effectiveness of the certificate of assumed business name for five (5) years from the date on which effectiveness would have lapsed but for the filing of the statement of continuation.

(5) Successive statements of continuation may be filed for each successive five (5) year period in the same manner as the first statement of continuation.

(6) A statement of continuation shall be executed in the same manner as required for a certificate of assumed business name.

53-507. AMENDMENT OF CERTIFICATE. (1) If the identity or business address of any person who has a financial or control interest in the business transacted under the assumed business name changes, or if the certificate of assumed business name becomes materially misleading in any other way, the person who transacts that business shall, within six (6) months thereafter, file with the secretary of state a certifi-

cate of amendment to the certificate of assumed business name in a form prescribed by the secretary of state. The form may be in any medium permitted by the secretary of state.

(2) The certificate of amendment shall specify how the certificate of assumed business name is to be amended, and shall be executed in the same manner as required for a certificate of assumed business name.

53-508. CANCELLATION OF CERTIFICATE. (1) A person who discontinues use of an assumed business name may cancel its certificate of assumed business name by filing with the secretary of state a certificate of cancellation in a form prescribed by the secretary of state. The form may be in any medium permitted by the secretary of state.

(2) The certificate of cancellation shall be executed in the same manner as required for a certificate of assumed business name.

53-509. CONSEQUENCES OF NONCOMPLIANCE. (1) Any person who transacts business in Idaho under an assumed business name without having complied with the requirements of this chapter shall not be entitled to maintain any legal action in the courts of this state until the person has filed a certificate of assumed business name as required by this chapter.

(2) Any person who suffers a loss because of another person's noncompliance with the requirements of this chapter shall be entitled to recover damages in the amount of the loss, and attorney fees and costs incurred in connection with recovery of damages.

(3) Noncompliance shall be held to include false, misleading or incomplete information in a certificate of assumed business name, as well as failure to file.

53-510. FEES. The secretary of state shall charge and collect fees for services under this chapter as follows:

(1) For filing a certificate of assumed business name, twenty dollars ($20.00).

(2) For filing a statement of continuation of a certificate of assumed business name, ten dollars ($10.00).

(3) For filing a certificate of amendment to a certificate of assumed business name, ten dollars ($10.00).

(4) For filing a certificate of cancellation of a certificate of assumed business name, no charge.

(5) For issuance of certified copies and certificates of fact concerning filing of certificates of assumed business name and related documents, fees as provided in section 67-910, Idaho Code.

53-511. DATES OF COVERAGE -- TRANSITION. (1) The provisions of this chapter shall govern all certificates of assumed business name filed on or after January 1, 1997.

(2) Certificates of assumed business name recorded with a county recorder before January 1, 1997, pursuant to chapter 5, title 53, Idaho Code, shall continue to be effective notice of assumed business name until January 1, 1999, and any person who has fully complied with the provisions of the repealed chapter shall be held to be in compliance with this chapter until January 1, 1999.

(3) Any person who continues to transact business in Idaho on or after January 1, 1999, under an assumed business name recorded with a county recorder before January 1, 1997, pursuant to chapter 5, title 53, Idaho Code, shall file a certificate of assumed business name with the secretary of state pursuant to this chapter, before January 1, 1999.

SECTION 3. That Section 67-916, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 9, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-916, Idaho Code, and to read as follows:

67-916. FEES -- COMMERCIAL AFFAIRS ADMINISTRATIVE FUND. (1) The secretary of state shall collect and persons served shall pay the fees and charges provided for the commercial affairs (CA) program by law or administrative rule. The CA program consists of the functions of the secretary of state which are governed by chapter 9, title 28; chapters 2 and 3, title 45; chapters 1, 3 and 13, title 30; chapter 5, title 48; chapter 1, title 51; and chapters 2, 3, 5, 6 and 7, title 53, Idaho Code. The secretary of state shall adjust fees and charges as necessary to meet the appropriation as provided for by law.

The secretary of state shall not, in any one (1) calendar year, increase any fee by an amount greater than twenty percent (20%) of that fee in effect on the previous December 31.

(2) CA administrative fund:

(a) There is hereby created a fund in the state treasury, to be designated the "CA administrative fund" to provide for the expenses of the CA program as provided for by law.

(b) The CA administrative fund shall be effective July 1, 1996, and shall consist of the following:

(i) all moneys appropriated by the legislature;

(ii) all fees and charges collected by the secretary of state for CA program services; and

(iii) all moneys which remain in the UCC administrative fund at the close of business on June 30, 1996.

(c) All moneys placed in the fund shall be examined, audited and allowed in the manner now or hereinafter provided by law.

(d) Pending use for purposes of the provisions of the laws of this state, moneys in the CA administrative fund shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury.

(e) The secretary of state shall transmit all fees and charges collected by him for CA program services to the state treasurer as provided under section 59-1014, Idaho Code. The secretary of state shall file with the state controller, a statement of each deposit thus made. All such funds received, unless otherwise specifically designated by another section of the law administered by the secretary of state shall be deposited into the CA administrative fund.

(f) At the beginning of each fiscal year, those moneys in the CA administrative fund which exceed the current year's appropriation plus any residual encumbrances made against prior years' appropriations by twenty-five percent (25%) or more shall be transferred to the general fund.

SECTION 5. This act shall be in full force and effect on and after January 1, 1997, provided that the Legislature passes an act appropriating funds to implement this act. If funds are not appropriated, this act shall have no force and effect.

Approved March 13, 1996.

CHAPTER 219
(H.B. No. 844)

AN ACT

APPROPRIATING MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 1997; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND CHANGING THE EFFECTIVE DATES OF THE APPROPRIATION FOR THE SPECIAL LITIGATION PROGRAM MADE IN SECTION 2, CHAPTER 335, LAWS OF 1995.

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

SECTION 1. There is hereby appropriated to the Attorney General the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. STATE LEGAL SERVICES:				
FROM:				
General Fund	$2,982,500	$ 380,800	$59,900	$3,423,200
Federal Grant Fund	312,700	77,500		390,200
Consumer Protection Fund	118,400	83,500		201,900
State Legal Services Fund	6,263,900	148,700		6,412,600
TOTAL	$9,677,500	$ 690,500	$59,900	$10,427,900
B. SPECIAL LITIGATION:				
FROM:				
General Fund		$1,000,000		$ 1,000,000
GRAND TOTAL	$9,677,500	$1,690,500	$59,900	$11,427,900

SECTION 2. It is legislative intent that an amount, not to exceed $1,000, of the amounts appropriated in Section 1 of this act, may be

used at the discretion of the Attorney General to assist in defraying expenses relating to or resulting from the discharge of the Attorney General's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Attorney General is authorized no more than one hundred sixty-six and five tenths (166.5) full-time equivalent positions at any point during the period July 1, 1996, through June 30, 1997, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. The appropriation made in Section 2, Chapter 335, Laws of 1995, for the Special Litigation Program shall be for the period July 1, 1995, through June 30, 1997.

Approved March 13, 1996.

CHAPTER 220
(S.B. No. 1402)

AN ACT

RELATING TO WORKER'S COMPENSATION INSURANCE; PROVIDING LEGISLATIVE INTENT; AND AMENDING SECTION 72-322, IDAHO CODE, TO PROVIDE A CORRECT TITLE, TO EXEMPT CERTAIN DOMESTIC RECIPROCAL INSURERS FROM PARTICIPATION IN THE ASSIGNED RISK POOL, AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. LEGISLATIVE INTENT. It is the intent of the legislature that, through this act, domestic reciprocal insurers which offer only worker's compensation coverage be treated like self-insured employers. Commercial insurance companies are required to participate in the assigned risk pool. However, it is the intent of the legislature that small, domestic reciprocal insurers addressed through this act not be included in the assigned risk pool and not be required to participate in the assigned risk pool system.

SECTION 2. That Section 72-322, Idaho Code, be, and the same is hereby amended to read as follows:

72-322. ASSIGNED RISK. The ~~commissioner~~ director of the department of insurance, after consultation with sureties authorized to issue ~~workmen's~~ worker's compensation policies and guaranty contracts in this state, may put into effect a reasonable system for the equitable apportionment among such sureties of applicants for such policies or guaranty contracts who are in good faith entitled to but are unable to procure the same through ordinary methods. Such system shall be so

drawn as to guarantee that such an applicant, if not in default on ~~workmen's~~ worker's compensation premiums, shall, following his application to the assigned risk system and tender of required premium, be covered by ~~workmen's~~ worker's compensation insurance or his coverage guaranteed. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no surety shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such surety during the preceding year bears to the total compensation premiums written in the state by all such sureties during the preceding calendar year. Provided however, that domestic reciprocal insurers which insure only worker's compensation risks shall be exempt from participation in this system.

Approved March 13, 1996.

CHAPTER 221
(H.B. No. 414)

AN ACT

RELATING TO POWERS OF THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING SECTION 56-203C, IDAHO CODE, TO PROVIDE ADDITIONAL AUTHORITY TO THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE CHILD SUPPORT SERVICES IN CERTAIN INSTANCES, TO PROVIDE LIMITATIONS AND TO PROVIDE FOR ATTORNEY'S FEES.

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

SECTION 1. That Section 56-203C, Idaho Code, be, and the same is hereby amended to read as follows:

56-203C. POWERS OF DEPARTMENT. (1) In order to carry out its responsibilities imposed under this chapter and title IV-D of the social security act, the state department of health and welfare, through the attorney general or the respective county prosecuting attorney, or through private counsel is hereby authorized to take the following action:

~~(1) Represent a dependent child or dependent children on whose behalf public assistance is being provided in obtaining any support order necessary to provide for his or their needs or to enforce any such order previously entered.~~

~~(2) Appear as a friend of the court in divorce or separate maintenance suits, or proceedings supplemental thereto, when either or both of the parties thereto are receiving public assistance, for the purpose of advising the court as to the financial interest of the state of Idaho therein.~~

~~(3) Appear on behalf of a dependent child or children on whose behalf public assistance is being provided, for the purpose of securing a modification of a divorce or separate maintenance decree wherein no support, or inadequate support, was given for such child or chil-~~

~~dren.-If-a-parent-does-not-request--assistance,--or--refuses--it--when offered,-the-attorney-general,-prosecuting-attorney-or-private-counsel may--nevertheless--appear-at-any-supplemental-proceeding-to-advise-the court-of-such-facts-as-will-show-the-financial-interest-of--the--state of--Idaho--therein;--but-the-attorney-general,-prosecuting-attorney-or private-counsel-shall-not-otherwise-participate-in-the-proceeding.~~

~~(4)--If-public-assistance-has--been--applied--for--or--granted--on behalf--of--a--child-of-parents-who-are-divorced-or-legally-separated, the-attorney-general,-prosecuting--attorney--or--private--counsel--may apply--to--the--district--court--in-such-action-for-an-order-directing either-parent-or-both-to-show-cause:~~

~~(a)--Why-an-order-of-support-for-the-child-should-not-be--entered, or~~

~~(b)--Why--the--amount--of-support-previously-ordered-should-not-be increased,-or~~

~~(c)--Why-the-parent-should-not-be-held-in-contempt-for-his-failure to-comply-with-any-order-of-support-previously-entered.~~

~~(5)--Initiate--any--civil--proceedings--deemed--necessary--by--the department-to-secure-reimbursement-from-the-parent-or-parents-of-minor dependent-children-for-all-moneys-expended-by-the-state--in--providing assistance-or-services-to-said-children.~~

~~(6)--Appear-on-behalf-of-a-minor-child,-who-is-not-a-recipient--of public--assistance,-to-obtain-or-modify-any-support-order-necessary-to provide-for-his-or-their-needs-or-to-enforce-any-such-order-previously entered.~~

~~(7)--Any-child-support-order-issued-or-modified-under-this-section shall-contain-a-provision-allowing-the-obligee-to-enforce-the-order-by income-withholding;-and-shall-include-the-notice-required--in--section 32-1205,--Idaho--Code,--advising-the-obligor-that-the-obligee-can-seek enforcement-of-the-order-by-means-of-a--mandatory--income--withholding order--issued--pursuant--to-this-chapter-without-further-notice-to-the obligor.~~

~~Failure-to-include-this-provision-does-not-affect-the-validity--of the--support--order.-If-the-social-security-number-of-the-person-obligated-to-make-child-support-payments-under-the-support-order-or-decree is-available,-the-court-shall-require-that-the-social-security--number of-the-obligor-be-included-in-the-order-or-decree.~~

(a) Petition to establish an order for support including medical support and support for a period during which a child received public assistance;

(b) Petition to establish paternity;

(c) Petition to modify an order for support in accordance with the Idaho child support guidelines at the request of an obligor, obligee or state agency providing services under title IV-D of the social security act;

(d) Petition to enforce an order for support of a child or a spouse or former spouse who is living with a child for whom the individual also owes support; and

(e) Intervene in a divorce or separate maintenance action or proceedings supplemental thereto, for the purpose of advising the court regarding support of a child or advising the court as to the financial interest of the state of Idaho therein without necessity of further leave of the court.

(f) Other services as required by title IV-D of the social security act.

(2) The department of health and welfare is not authorized to provide services regarding visitation or custody of a child unless so authorized by title IV-D of the social security act.

(3) In any action taken under this section, the prevailing party may, at the discretion of the court, be allowed reasonable attorney's fees and costs to be set by the court.

Approved March 14, 1996.

CHAPTER 222
(H.B. No. 472, As Amended)

AN ACT

RELATING TO LONG-TERM CARE INSURANCE; AMENDING SECTION 41-4605, IDAHO CODE, TO PROVIDE THAT A LONG-TERM CARE INSURANCE POLICY SHALL PROVIDE COVERAGE FOR ALL LEVELS OF CARE IN A NURSING HOME, MAY PROVIDE FOR NURSING HOME ONLY AND/OR HOME HEALTH CARE ONLY AND MAY PROVIDE FOR CERTAIN ADDITIONAL COVERAGE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-4605, Idaho Code, be, and the same is hereby amended to read as follows:

41-4605. DISCLOSURE AND PERFORMANCE STANDARDS FOR LONG-TERM CARE INSURANCE. (1) The director may adopt ~~regulations~~ rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions and definitions of terms.

(2) No long-term care insurance policy may:

(a) Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

(b) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(c3) ~~Provide coverage--for--skilled--nursing--care--only--or--for skilled--nursing--care--in-a-facility-only,-and-such-policy-shall~~ Each long-term care insurance policy shall cover all levels of care including, but not limited to, custodial, intermediate and skilled levels of care in a nursing home. Policies may provide coverage for nursing home

only and/or home health care only and may also provide coverage for additional service including, but not limited to, personal care services, adult foster care, adult day care, in-home services and home-delivered meals.

(34) Preexisting condition:

(a) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in section 41-4603(4)(a), Idaho Code, shall use a definition of "preexisting condition" which is more restrictive than the following: Preexisting condition means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six (6) months preceding the effective date of coverage of an insured person.

(b) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in section 41-4603(4)(a), Idaho Code, may exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

(c) The director may extend the limitation periods set forth in paragraphs (a) and (b) of this subsection as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(d) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph (b) of this subsection expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph (b) of this subsection.

(45) Prior hospitalization institutionalization:

(a) No long-term care insurance policy may be delivered or issued for delivery in this state if such policy:

(i) Conditions eligibility for any benefits on a prior hospitalization requirement;

(ii) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(iii) Conditions eligibility for any benefits other than waiver of premium, post confinement, post acute care or recuperative benefits on a prior institutionalization requirement.

(b) (i) A long-term care insurance policy containing post confinement, post acute care or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility

for benefits" such limitations or conditions including any required number of days of confinement;

(ii) A long-term care policy or rider which conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

(~~5~~6) The director may adopt ~~regulations~~ rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the ~~regulation~~ rule.

(~~6~~7) Right to return -- free look:

(a) Individual long-term care insurance policyholders shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(b) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(~~7~~8) (a) An outline of coverage shall be delivered to an applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(i) The commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

(ii) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.

(iii) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

(b) The outline of coverage shall include:

(i) A description of the principal benefits and coverage provided in the policy;

(ii) A statement of the principal exclusions, reductions and limitations contained in the policy;

(iii) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change

premium. Continuation or conversion provisions of group coverage shall be specifically described;

(iv) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions;

(v) A description of the terms under which the policy or certificate may be returned and premiums refunded; and

(vi) A brief description of the relationship of cost of care and benefits.

(8~~9~~) A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the principal exclusions, reductions and limitations contained in the policy; and

(c) A statement that the group master policy determines governing contractual provisions.

(9~~10~~) At the time of policy delivery, the policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, this summary shall also include:

(a) An explanation of how long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(b) An illustration of the amount of benefits, the length of a benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(c) Any exclusions, reductions and limitations on benefits of long-term care; and

(d) If applicable to the policy type, the summary shall also include:

(i) A disclosure of the effects of exercising other rights under the policy;

(ii) A disclosure of guarantees related to long-term care costs of insurance; and

(iii) Current and projected maximum lifetime benefits.

(10~~1~~) Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. Such report shall include:

(a) Any long-term care benefits paid out during the month;

(b) An explanation of any changes in the policy, e.g., death benefits or cash values, due to long-term care benefits being paid out; and

(c) The amount of long-term care benefits existing or remaining.

(1~~1~~2) The following shall apply to any application for coverage under a long-term care insurance policy:

(a) All medical questions shall be completed and attested to by the applicant and answers thereto shall not be provided or suggested by any agent of the insurer;

(b) The application shall contain a notice prominently printed near the signature line stating in substance that all questions shall be answered truthfully; and

(c) A physician's statement of the mental and physical condition of the proposed insured shall accompany the application of any person over seventy-five (75) years of age.

(1~~2~~3) The issuer of a long-term care insurance policy shall report any cancellation, nonrenewal or termination of such policy, stating the reasons therefor, to the department of insurance.

(1~~3~~4) No policy may be advertised, marketed or offered as long-term care or nursing home insurance unless it complies with the provisions of this chapter.

Approved March 14, 1996.

CHAPTER 223
(H.B. No. 501, As Amended in the Senate)

AN ACT

RELATING TO MOTOR FUELS TAXES; AMENDING SECTION 63-2401, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-2407, IDAHO CODE, TO PROVIDE THAT A DEDUCTION FOR GASOLINE OR AIRCRAFT ENGINE FUEL EXPORTED IS AVAILABLE ONLY IF THE SELLER ESTABLISHES THAT THE PURCHASER EITHER PAYS ANY TAX DUE THE DESTINATION STATE OR IS A LICENSED DISTRIBUTOR IN THE DESTINATION STATE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 63-2416, IDAHO CODE, TO PROVIDE THAT A DEDUCTION FOR SPECIAL FUEL EXPORTED IS AVAILABLE ONLY IF THE SELLER ESTABLISHES THAT THE PURCHASER EITHER PAYS ANY TAX DUE THE DESTINATION STATE OR IS A LICENSED DISTRIBUTOR IN THE DESTINATION STATE.

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

SECTION 1. That Section 63-2401, Idaho Code, be, and the same is hereby amended to read as follows:

63-2401. DEFINITIONS. In this chapter:

(1)~~(1)~~~~(1)~~ "Aircraft engine fuel" means:

(a) Aviation gasoline, defined as any mixture of volatile hydrocarbons used in aircraft reciprocating engines; and

(b) Jet fuel, defined as any mixture of volatile hydrocarbons used in aircraft turbojet and turboprop engines.

(2)~~(2)~~~~(2)~~ "Bond" means:

(a) A surety bond, in an amount required by this chapter, duly executed by a surety company licensed and authorized to do business in this state conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties and other obligations arising out of the provisions of

this chapter; or

(b) A deposit with the commission by any person required to be licensed pursuant to this chapter under terms and conditions as the commission may prescribe, of a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Idaho, or any county of the state; or

(c) An irrevocable letter of credit issued to the commission by a bank doing business in this state payable to the state upon failure of the person on whose behalf it is issued to remit any payment due under the provisions of this chapter.

(3)~~(3)(4)~~ "Commercial motor boat" means any boat, equipped with a motor, which is wholly or partly used in a profit-making enterprise or in an enterprise conducted with the intent of making a profit.

(4)~~(4)(5)~~ "Commission" means the state tax commission of the state of Idaho.

(5)~~(5)(6)~~ "Distributor" means any person who receives gasoline, special fuels, and/or aircraft fuel in this state, and includes a special fuels dealer. Any person who sells or receives gaseous fuels will not be considered a distributor unless the gaseous fuel is delivered into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him.

(6)~~(6)(7)~~ "Dyed fuel" means diesel fuel that is dyed pursuant to requirements of the internal revenue service, or the environmental protection agency.

(7)~~(8)~~ "Exported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

(8)~~(9)(7)~~ "Gasohol" means gasoline containing a mixture of no more than ten percent (10%) blend anhydrous ethanol.

(9)~~(10)(8)~~ "Gasoline" means any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. "Gasoline" also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels.

(10)~~(11)(9)~~ "Highways" means every place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel which is maintained by the state of Idaho or an agency or taxing subdivision or unit thereof or the federal government or an agency or instrumentality thereof. Provided, however, if the cost of maintaining a roadway is primarily borne by a special fuels user who is registered under section 63-2438, Idaho Code, pursuant to a written contract during any period of time that a special fuels tax liability accrues to the user, such a roadway shall not be considered a "highway" for any purpose related to calculating that user's special fuel's tax liability or refund.

(11)~~(12)~~ "Imported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

(12)~~(13)~~ "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(13)~~(14)(10)~~ "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code.

(14)~~(16)(11)~~ "Motor fuel" means gasoline, special fuels, aircraft engine fuels or any other fuels suitable for the operation or propulsion of motor vehicles, motor boats or aircraft.

(15)~~(17)(12)~~ "Motor vehicle" means every self-propelled vehicle designed for operation, or required to be licensed for operation, upon a highway.

(16)~~(18)(13)~~ "Person" means any individual, firm, fiduciary, copartnership, association, corporation, governmental instrumentality including the state and all of its agencies and political subdivisions, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means the partners or members, and as applied to corporations, the officers.

(17)~~(19)(14)~~ "Recreational vehicle" means a snowmobile as defined in section 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in section 49-114, Idaho Code; and any vehicular type unit either as an integral part of, or required for the movement of, units defined in section 39-4105(15), Idaho Code.

(18)~~(20)(15)~~ "Retail dealer" means any person engaged in the retail sale of motor fuels to the public or for use in the state.

(19)~~(21)(16)~~ "Special fuels" means:

(a) All fuel suitable as fuel for diesel engines;

(b) A compressed or liquified gas obtained as a byproduct in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and

(c) Natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles.

(20)~~(22)(17)~~ "Special fuels dealer" means "distributor" under subsection (5)~~(5)(6)~~ of this section. ~~or pursuant to section 63-2427A, Idaho Code.~~

(21)~~(23)(18)~~ "Special fuels user" means any person who uses or consumes special fuels for the operation or propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(22)~~(24)(19)~~ "Use" means either:

(a) The receipt, delivery or placing of fuels by a licensed distributor or a special fuels dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or

(b) The consumption of fuels in the operation or propulsion of a motor vehicle on the highways of this state.

SECTION 2. That Section 63-2407, Idaho Code, be, and the same is hereby amended to read as follows:

63-2407. DEDUCTIONS AUTHORIZED. Each licensed distributor shall deduct from his monthly report:

(1) Gasoline and/or aircraft engine fuel exported from this state other than in the supply tanks of motor vehicles, motor boats or aircraft when supported by a shipping document issued by a common car-

rier, an invoice signed by the purchaser, or other proper documents approved by the commission but only if:

(a) the purchaser is not a licensed distributor and the seller can establish that any tax due in the jurisdiction to which the gasoline and/or aircraft engine fuel is destined is paid, or

(b) the purchaser is a licensed distributor in the jurisdiction to which the gasoline and/or aircraft engine fuel is destined.

(2) Gasoline and/or aircraft engine fuel returned to a licensed distributor's refinery or pipeline terminal storage when supported by proper documents approved by the commission.

(3) Gasoline and/or aircraft engine fuel lost or destroyed by fire, lightning, flood, tornado, windstorm, explosion, or other accidental casualty, after presenting to the commission satisfactory proof of loss.

(4) The number of gallons which would be equal to one per cent (1%) of the total number of gallons received during the reporting period, less the total number of gallons deducted under subsections (1) through (3) of this section, which credit is granted to the licensed distributor to reimburse him for the expense incurred on behalf of the state of Idaho in collecting and remitting gasoline and/or aircraft engine fuel tax moneys, maintaining necessary records for the state, preparing necessary reports and remittances in compliance with this chapter, and for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty as provided in subsection (3) of this section. The licensed distributor may, in addition to the above, deduct the number of gallons equal to one per cent (1%) of the total number of gallons received during the preceding calendar month, less the total number of gallons deducted under subsections (1) through (3) of this section, to cover shrinkage, evaporation, spillage and handling losses of a retail dealer. The latter deductions are to be allowed only upon filing with the commission satisfactory evidence as may be prescribed by it indicating the credit allowance has been made in favor of the retail dealer or paid to him. The evidence shall be submitted together with the report wherein this portion of the deduction is claimed. A licensed distributor who sells and delivers gasoline directly to the consumer and not for resale shall, with respect to those sales, be deemed a retail dealer for the purposes of this section.

(5) Gasoline and/or aircraft engine fuel sold to the Idaho national guard for use in aircraft and in vehicles used off public highways provided, however, such deduction is supported by an exemption certificate signed by an authorized officer of the Idaho national guard.

(6)~~(7)~~ For sales made on or after July 1, 1995, taxes previously paid on gallons represented by accounts found to be worthless and actually charged-off for income tax purposes may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, the tax per gallon shall be paid based upon the amount actually received divided by the price per gallon of the original sale multiplied by the appropriate tax rate.

SECTION 3. That Section 63-2416, Idaho Code, be, and the same is hereby amended to read as follows:

63-2416. TAX IMPOSED. (1) For the privilege of using the public highways, an excise tax is hereby imposed on all special fuels used for the operation or propulsion of any motor vehicle which is licensed or required to be licensed under the laws of this state or which is required to be licensed under the laws of another state and is operated on a highway in this state. The tax shall apply at the same rate as the tax imposed by section 63-2405, Idaho Code. The tax shall attach and be collected at the time special fuels are received, in the same manner as for gasoline under section 63-2403, Idaho Code, and is to be paid by the licensed distributor.

(2) The tax imposed in subsection (1) of this section does not apply to special fuels:

(a) Which have been dyed at a refinery or terminal; or

(b) Exported, other than in the supply tanks of motor vehicles, but only if:

(i) any tax due in the jurisdiction to which the special fuel is destined is paid; or

(ii) the purchaser is a licensed distributor in the jurisdiction to which the special fuel is destined; or

(c) Dispensed into a motor vehicle which uses gaseous special fuels and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code; or

(d) Which are gaseous special fuels, as defined in section 63-2401, Idaho Code, unless any part thereof is delivered into the fuel supply tank or tanks of a motor vehicle.

(3) If special fuels on which tax is not collected under subsection (1) of this section or fuel on which a claim for refund has been allowed under section 63-2423, Idaho Code, is used or consumed:

(a) In the operation or propulsion of a motor vehicle on a highway, or

(b) In a recreational vehicle, or

(c) In noncommercial motor boats or in motor boats operated by a governmental entity,

the tax shall be payable at the rate established in section 63-2405, Idaho Code, to the commission by the user or consumer of the fuels and shall be a debt owing to the state until it is paid.

(4) A floor stocks tax is hereby imposed upon every licensed special fuels dealer on all undyed diesel fuel at the rate imposed in subsection (1) of this section on each gallon of fuel in their possession or under their control on January 1, 1996. The tax shall be reported with the return due under this chapter for the month of January, 1996, in the manner required by the state tax commission. The tax due under this subsection shall be paid in full to the state tax commission on or before July 31, 1996.

Approved March 14, 1996.

CHAPTER 224
(H.B. No. 508)

AN ACT

RELATING TO PROCEDURE IN THE COURTS; AMENDING SECTION 7-302, IDAHO CODE, TO PROVIDE CURRENT REFERENCES; AMENDING SECTION 7-305, IDAHO CODE, TO EXTEND THE TIME WHICH NOTICE SHALL BE GIVEN; AMENDING SECTION 7-402, IDAHO CODE, TO PROVIDE CURRENT REFERENCES; AND AMENDING SECTION 7-403, IDAHO CODE, TO CLARIFY AN ALTERNATIVE ACTION.

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

SECTION 1. That Section 7-302, Idaho Code, be, and the same is hereby amended to read as follows:

7-302. WHEN AND BY WHAT COURTS ISSUED. It may be issued by ~~any court--except--a--justice's-or-probate-court,~~ the supreme court or any district court to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and the enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

SECTION 2. That Section 7-305, Idaho Code, be, and the same is hereby amended to read as follows:

7-305. NOTICE OF APPLICATION -- HEARING. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, must be at least ~~ten (10)~~ fourteen (14) days. The writ cannot be granted by default. The case must be heard by the court whether the adverse party appear or not.

SECTION 3. That Section 7-402, Idaho Code, be, and the same is hereby amended to read as follows:

7-402. WHEN AND HOW ISSUED. It may be issued by ~~any court except probate or justice's courts,~~ the supreme court or any district court to an inferior tribunal, or to a corporation, board or person in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit on the application of the person beneficially interested.

SECTION 4. That Section 7-403, Idaho Code, be, and the same is hereby amended to read as follows:

7-403. ALTERNATIVE AND PEREMPTORY WRITS. The writs must be either alternative or peremptory. The alternative writ must state generally

the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, ~~and~~ or to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

Approved March 14, 1996.

CHAPTER 225
(H.B. No. 509)

AN ACT

RELATING TO DETERMINATION OF MENTAL STATUS IN CRIMINAL PROSECUTIONS; AMENDING SECTION 18-207, IDAHO CODE, TO PROVIDE CONDITIONS FOR EXPERT TESTIMONY CONCERNING MENTAL CONDITION AND TO REQUIRE OPPORTUNITY FOR THE OPPOSING PARTY TO CONDUCT EXAMINATIONS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 18-211, IDAHO CODE, TO ELIMINATE A REQUIREMENT FROM A REPORT ORDERED BY THE COURT.

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

SECTION 1. That Section 18-207, Idaho Code, be, and the same is hereby amended to read as follows:

18-207. MENTAL CONDITION NOT A DEFENSE -- PROVISION FOR TREATMENT DURING INCARCERATION -- RECEPTION OF EVIDENCE -- NOTICE AND APPOINTMENT OF EXPERT EXAMINERS. (~~a~~1) Mental condition shall not be a defense to any charge of criminal conduct.

(~~b~~2) If by the provisions of section 19-2523, Idaho Code, the court finds that one convicted of crime suffers from any mental condition requiring treatment, such person shall be committed to the board of correction or such city or county official as provided by law for placement in an appropriate facility for treatment, having regard for such conditions of security as the case may require. In the event a sentence of incarceration has been imposed, the defendant shall receive treatment in a facility which provides for incarceration or less restrictive confinement. In the event that a course of treatment thus commenced shall be concluded prior to the expiration of the sentence imposed, the offender shall remain liable for the remainder of such sentence, but shall have credit for time incarcerated for treatment.

(~~c~~3) Nothing herein is intended to prevent the admission of expert evidence on the issues of ~~mens rea or~~ any state of mind which is an element of the offense, subject to the rules of evidence.

(4) No court shall, over the objection of any party, receive the

evidence of any expert witness on any issue of mental condition, or permit such evidence to be placed before a jury, unless such evidence is fully subject to the adversarial process in at least the following particulars:

(a) Notice must be given at least ninety (90) days in advance of trial, or such other period as justice may require, that a party intends to raise any issue of mental condition and to call expert witnesses concerning such issue, failing which such witness shall not be permitted to testify until such time as the opposing party has a complete opportunity to consider the substance of such testimony and prepare for rebuttal through such opposing expert(s) as the party may choose.

(b) A party who expects to call an expert witness to testify on an issue of mental condition must, on a schedule to be set by the court, furnish to the opposing party a written synopsis of the findings of such expert, or a copy of a written report. The court may authorize the taking of depositions to inquire further into the substance of such reports or synopses.

(c) Raising an issue of mental condition in a criminal proceeding shall constitute a waiver of any privilege that might otherwise be interposed to bar the production of evidence on the subject and, upon request, the court shall order that the state's experts shall have access to the defendant in such cases for the purpose of having its own experts conduct an examination in preparation for any legal proceeding at which the defendant's mental condition may be in issue.

(d) The court is authorized to appoint at least one (1) expert at public expense upon a showing by an indigent defendant that there is a need to inquire into questions of the defendant's mental condition. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19, Idaho Code.

(e) If an examination cannot be conducted by reason of the unwillingness of the defendant to cooperate, the examiner shall so advise the court in writing. In such cases the court may deny the party refusing to cooperate the right to present evidence in support of a mental status claim unless the interest of justice requires otherwise and shall instruct the jury that it may consider the party's lack of cooperation for its effect on the credibility of the party's mental status claim.

SECTION 2. That Section 18-211, Idaho Code, be, and the same is hereby amended to read as follows:

18-211. EXAMINATION OF DEFENDANT -- APPOINTMENT OF PSYCHIATRISTS AND LICENSED PSYCHOLOGISTS -- HOSPITALIZATION -- REPORT. (1) Whenever there is reason to doubt the defendant's fitness to proceed as set forth in section 18-210, Idaho Code, the court shall appoint at least one (1) qualified psychiatrist or licensed psychologist or shall request the director of the department of health and welfare to designate at least one (1) qualified psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant to assist counsel with defense or understand the proceedings. The costs

of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19, Idaho Code.

(2) Within three (3) days, excluding Saturdays, Sundays and legal holidays, of the appointment or designation, the examiner shall determine the best location for the examination. If practical, the examination shall be conducted locally on an outpatient basis.

(3) If the examiner determines that confinement is necessary for purposes of the examination, the court may order the defendant to be confined to a jail, a hospital, or other suitable facility for that purpose for a period not exceeding thirty (30) days. The order of confinement shall require the county sheriff to transport the defendant to and from the facility and shall notify the facility of any known medical, behavioral, or security requirements of the defendant. The court, upon request, may make available to the examiner any court records relating to the defendant.

(4) In such examination any method may be employed which is accepted by the examiner's profession for the examination of those alleged not to be competent to assist counsel in their defense.

(5) Upon completion of the examination a report shall be submitted to the court and shall include the following:

(a) a description of the nature of the examination;

(b) a diagnosis or evaluation of the mental condition of the defendant;

(c) an opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense~~;~~

~~(d)--when--directed-by-the-court,-an-opinion-as-to-the-capacity-of the-defendant-to-form-mens-rea-or-a-particular-state-of-mind-which is-an-element-of-the-offense-charged.~~

(6) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect.

(7) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(8) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(9) In addition to the psychiatrist or licensed psychologist, the court may appoint additional experts to examine the defendant. In the event a defendant is suspected of being developmentally disabled, the examination shall proceed with those experts set out in subsection (6) of section 66-402, Idaho Code.

(10) If the defendant lacks capacity to make informed decisions about treatment, as defined in section 66-317(i), Idaho Code, the court may authorize consent to be given pursuant to section 66-322, Idaho Code. If the defendant lacks capacity to make informed decisions as defined in subsection (8) of section 66-402, Idaho Code, the court may authorize consent to be given pursuant to sections 66-404 and 66-405, Idaho Code.

(11) If the defendant was confined solely for the purpose of examination, he shall be released from the facility within three (3) days, excluding Saturdays, Sundays and legal holidays following notification of completion of the examination.

Approved March 14, 1996.

CHAPTER 226
(H.B. No. 512)

AN ACT
RELATING TO PERFORMANCE EVALUATION REPORTS; AMENDING SECTION 67-461, IDAHO CODE, TO GOVERN CONDITIONS FOR RELEASE OF DATA OR FOR CONFIDENTIALITY OF AN INDIVIDUAL WHO PROVIDES INFORMATION TO THE DIRECTOR OF LEGISLATIVE PERFORMANCE EVALUATIONS.

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

SECTION 1. That Section 67-461, Idaho Code, be, and the same is hereby amended to read as follows:

67-461. CONDUCT OF AND ISSUANCE OF PERFORMANCE EVALUATION REPORTS. (1) Prior to any performance evaluation, the legislative management systems analyst shall conduct a survey to obtain an overview of the operations of the agency or program. The survey will develop background information, including roles and identities of key personnel, identify actual and potential financial, managerial and operational problem areas and determine whether and to what extent detailed audit tests may be required in each specific area. In consultation with the agency or program, the legislative management systems analyst will develop a performance evaluation work plan.

(2) Prior to the presentation of any performance evaluation to the committee, the evaluated agency, the governor and the state controller shall have an opportunity to review the performance evaluation findings and issue a response. The response of the agency, the governor and the state controller to the performance evaluation shall be included in the performance evaluation when it is presented to the committee. All documents, writings and information transmitted pursuant to this subsection shall be deemed confidential and shall not be released to the public prior to the time the committee issues its performance evaluation report pursuant to subsection (3) of this section. Any person violating the provisions of this subsection regarding confidentiality shall be guilty of a misdemeanor.

(3) The committee shall issue performance evaluation reports, favorable or unfavorable, of any state agency, and such reports shall be a public record. Prior to the release of a performance evaluation report <u>or the point at which a performance evaluation is no longer being actively pursued,</u> all papers, physical and electronic records and correspondence and other supporting materials comprising the work papers in the possession of the legislative council employee or other entity charged with the preparation of a performance evaluation

report shall be confidential and exempt from disclosure pursuant to chapter 3, title 9, Idaho Code. Additionally, all other records or materials in the possession of the legislative council or other entity charged with the preparation of a performance evaluation report that would otherwise be confidential or exempt from disclosure shall be exempt from disclosure pursuant to the provisions of chapter 3, title 9, Idaho Code. If data supplied by an individual are needed to initiate, continue or complete a performance evaluation and the individual will not provide the data to the director of legislative performance evaluations without an assurance that the individual's identity will remain confidential and exempt from disclosure, the director of legislative performance evaluations may by written memorandum to the file provide that the individual's identity will remain confidential and exempt from disclosure under chapter 3, title 9, Idaho Code, and this written memorandum will protect the identity of the person from disclosure under chapter 3, title 9, Idaho Code, notwithstanding any other provision of law to the contrary. A copy of the report signed by the cochairmen of the committee, including committee recommendations, shall be submitted to the governor, to the state controller, to each member of the legislature, and to the official, officer or person in charge of the state agency examined.

Approved March 14, 1996.

CHAPTER 227
(H.B. No. 553)

AN ACT

RELATING TO THE PUNISHMENT FOR BATTERY; AMENDING SECTION 18-904, IDAHO CODE, TO PROVIDE AN ENHANCED PUNISHMENT FOR BATTERY IF THE VICTIM IS PREGNANT AND THAT FACT IS KNOWN TO THE BATTERER.

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

SECTION 1. That Section 18-904, Idaho Code, be, and the same is hereby amended to read as follows:

18-904. BATTERY -- PUNISHMENT. Battery is punishable by a fine not exceeding five hundred dollars ($500), or by imprisonment in the county jail not to exceed six (6) months, or both unless the victim is pregnant and this fact is known to the batterer, in which case the punishment is by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed one (1) year, or both.

Approved March 14, 1996.

CHAPTER 228
(H.B. No. 558)

AN ACT

RELATING TO DOMESTIC ASSAULT OR BATTERY; AMENDING SECTION 18-918, IDAHO CODE, TO PROVIDE FOR THE CRIME OF DOMESTIC ASSAULT OR BATTERY IF A HOUSEHOLD MEMBER RATHER THAN AN ADULT HOUSEHOLD MEMBER COMMITS THE ACT.

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

SECTION 1. That Section 18-918, Idaho Code, be, and the same is hereby amended to read as follows:

18-918. DOMESTIC ASSAULT OR BATTERY. (1) For the purpose of this section, "~~adult~~ household member" means a person who ~~is eighteen (18) years of age or older and~~ is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or have lived together at any time.

(2) ~~An adult~~ household member who commits an assault, as defined in section 18-901, Idaho Code, against another ~~adult~~ household member is guilty of domestic assault.

(3) ~~An adult~~ household member who commits a battery, as defined in section 18-903, Idaho Code, against another ~~adult~~ household member is guilty of domestic battery.

(4) Upon a first conviction, the crime of domestic assault or battery is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. Upon a second conviction, within ten (10) years of the first conviction, the person so convicted shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars ($2,000) or by both fine and imprisonment. Upon a third or subsequent conviction, within fifteen (15) years of the first conviction, the person so convicted shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000) or by both fine and imprisonment.

(5) (a) Any person who pleads guilty or is found guilty of a violation of this section shall undergo, at the person's own expense and prior to the sentencing date, an evaluation by a person, agency or organization approved by the court in accordance with subsection (c) of this section to determine whether the defendant should be required to obtain aggression counseling or other appropriate treatment for anger control and prevention. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropri-

ate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that counseling is required unless the defendant makes a showing by a preponderance of evidence that counseling is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code.

(b) If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.

(c) Each judicial district shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section 31-3201A(p), Idaho Code.

Approved March 14, 1996.

CHAPTER 229
(H.B. No. 566, As Amended)

AN ACT

RELATING TO CRUELTY TO ANIMALS; AMENDING SECTION 25-3501, IDAHO CODE, TO PROVIDE FOR COOPERATION WITH LOCAL ENTITIES; AMENDING SECTION 25-3502, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 25-3504, IDAHO CODE, TO REVISE PENALTIES; AMENDING SECTION 25-3505, IDAHO CODE, TO PROVIDE FOR A DIFFERENT PENALTY; AMENDING SECTION 25-3506, IDAHO CODE, TO PROHIBIT THE EXHIBITION OF FIGHTING BETWEEN GAMECOCKS; AMENDING SECTION 25-3507, IDAHO CODE, TO PROHIBIT THE EXHIBITION OF DOGFIGHTS; REPEALING SECTION 25-3508, IDAHO CODE; AMENDING SECTION 25-3510, IDAHO CODE, TO PROVIDE FOR A DIFFERENT PENALTY; AMENDING SECTION 25-3511, IDAHO CODE, TO PROVIDE DUTIES OF THE DIVISION OF ANIMAL INDUSTRIES, TO PROVIDE PENALTIES, TO PROVIDE FOR TAKING AN ANIMAL INTO CUSTODY UNTIL IT IS DEEMED TO BE IN A SUITABLE CONDITION BY AN IDAHO LICENSED VETERINARIAN OR A REPRESENTATIVE OF THE DIVISION OF ANIMAL INDUSTRIES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 25-3513, IDAHO CODE, TO PROVIDE FOR A DIFFERENT PENALTY AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 35, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-3514A, IDAHO CODE, TO PROVIDE IMMUNITY TO IDAHO LICENSED VETERINARIANS WITH EXCEPTIONS; AMENDING SECTION 25-3516, IDAHO CODE, TO PROVIDE FOR A DIFFERENT PENALTY; AMENDING SECTION 25-3518, IDAHO CODE, TO PROVIDE FOR A DIFFERENT PENALTY; AMENDING CHAPTER 35, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-3520A, IDAHO CODE, TO PROVIDE PENALTIES FOR VIOLATIONS OF THE STATE'S ANIMAL CRUELTY LAW; AND AMENDING SECTION 25-3521, IDAHO CODE, TO PROVIDE A TECHNICAL CHANGE IN SEVERABILITY.

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

SECTION 1. That Section 25-3501, Idaho Code, be, and the same is hereby amended to read as follows:

25-3501. ADMINISTRATION. The department of agriculture, division of animal industries shall be responsible for the administration of the provisions of this chapter and shall inform the public and animal owners concerning their legal responsibilities, ~~conduct investigations of alleged violations, develop cases and prosecute violators~~ and in cooperation with local law enforcement, investigate and develop cases for prosecution. The division shall be authorized to call upon any peace officer in the state to aid in fulfillment of the requirements of this chapter and refer cases for prosecution to the appropriate authority. The foregoing shall not be construed to preclude county or local officials, acting upon their own authority, from investigating, developing cases and prosecuting violations of this chapter that occur in their jurisdiction. The cost ~~of~~ to the department for administering the provisions of this chapter shall be borne by the citizens of this state through the appropriation of general funds for administration, personnel, travel, equipment and supplies.

SECTION 2. That Section 25-3502, Idaho Code, be, and the same is hereby amended to read as follows:

25-3502. DEFINITIONS. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Abandon" means to completely forsake and desert an animal previously under the custody or possession of a person without making reasonable arrangements for its proper care, sustenance and shelter.

(2) "Animal" means any vertebrate member of the animal kingdom, except man.

(3) "Cruel" or "cruelty" shall mean any or all of the following:

(a) The intentional and malicious infliction of pain, physical suffering, injury or death upon an animal;

(b) To maliciously kill, maim, wound, overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, drink or shelter, cruelly beat, mutilate or cruelly kill an animal;

(c) To subject an animal to needless suffering, inflict unnecessary cruelty, drive, ride or otherwise use an animal when same is unfit;

(d) To abandon an animal;

(e) To negligently confine an animal in unsanitary conditions or to negligently house an animal in inadequate facilities; to negligently fail to provide sustenance, water or shelter to an animal.

(4) "Custodian" means any person who keeps or harbors an animal, has an animal in his care or acts as caretaker of an animal.

(5) "Malicious" or "maliciously" means the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or death.

(6) "Owner" means any person who has a right of property in an animal.

(7) "Person" means any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, any public or private institution, the state of Idaho, or any municipal corporation or political subdivision of the state.

(8) "Pound" means a place enclosed by public authority for the detention of stray animals.

SECTION 3. That Section 25-3504, Idaho Code, be, and the same is hereby amended to read as follows:

25-3504. COMMITTING CRUELTY TO ANIMALS. ~~(1)~~ Every person who is cruel to any animal, or causes or procures any animal to be cruelly treated; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to cruelty, is, for every such offense, guilty of a misdemeanor~~.~~

~~(2) Any person convicted for violation of this section shall be punished, for each offense, by a jail sentence of not more than six (6) months or by a fine of not less than one hundred dollars ($100) or more than five thousand dollars ($5,000), or by both such fine and imprisonment~~ and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

SECTION 4. That Section 25-3505, Idaho Code, be, and the same is hereby amended to read as follows:

25-3505. CARRYING IN A CRUEL MANNER -- SEIZURE, EXPENSES, LIEN. Whoever carries or causes to be carried in or upon any vehicle or otherwise any animal in a cruel manner, or knowingly and wilfully authorizes or permits it to be subjected to cruelty of any kind, is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle, and its contents, together with the animal and deposit them in some place of custody. Any necessary expense incurred for taking care of and keeping the same, is a lien thereon, to be paid before the same can be lawfully recovered; and if such expense, or any part thereof remains unpaid, it may be recovered, by the person incurring the same, from the owner of such animal, in an action therefor.

SECTION 5. That Section 25-3506, Idaho Code, be, and the same is hereby amended to read as follows:

25-3506. ~~PERMITTING--ANIMAL--FIGHTS--FOR--AMUSEMENT~~ EXHIBITION OF COCKFIGHTS. ~~Any~~ Every person who ~~causes any bird or animal to fight any other bird or animal or to injure each other for his amusement, or for gain; and any person who permits the same to be done on any premises under his charge or control; and any person who aids, abets or is present at such fighting of such birds or animals, as a spectator,~~ participates in a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Nothing in this section prohibits any customary practice of breeding or rearing game fowl, regardless of the subsequent uses of said game fowl.

SECTION 6. That Section 25-3507, Idaho Code, be, and the same is hereby amended to read as follows:

25-3507. ~~TRAINING--BIRDS--OR--ANIMALS--FOR FIGHTING~~ EXHIBITION OF DOGFIGHTS. ~~Whoever owns, possesses, keeps or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where preparations are being made for an exhibition of fighting of birds or animals, with the intent to be present at such exhibition,~~ Every person who participates in a public or private display of combat between two (2) or more dogs in which the fighting, killing, maiming or injuring of dogs is a significant feature is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Nothing in this section prohibits demonstrations of the hunting, herding, working or tracking skills of dogs or the lawful use of dogs for hunting, herding, working, tracking or self and property protection.

SECTION 7. That Section 25-3508, Idaho Code, be, and the same is

hereby repealed.

SECTION 8. That Section 25-3510, Idaho Code, be, and the same is hereby amended to read as follows:

25-3510. IMPOUNDING WITHOUT FOOD OR WATER. Any person who impounds, or causes to be impounded in any pound, any animal, must supply the same during such confinement with a sufficient quantity of wholesome food and clean water, and in default thereof, is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

SECTION 9. That Section 25-3511, Idaho Code, be, and the same is hereby amended to read as follows:

25-3511. PERMITTING ANIMALS TO GO WITHOUT CARE -- ABANDONED ANIMALS TO BE HUMANELY DESTROYED. Every owner, custodian or possessor of any animal, who shall permit the same to be in any building, inclosure, lane, street, square or lot of any city, county or precinct, without proper care and attention, as determined by an Idaho licensed veterinarian, or a representative of the division, shall, on conviction, be deemed guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. And it shall be the duty of any peace officer, or officer of any incorporated association qualified as provided by law, to take possession of the animal so abandoned or neglected, and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid. Every sick, disabled, infirm or crippled animal which shall be abandoned in any city, county or precinct, may if after due search no owner can be found therefor, be humanely destroyed, or other provision made for the animal by or on the order of such officer; and it shall be the duty of all peace officers, or by an officer of said incorporated association, to cause the same to be humanely destroyed, or other provision made therefor, on information of such abandonment. Such officer may likewise take charge of any animal that by reason of lameness, sickness, feebleness or neglect, is unfit for the activity it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in custody of its owner, such officer shall give notice thereof to such owner, if known, and may provide suitable care for such animal until it is deemed to be in a suitable condition, as determined by an Idaho licensed veterinarian or a representative of the division, to be delivered to such owner, and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered. If, after due process under this section, a responsible owner cannot be found, the animal may be offered for adoption to a responsible person in lieu of destruction.

SECTION 10. That Section 25-3513, Idaho Code, be, and the same is hereby amended to read as follows:

25-3513. PROSECUTIONS. When complaint is made on oath, to any

magistrate authorized to issue warrants in criminal cases, that there is probable cause to believe that any provision of law relating to or in any way affecting animals, is being, or is about to be violated in any particular building or place, such magistrate must issue and deliver immediately a warrant directed to any sheriff, police or peace officer, or animal control officer, authorizing him to enter and search such building or place, and to arrest any person there present violating or attempting to violate any law relating thereto, or in any way affecting animals and to bring such person before some court or magistrate of competent jurisdiction, within the city or county within which such offense has been committed or attempted, to be dealt with according to law, and such attempt must be held to be a ~~violation of~~ misdemeanor and persons so convicted shall be punished in accordance with section 25-35~~0~~420A, Idaho Code.

SECTION 11. That Chapter 35, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-3514A, Idaho Code, and to read as follows:

25-3514A. IMMUNITY. Any Idaho licensed veterinarian shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this chapter. Such a veterinarian is, therefore, protected from a lawsuit for his part in an investigation of cruelty to animals. Provided however, that a veterinarian who participates or reports in bad faith or with malice shall not be protected under the provisions of this section.

SECTION 12. That Section 25-3516, Idaho Code, be, and the same is hereby amended to read as follows:

25-3516. HIGH-ALTITUDE DECOMPRESSION CHAMBER PROHIBITED. No person, peace officer, officer of a humane society, or officer of a pound, or any public agency shall kill any dog or cat by the use of any high-altitude decompression chamber. Every person who violates the provisions of this section is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

SECTION 13. That Section 25-3518, Idaho Code, be, and the same is hereby amended to read as follows:

25-3518. BEATING AND HARASSING ANIMALS. Every person who cruelly whips, beats or otherwise maliciously treats any animal, or maliciously harasses with a dog any cattle, horses, sheep, hogs or other livestock shall be guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

SECTION 14. That Chapter 35, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-3520A, Idaho Code, and to read as follows:

25-3520A. PENALTY FOR VIOLATIONS. (1) Except as provided in section 25-3503, Idaho Code, any person convicted for a first violation of any of the provisions of this chapter shall be punished, for each offense, by a jail sentence of not more than six (6) months or by a fine of not less than one hundred dollars ($100) or more than five thousand dollars ($5,000), or by both such fine and imprisonment.

(2) Except as provided in section 25-3503, Idaho Code, any person convicted of a second violation of any of the provisions of this chapter within ten (10) years of the first conviction, shall be punished for each offense, by a jail sentence of not more than nine (9) months or a fine of not less than two hundred dollars ($200) or more than seven thousand dollars ($7,000) or both fine and imprisonment.

(3) Except as provided in section 25-3503, Idaho Code, any person convicted of a third or subsequent violation, within fifteen (15) years of the first conviction, shall be punished for each offense by a jail sentence of not more than twelve (12) months or a fine of not less than five hundred dollars ($500) or more than nine thousand dollars ($9,000) or by both fine and imprisonment.

SECTION 15. That Section 25-3521, Idaho Code, be, and the same is hereby amended to read as follows:

25-3521. SEVERABILITY. The provisions of this ~~act~~ chapter are hereby declared to be severable and if any provision of this ~~act~~ chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this ~~act~~ chapter.

Approved March 14, 1996.

CHAPTER 230
(H.B. No. 585)

AN ACT

RELATING TO FORFEITURES IN CRIMINAL ACTIONS; AMENDING TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 28, TITLE 37, IDAHO CODE, TO PROVIDE FOR FORFEITURES OF PROPERTY IN CERTAIN CRIMINAL CONVICTIONS, TO SPECIFY THE PROPERTY SUBJECT TO FORFEITURE, TO REQUIRE AN INVENTORY OF PROPERTY SEIZED, TO PROVIDE FOR A FORFEITURE REQUEST AND ESTABLISH A REBUTTABLE PRESUMPTION, TO PROVIDE FOR PRESERVATION OF PROPERTY, A WARRANT OF SEIZURE, AND PROTECTIVE ORDERS, TO PROVIDE FOR INSTITUTION OF PROCEEDINGS, TO PROVIDE RIGHTS OF THIRD PARTIES IN PERSONAL PROPERTY, TO PROVIDE RIGHTS OF THIRD PARTIES IN REAL PROPERTY, TO PROVIDE PROPORTIONALITY, TO PROVIDE AUTHORITY OF THE ATTORNEY GENERAL, TO PROVIDE A BAR ON INTERVENTION, TO PROVIDE JURISDICTION, TO PROVIDE FOR DISPOSITION OF PROPERTY, TO PROVIDE FOR FORFEITURE OF SUBSTITUTE PROPERTY AND TO PROVIDE FOR STATUTORY CONSTRUCTION; AND TO PROVIDE SEVERABILITY.

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

SECTION 1. That Title 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 28, Title 37, Idaho Code, and to read as follows:

CHAPTER 28
CRIMINAL FORFEITURES

37-2801. PROPERTY SUBJECT TO CRIMINAL FORFEITURE. Any person who is found guilty of, who enters a plea of guilty, or who is convicted of a violation of the uniform controlled substances act, chapter 27, title 37, Idaho Code, punishable by imprisonment for more than one (1) year, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(1) Any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(2) Any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to chapter 27, title 37, Idaho Code, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed or interpreted in any manner to prevent the state of Idaho, attorney general or the appropriate prosecuting attorney from requesting restitution pursuant to section 37-2732(k), Idaho Code; or, if appropriate, from pursuing civil forfeiture pursuant to section 37-2744 and/or section 37-2744A, Idaho Code. Nor shall an order of forfeiture pursuant to this chapter be used as an offset against, or in any manner be used to diminish the amount of, a restitution order under section 37-2732(k), Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

37-2802. PROPERTY SUBJECT TO FORFEITURE. "Property" subject to criminal forfeiture under this chapter includes:

(1) Real property, including things growing on, affixed to, or found on the land; and

(2) Tangible and intangible personal property, including rights, privileges, interests, claims and securities.

37-2803. INVENTORY. Any peace officer of this state seizing property subject to forfeiture under the provisions of this chapter shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted. A copy of the inventory shall be sent, within five (5) days of the seizure, to the director of the department of law enforcement. Upon completion of the forfeiture action pursuant to this chapter, a final inventory shall be made which indicates the disposition of the seized property, and a copy of that inventory shall also be sent to the director of the department of law enforcement.

37-2804. FORFEITURE REQUEST -- REBUTTABLE PRESUMPTION. Property

subject to criminal forfeiture under this chapter shall not be ordered forfeited unless the attorney general or the appropriate prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property as described in section 37-2801, Idaho Code. The attorney general or appropriate prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a separate part II forfeiture request and notice with the trial court.

There is a rebuttable presumption that any property of a person subject to the provisions of section 37-2801, Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

(1) The property was acquired by a person during the period of the violation of chapter 27, title 37, Idaho Code, or within a reasonable time after such violation; and

(2) There was no likely source for such property other than the violation of chapter 27, title 37, Idaho Code.

37-2805. PRESERVATION OF PROPERTY -- WARRANT OF SEIZURE -- PROTECTIVE ORDERS. (1) Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in section 37-2801, Idaho Code, for forfeiture under this chapter upon the filing of an indictment or information charging a violation of the uniform controlled substance act for which criminal forfeiture may be ordered and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this chapter.

(2) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this chapter in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (1) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(3) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this chapter may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the state of Idaho or third parties.

37-2806. INSTITUTION OF PROCEEDINGS -- THIRD PARTIES. Upon the filing of a part II forfeiture request pursuant to section 37-2804, Idaho Code, or in the event of seizure pursuant to a warrant of seizure, or upon entry of an order of forfeiture pursuant to section

37-2801, Idaho Code, the attorney general or appropriate prosecuting attorney shall, if appropriate, institute proceedings pursuant to sections 37-2807 or 37-2808, Idaho Code, or both, within five (5) days of such event.

37-2807. PERSONAL PROPERTY -- RIGHTS OF THIRD PARTIES. (1) Within five (5) days of any of the events specified in section 37-2806, Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title or interest in any of such personal property according to one (1) of the following methods:

(a) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft or other conveyance, by mailing notice by certified mail to the address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained.

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement.

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the last-known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance was being used, had been used or was intended to be used for the purposes described in section 37-2801, Idaho Code.

(b) A co-owner, or claimant of any right, title, or interest in the property may prove that his right, title or interest, whether under a lien, mortgage, security agreement, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used or was intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney general, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee or secured party of the property, if any, up to the value of his interest in the property.

2. The balance, if any, in the following order:

(A) To the attorney general or appropriate prosecuting attorney, for all expenditures made or incurred by them in connection with the sale, including expenditure for any necessary repairs, storage or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this chapter.

(C) The remainder, if any, to the director of law enforcement for credit to the drug enforcement donation account created in section 57-816, Idaho Code, or to the appropriate prosecuting attorney for credit to the local drug enforcement donation account, or its equivalent.

3. Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

4. In any case, the attorney general, or appropriate prosecuting attorney, may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party or conditional

sales vendor and thereby purchase the property for use to enforce this chapter.

37-2808. REAL PROPERTY -- RIGHTS OF THIRD PARTIES. (1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to forfeiture, by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of this notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 37-2804, Idaho Code. The request shall be served in the same manner as complaints subject to the Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) A co-owner, or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed of trust or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for

the purposes alleged;

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used, or had been used in any manner in violation of the provisions of section 37-2801, Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee or beneficiary of the real property, if any, up to the value of his interest in the real property.

(ii) The balance, if any, in the following order:

1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the director of law enforcement for credit to the drug enforcement donation account created in section 57-816, Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

37-2809. PROPORTIONALITY. In issuing any order under the provisions of this chapter, the court shall make a determination that the property, or a portion thereof in the case of real property, was actually used in violation of the provisions of this chapter. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this chapter.

37-2810. AUTHORITY OF THE ATTORNEY GENERAL. With respect to property ordered forfeited under this chapter, the attorney general or appropriate prosecuting attorney is authorized to:

(1) Restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) Compromise claims arising under this chapter;

(3) Award compensation to persons providing information resulting in a forfeiture under this chapter; and

(4) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this chapter pending its disposition.

37-2811. BAR ON INTERVENTION. Except as provided in sections 37-2807 and 37-2808, Idaho Code, no party claiming an interest in property subject to forfeiture under this section may:

(1) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this chapter; or

(2) Commence an action at law or equity against the state of Idaho concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this chapter.

37-2812. JURISDICTION -- DEPOSITIONS. The district courts of the state of Idaho shall have jurisdiction over:

(1) Property for which forfeiture is sought that is within the state at the time the action is filed; or

(2) The interest of a co-owner or interest holder in the property if the co-owner or interest holder is subject to personal jurisdiction in this state.

In order to facilitate the identification and location of property declared forfeited after the entry of an order declaring property forfeited to the state of Idaho, the court may, upon application of the state of Idaho, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 26 of the Idaho rules of civil procedure.

37-2813. DISPOSITION OF PROPERTY. On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. If the court orders a sale, the court shall designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

(1) Payment of reasonable expenses incurred in connection with the sale.

(2) Satisfaction of exempt interests in the order of their priority.

(3) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest-bearing account, subject to further proceedings under this chapter.

When property is forfeited under this chapter, the attorney general or appropriate prosecuting attorney, may:

(1) Retain it for official use; and/or

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public, pursuant to section 37-2807 or 37-2808, Idaho Code.

37-2814. FORFEITURE OF SUBSTITUTE PROPERTY. If any of the property described in section 37-2801, Idaho Code, as a result of any act or omission of the defendant:

(1) Cannot be located upon the exercise of due diligence;

(2) Has been transferred or sold to, or deposited with, a third party;

(3) Has been placed beyond the jurisdiction of the court;

(4) Has been substantially diminished in value; or

(5) Has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in section 37-2801, Idaho Code.

37-2815. CONSTRUCTION. The provisions of this section shall be liberally construed to effectuate its remedial purposes.

SECTION 2. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Approved March 14, 1996.

CHAPTER 231
(H.B. No. 646)

AN ACT

RELATING TO THE SALE OF SECURITIES; AMENDING SECTION 30-1403A, IDAHO CODE, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF FINANCE TO PERMIT THE USE OF A STATEMENT WHICH COMPLIES WITH REGULATIONS PROMULGATED UNDER THE SECURITIES ACT OF 1933, IN LIEU OF THE SPECIFIC STATEMENT SET FORTH IN THIS SECTION.

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

SECTION 1. That Section 30-1403A, Idaho Code, be, and the same is hereby amended to read as follows:

30-1403A. PROSPECTUS OR OFFERING CIRCULAR DELIVERY REQUIREMENT. (1) It is unlawful for any broker-dealer or salesman registered under this act to fail to deliver to each purchaser of a security a current prospectus or offering circular no later than the earlier of:

(a) The confirmation of such sale; or

(b) Delivery of such security to the purchaser.

(2) This section shall not be construed to preclude the use or distribution of a preliminary prospectus, provided:

(a) An application to register the securities is pending with the director; and

(b) The outside front cover page of such prospectus bears, in red ink, the caption "Preliminary Prospectus," the date of issuance, and the following statement printed in boldface type: **"A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE IDAHO DEPARTMENT OF FINANCE, BUT HAS NOT YET BECOME EFFECTIVE. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY."**

(3) The director may, in lieu of the statement set forth in subsection (2)(b) of this section, authorize, by order, the use of a statement that complies with regulations promulgated under the securities act of 1933.

Approved March 14, 1996.

CHAPTER 232
(H.B. No. 676)

AN ACT

RELATING TO THE STATE HISTORIC PRESERVATION OFFICER; AMENDING SECTION 59-904, IDAHO CODE, TO PROVIDE THAT THE STATE HISTORIC PRESERVATION OFFICER SHALL BE APPOINTED BY THE GOVERNOR; AMENDING SECTION 67-4127, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE STATE HISTORICAL SOCIETY MAY SERVE AS THE STATE HISTORIC PRESERVATION OFFICER IF SO APPOINTED BY THE GOVERNOR AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 41, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4127A, IDAHO CODE, TO PROVIDE THAT THE STATE HISTORIC PRESERVATION OFFICER SHALL BE APPOINTED BY THE GOVERNOR, SHALL SERVE AT THE PLEASURE OF THE GOVERNOR, SHALL BE QUALIFIED AND MAY BE AN EMPLOYEE OF THE STATE HISTORICAL SOCIETY OR OTHER PERSON; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 59-904, Idaho Code, be, and the same is hereby amended to read as follows:

59-904. STATE OFFICES -- VACANCIES, HOW FILLED AND CONFIRMED. (a) All vacancies in any state office, and in the supreme and district courts, unless otherwise provided for by law, shall be filled by appointment by the governor. Appointments to fill vacancies pursuant to this section shall be made as provided in subsections (b), (c), (d), (e), and (f) of this section, subject to the limitations pre-

scribed in those subsections.

(b) Nominations and appointments to fill vacancies occurring in the office of lieutenant governor, state controller, state treasurer, superintendent of public instruction, attorney general and secretary of state shall be made by the governor, subject to the advice and consent of the senate, for the balance of the term of office to which the predecessor of the person appointed was elected.

(c) Nominations and appointments to and vacancies in the following listed offices shall be made or filled by the governor subject to the advice and consent of the senate for the terms prescribed by law, or in case such terms are not prescribed by law, then to serve at the pleasure of the governor:

Director of the department of administration,
Director of the department of finance,
Director of the department of insurance,
Director, department of agriculture,
Director of the department of employment,
Director of the department of water resources,
Director of the department of law enforcement,
Director, department of labor and industrial services,
Director of the department of commerce,
Director of the department of juvenile corrections,
The state historic preservation officer,
Manager of the state insurance fund,
Member of the state tax commission,
Members of the board of regents of the university of Idaho and the state board of education,
Members of the Idaho water resources board,
Members of the state fish and game commission,
Members of the Idaho transportation board,
Members of the state board of health and welfare,
Members of the board of directors of state parks and recreation,
Members of the board of correction,
Members of the industrial commission,
Members of the Idaho public utilities commission,
Members of the Idaho personnel commission,
Members of the board of directors of the Idaho state retirement system.

(d) Appointments made by the state board of land commissioners to the office of director, department of lands, and appointments to fill vacancies occurring in those offices shall be submitted by the president of the state board of land commissioners to the senate for the advice and consent of the senate in accordance with the procedure prescribed in this section.

(e) Appointments made pursuant to this section while the senate is in session shall be submitted to the senate forthwith for the advice and consent of that body. The appointment so made and submitted shall not be effective until the approval of the senate has been recorded in the journal of the senate. Appointments made pursuant to this section while the senate is not in session shall be effective until the appointment has been submitted to the senate for the advice and consent of the senate. Should the senate adjourn without granting its consent to such an interim appointment the appointment shall

thereupon become void and a vacancy in the office to which the appointment was made shall exist.

All appointments made pursuant to subsection (c) of this section, except those appointments for which a term of office is fixed by law, shall terminate at the expiration of any gubernatorial term. Appointments to fill the vacancies thus created by the expiration of the term of office of the governor shall be forthwith submitted to the senate for the advice and consent of that body, and when so submitted shall be as expeditiously considered as possible.

Upon receipt of an appointment in the senate for the purpose of securing the advice and consent of the senate, the appointment shall be referred by the presiding officer to the appropriate committee of the senate for consideration and report prior to action thereon by the full senate.

(f) It is the intent of the legislature that the provisions of this section as amended by this act shall not apply to appointments which have been made prior to the effective date of this act. It is the further intent of the legislature that the provisions of this section shall apply to the offices listed in this section and to any office created by law or executive order which succeeds to the powers, duties, responsibilities and authorities of any of the offices listed in subsections (c) and (d) of this section.

SECTION 2. That Section 67-4127, Idaho Code, be, and the same is hereby amended to read as follows:

67-4127. DIRECTOR OF THE SOCIETY APPOINTED BY BOARD -- POWERS AND DUTIES. A director of the society shall be appointed by the board of trustees, serve at the pleasure of the board, be qualified by reason of his education, training, experience and demonstrated ability to fill such position, and exercise the following powers and duties in addition to all other powers and duties inherent in the position or delegated to him or imposed upon him by the board:

1. To be a nonvoting member of the board of trustees and secretary thereto.

2. To be the administrative officer of the state historical society.

3. To prescribe such rules ~~and regulations~~ as may be necessary for the efficient operation of his office.

4. To serve as state historic preservation officer <u>if so appointed by the governor pursuant to section 67-4127A, Idaho Code.</u>

SECTION 3. That Chapter 41, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a <u>NEW SECTION,</u> to be known and designated as Section 67-4127A, Idaho Code, and to read as follows:

67-4127A. STATE HISTORIC PRESERVATION OFFICER APPOINTED BY THE GOVERNOR. The state historic preservation officer shall be appointed by the governor, serve at the pleasure of the governor and be qualified by reason of his education, training, experience and demonstrated ability to fill the position. The compensation for the state historic preservation officer shall be set by the governor. The state historic

preservation officer may be the same person as the director of the state historical society or may also be an employee of the state historical society or may be an individual not employed by the state historical society.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 14, 1996.

CHAPTER 233
(H.B. No. 698, As Amended)

AN ACT

RELATING TO THE IDAHO RANGELAND RESOURCES COMMISSION; AMENDING CHAPTER 14, TITLE 58, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 58-1414A, IDAHO CODE, TO PROVIDE FOR THE IMPOSITION OF FEES UPON OWNERS OF DRY GRAZING LAND WITH EXCEPTIONS, LESSEES OF STATE LANDS UTILIZED FOR GRAZING, AND LESSEES OR PERMITTEES UTILIZING FEDERAL LANDS FOR GRAZING, TO PROVIDE THE EFFECT OF THE FEE AND TO PROVIDE A PROCEDURE FOR REQUESTING REFUNDS OF THE FEES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 14, Title 58, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 58-1414A, Idaho Code, and to read as follows:

58-1414A. IMPOSITION OF FEES. (1) There is hereby imposed, as of January 1, of each year, a fee upon owners of dry grazing land within the state of Idaho for the purpose of funding the activities and obligations of the Idaho rangeland resources commission. The fee shall be in the amount of two cents (2¢) per acre of dry grazing land. "Dry grazing land" is that category of land defined by the state tax commission for ad valorem tax purposes. No later than the second Monday in July, the county assessor shall deliver to the county treasurer a list of the owners of dry grazing land in the county, as shown on the records of the county, together with the number of acres owned. The county treasurer shall calculate the amount of the fee owed and shall cause the fee to be shown on the real property tax bill. The fee shall be collected in the manner provided in section 63-1102, Idaho Code. From the annual January remittance, the county shall retain an amount equal to the cost of collection but not to exceed five percent (5%) in 1997 and two percent (2%) for each year thereafter of the fee collected which shall be deposited in the county current expense fund. The county auditor shall remit monthly the balance of the fee collected to the Idaho rangeland resources commission. An owner of dry grazing land shall not be assessed the fee contained herein if the

owner's or owners' legal representative signs an affidavit attesting under penalties of perjury that the dry grazing land is not utilized for grazing. The commission shall prescribe the form and the affidavit shall be filed with the commission.

(2) In addition to the fees imposed in subsection (1) of this section, there is hereby imposed, as of January 1 of each year a fee of ten cents (10¢) per animal unit month on all domestic cattle and sheep utilizing state grazing lands in the state of Idaho. The Idaho department of lands is hereby directed to collect this fee in conjunction with its annual billing for rental of grazing lands and shall remit such collection to the Idaho rangeland resource committee on a monthly basis.

(3) In addition to the fees imposed in subsections (1) and (2) of this section, there is hereby imposed, as of January 1, of each calendar year, a fee of ten cents (10¢) per animal unit month on all domestic cattle and sheep utilizing United States forest service and bureau of land management lands in the state of Idaho if a joint exercise of powers agreement or memorandum of understanding has been entered into authorizing the collection of such a fee. The federal agencies shall, as part of their billing process, include provisions for the collection of this fee and remittance of the fee to the Idaho rangeland resources commission.

(4) The fee established in subsections (1), (2) and (3) of this section, shall be a debt of the owner(s), lessee(s) or permittee(s) of the dry grazing land obligated to pay the fee and the fee shall be a debt owed the commission and may be collected by the commission using the normal process to recover a debt.

(5) Any person may request from the commission in writing, within thirty (30) calendar days after payment thereof, a refund of all or any portion of an assessment levied hereunder. The commission shall make the refund not later than sixty (60) days after receipt of refund request as long as the commission has received the moneys from the entity collecting the assessment.

SECTION 2. This act shall be in full force and effect on and after January 1, 1997.

Approved March 14, 1996.

CHAPTER 234
(H.B. No. 703)

AN ACT

RELATING TO ELIGIBILITY FOR COUNTY ASSISTANCE; AMENDING SECTION 31-3408, IDAHO CODE, TO PROVIDE A CONDITION GOVERNING INELIGIBILITY FOR NONMEDICAL COUNTY ASSISTANCE.

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

SECTION 1. That Section 31-3408, Idaho Code, be, and the same is hereby amended to read as follows:

31-3408. ELIGIBILITY. Pursuant to this chapter, eligibility for nonmedical assistance shall be based on the documentation of county residence, completion of an application and interview, except as provided in section 31-3410, Idaho Code. Failure to comply shall result in a denial of the requested assistance. Notwithstanding any other eligibility factors, no county shall be obligated to provide nonmedical services to persons who have become ineligible for cash assistance by exhaustion of lifetime limits for such benefits or by noncompliance with their personal responsibility contract as defined by rules of the department of health and welfare.

Approved March 14, 1996.

CHAPTER 235
(H.B. No. 719)

AN ACT

RELATING TO JUDICIAL CONFIRMATION PROCEEDINGS; AMENDING SECTION 7-1302, IDAHO CODE, TO REVISE LEGISLATIVE INTENT FOR THE CHAPTER; AMENDING SECTION 7-1304, IDAHO CODE, TO REVISE REQUIREMENTS FOR PETITION FOR JUDICIAL EXAMINATION AND DETERMINATION OF VALIDITY OF BOND, OBLIGATION, AGREEMENT OR SECURITY INSTRUMENT, AND TO REVISE PUBLIC HEARING REQUIREMENTS; AMENDING SECTION 7-1308, IDAHO CODE, TO REVISE HEARING REQUIREMENTS; AND AMENDING SECTION 7-1313, IDAHO CODE, TO REVISE CRITERIA WHEN ATTORNEY FEES MAY BE AWARDED.

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

SECTION 1. That Section 7-1302, Idaho Code, be, and the same is hereby amended to read as follows:

7-1302. LEGISLATIVE DECLARATION. The legislature of the state of Idaho determines, finds and declares in connection with this chapter:

(1) An early judicial examination into and determination of the validity of the power of any political subdivision to issue bonds or obligations and execute any agreements or security instruments therefor promotes the health, ~~comfort,~~ safety~~,convenience~~ and welfare of the people of the state.

(2) The provision in this chapter of the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities pertaining to issuance of bonds or execution of obligations by political subdivisions will serve a public function and effect a public purpose.

(3) Any notice provided for in this chapter is reasonably calculated to inform each person of interest in any proceedings thereunder which may directly and adversely affect his legally protected interests, if any.

(4) ~~The--rule-of-strict-construction-shall-have-no-application-to this-chapter,-but-this-chapter-shall-be-liberally-construed-to--effect the-purposes-and-objects-for-which-it-is-intended.~~

~~(5)~~ Any act prior to or subsequent to the effective date of this

chapter may be confirmed pursuant to this chapter.

SECTION 2. That Section 7-1304, Idaho Code, be, and the same is hereby amended to read as follows:

7-1304. PETITION FOR JUDICIAL EXAMINATION AND DETERMINATION OF VALIDITY OF BOND, OBLIGATION, AGREEMENT, OR SECURITY INSTRUMENT -- FACTS -- VERIFICATION -- PUBLIC HEARING. (1) In its discretion the governing body of a political subdivision may file or cause to be filed a petition at any time in the judicial district court in and for the district in which the political subdivision is located wholly or in part, praying a judicial examination and determination of the validity of any bond or obligation or of any agreement or security instrument related thereto, of the political subdivision, whether or not such bond or obligation agreement has been validly exercised, or executed. The filing of the petition shall have been authorized by the governing body having adopted a resolution or ordinance authorizing such filing after conducting a public hearing as defined in subsection (3) of this section.

(2) Such petition shall make a clear statement of the legal authority for the proposed expenditure, shall set forth the facts on which the validity of such bond or obligation is founded and shall be verified by the executive officer of the political subdivision.

(3) Prior to the filing of the petition described in subsection (1) above, the governing body of a political subdivision shall hold a public hearing to consider whether it should adopt a resolution or ordinance authorizing the filing of the petition. Any person may make a request for notice of all meetings of the governing body of a political subdivision at which a public hearing will be held to consider a resolution or ordinance authorizing the filing of a petition described in subsection (1) of this section, by submitting to the governing body a written request for notice, which request shall be valid until December 31 of the year in which it was filed. The governing body of the political subdivision shall send a notice by certified mail to all persons who have requested notice, to the address provided in the request for notice, at least fourteen (14) days before the public hearing will be held, informing them of the time and place of the public hearing which will be held to consider the resolution or ordinance authorizing the filing of the petition. A petition or judgment approving a petition shall not be defective for failure to strictly comply with this notice provision if compliance with the notice requirement is substantial and in good faith. The public hearing shall be conducted at least fourteen (14) days prior to the adoption of the resolution or ordinance. At least fifteen (15) days prior to the date set for the public hearing, notice of the time, place and summary of the matter shall be published in the official newspaper, or papers of general circulation within the jurisdiction. The notice shall be in the form and content described in subsection (2) of section 7-1306, Idaho Code, but need be published only once.

SECTION 3. That Section 7-1308, Idaho Code, be, and the same is hereby amended to read as follows:

7-1308. HEARING -- FINDINGS -- JUDGMENT AND DECREE -- COSTS -- ENTITLEMENT TO RELIEF. (1) The filing of the petition and publication and posting of the notice as provided in section 7-1306, Idaho Code, shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting each question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants.

(2) In making the findings set forth in subsection (1) of this section, the court shall find upon what legal authority the political subdivision bases the petition for the proposed bond, obligation or agreement and whether such bond, obligation or agreement is permissible under the general laws of the state or is permissible as an ordinary and necessary expense of the political subdivision authorized by the general laws of the state and shall determine if the political subdivision is entitled to the relief sought. If in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to establish the truth of any averment by evidence or make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

SECTION 4. That Section 7-1313, Idaho Code, be, and the same is hereby amended to read as follows:

7-1313. ATTORNEY FEES. Whenever a court shall determine that a political subdivision is not entitled to the relief sought or that this chapter has not been substantially complied with and enters a judgment denying the petition, ~~on the grounds that the bond or obligation agreement has not been validly exercised or executed,~~ the court shall award reasonable attorney fees to any owner of property, taxpayer, qualified elector or rate payor or any other interested person who has appeared and moved to dismiss or answer the petition. ~~In determining the final amount of attorney fees awarded, the court shall consider the position advanced by the political subdivision, the novelty and difficulty of the questions presented, the reasons why the relief sought had not been granted and any other factor the court deems appropriate in the particular case.~~

Approved March 14, 1996.

CHAPTER 236
(H.B. No. 747)

AN ACT

RELATING TO SERVICE OF PROTECTION ORDERS BY MAIL; AMENDING SECTION 39-6310, IDAHO CODE, TO PROVIDE CIRCUMSTANCES WHEN THE CLERK OF THE COURT SHALL COMPLETE SERVICE OF ORDERS, MODIFICATIONS OF ORDERS AND NOTICES OF ORDERS OR MODIFICATIONS BY CERTIFIED MAIL TO THE RESPONDENT'S ADDRESS.

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

SECTION 1. That Section 39-6310, Idaho Code, be, and the same is hereby amended to read as follows:

39-6310. ORDER AND SERVICE. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (6) and (7) of this section.

(2) A peace officer of the jurisdiction in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party at the petitioner's own expense.

(3) If service by a peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the peace officer cannot complete service upon the respondent within ten (10) days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) If an order entered by the court recites that the respondent appeared in person before the court and receives a copy of the order, the necessity for further service is waived and proof of service of that order is not necessary.

(7) If a party has appeared in person before the court and has waived personal service, the clerk of the court shall complete service of any notice of hearing for orders or modifications by certified mail to the party's address as shown on the court petition which resulted in the issuance of the order or modification. Parties shall at all times keep the court informed of their current mailing address.

Approved March 14, 1996.

CHAPTER 237
(H.B. No. 760)

AN ACT

RELATING TO COMPENSATION OF CERTAIN LICENSING BOARDS; AMENDING SECTION 54-911, IDAHO CODE, TO REVISE COMPENSATION FOR BOARD OF DENTISTRY MEMBERS; AMENDING SECTION 54-1714, IDAHO CODE, TO REVISE COMPENSATION FOR MEMBERS OF THE BOARD OF PHARMACY; AND AMENDING SECTION 54-2105, IDAHO CODE, TO REVISE COMPENSATION FOR MEMBERS OF THE BOARD OF VETERINARY MEDICINE AND TO CORRECT A CODIFIER ERROR.

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

SECTION 1. That Section 54-911, Idaho Code, be, and the same is hereby amended to read as follows:

54-911. BOARD OF DENTISTRY -- ORGANIZATION -- MEETINGS -- EXPENSES -- PER DIEM. The board of dentistry shall select from its dentist members a chairman who shall serve at the pleasure of the board. The board may meet at stated times, and shall meet upon the call of its chairman or a majority of the members. It shall keep minutes of its meetings and actions thereat. Five (5) members, three (3) of whom must be dentists and one (1) of whom must be a nondentist, shall constitute a quorum, and the vote of the majority of the members present at a meeting at which a quorum is present shall determine the action of the board.

Out of any appropriation applicable to the administration of this act, each member of the board shall be compensated as provided by section 59-509(~~h~~n), Idaho Code.

SECTION 2. That Section 54-1714, Idaho Code, be, and the same is hereby amended to read as follows:

54-1714. COMPENSATION OF BOARD MEMBERS. (1) Each member of the board of pharmacy shall be compensated as provided by section 59-509(~~h~~n), Idaho Code, for each day on which the member is engaged in performance of the official duties of the board, and reimbursement for all expenses incurred in connection with the discharge of such official duties.

(2) The executive director of the board of pharmacy shall be a nonclassified officer and shall receive, as compensation, an annual salary payable on regular pay periods, the amount of which shall be determined by the board, and reimbursement for all expenses incurred in connection with performance of his official duties.

SECTION 3. That Section 54-2105, Idaho Code, be, and the same is hereby amended to read as follows:

54-2105. BOARD OF VETERINARY MEDICINE -- COMPOSITION -- APPOINTMENT -- VACANCY -- QUALIFICATIONS -- COMPENSATION -- REMOVAL -- MEETINGS -- OFFICERS -- REVENUES -- POWERS. (1) A board of veterinary medicine which shall consist of six (6) members to be appointed by the governor, is hereby created in the department of self-governing agencies. Five (5) members shall be veterinarians and one (1) member shall be a ~~publicmember~~ public member. Each of the five (5) appointive veterinary members shall serve a term of four (4) years as a veterinary board member and a fifth year as a liaison officer, or until his successor is appointed, except that the terms of the first appointees may be for shorter periods to permit staggering of terms whereby one (1) term expires each year. The public member shall serve for a term of three (3) years.

Whenever the occasion arises for an appointment of a veterinary member under this section, one (1) of the state or regional veterinary medical associations may nominate three (3) or more qualified persons and forward the nominations to the governor at least thirty (30) days before the date set for the appointment. The governor shall appoint

one (1) of the persons so nominated. Vacancies due to death, resignation or removal shall be filled for the remainder of the unexpired term in the same manner as regular appointments. No person shall serve two (2) consecutive terms, except in the case of a person appointed for less than a full term. Each of the five (5) veterinarians shall be qualified to serve as a member of the board if a graduate of a veterinary school, a resident of this state, and has been licensed to practice veterinary medicine in this state for the five (5) years immediately preceding the time of appointment. The public member shall be at least twenty-one (21) years of age and a resident of this state for five (5) years immediately preceding appointment. No person may serve on the board who is, or was, during the two (2) years preceding appointment, a member of the faculty or trustees of a veterinary school.

Each member of the board, certified euthanasia task force and veterinary technical committee shall be compensated as provided by section 59-509(~~h~~n), Idaho Code.

Any member of the board may be removed by the governor after a hearing by the board determines cause for removal.

(2) The board shall meet at least once each year at the time and place fixed by rule of the board. Other necessary meetings may be called by the president of the board by giving notice as may be required by rule. Except as may otherwise be provided, a majority of the board constitutes a quorum. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer or grade examinations, or to deliberate the qualifications of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian.

(3) The board member serving the fourth year of appointment shall be the president of the board and shall serve as chairman of the board meetings.

(4) All revenues received under this chapter shall be paid to the state board of veterinary medicine account created in section 54-2120, Idaho Code, and shall be subject to and administered in accordance with the provisions of this chapter.

(5) The board shall have the power to:

(a) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the state.

(b) Issue, renew, deny, suspend or revoke licenses and temporary permits to practice veterinary medicine in the state or otherwise discipline licensed veterinarians consistent with the provisions of this chapter and the rules adopted hereunder.

(c) Establish a schedule of fees for licensing, certifying and registering veterinarians, veterinary technicians, certified euthanasia agencies and certified euthanasia technicians.

(d) Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining licensed veterinarians, veterinary technicians, certified euthanasia agencies and certified euthanasia technicians.

(e) Hold hearings on all matters properly brought before the board, and in connection thereto to administer oaths, receive evidence, make the necessary determinations, and enter orders consis-

tent with the findings. The board may require the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and may commission depositions. The board may designate one or more of its members or a person appointed by the state board of veterinary medicine to serve as its hearing officer.

(f) Employ full-time or part-time personnel, professional, clerical or special, necessary to effectuate the provisions of this chapter and purchase or rent necessary office space, equipment and supplies.

(g) Appoint from its own membership one or more members to act as representatives of the board at any meeting within or outside the state where such representation is deemed desirable.

(h) Bring proceedings in the courts for the enforcement of this chapter or any rules made pursuant thereto.

(i) Levy civil penalties.

(j) Establish a certified euthanasia task force for the purposes of training, examining, licensing and certifying certified euthanasia agencies and certified euthanasia technicians and assess application, license and certification fees. The fees so assessed are continuously appropriated to the board to support the activities of the task force.

(k) Establish qualifications for licensure of certified euthanasia agencies and certified euthanasia technicians.

(l) Issue, renew, deny, suspend or revoke licenses to operate as a CEA or practice as a CET in the state or otherwise discipline CEA's and CET's consistent with this chapter and the rules of the board.

(m) Establish a veterinary technical committee and assess application and certification fees. The fees so assessed are to be deposited to the state board of veterinary medicine account to support the activities of the committee.

(n) Adopt, amend, or repeal all rules necessary for its government and all rules necessary to carry into effect the provisions of this chapter pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

Approved March 14, 1996.

CHAPTER 238
(H.B. No. 840)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC HEALTH TRUST FUND FOR THE PUBLIC HEALTH DISTRICTS FOR FISCAL YEAR 1997.

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

SECTION 1. There is hereby appropriated $7,928,000 from the General Fund to be deposited in the Public Health Trust Fund for the period July 1, 1996, through June 30, 1997.

Approved March 14, 1996.

CHAPTER 239
(H.B. No. 841)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR THE PERSONNEL COMMISSION FOR FISCAL YEAR 1997; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Administration for the Personnel Commission the following amounts, to be expended according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Personnel Commission Fund	$1,640,100	$546,000	$37,500	$2,223,600
Seminars and Publications Fund		55,800		55,800
TOTAL	$1,640,100	$601,800	$37,500	$2,279,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Personnel Commission is authorized no more than thirty-seven (37) full-time equivalent positions at any point during the period July 1, 1996 through June 30, 1997, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 14, 1996.

CHAPTER 240
(S.B. No. 1413)

AN ACT

RELATING TO MOTOR VEHICLES OWNED BY THE STATE OF IDAHO; AMENDING SECTION 49-2426, IDAHO CODE, TO PROVIDE THAT MOTOR VEHICLES OF THE DEPARTMENT OF HEALTH AND WELFARE DO NOT NEED TO BE MARKED AND TO

MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-2426, Idaho Code, be, and the same is hereby amended to read as follows:

49-2426. MARKING OF VEHICLES -- CERTAIN VEHICLES EXCEPTED. (1) Every motor vehicle owned by or under control and custody of the state of Idaho, except as provided in subsection (2) of this section, or in section 49-2427, Idaho Code, shall be indelibly and conspicuously lettered on each side, in plain letters not less than one and one-half (1 1/2) inches high, with the words "State of Idaho" or "Idaho" with the name of the proper department, as ~~dwfined~~ defined in section 67-2402, Idaho Code, in each case inserted following either of these words. The words shall be kept clear, distinct and visible at all times. The provisions of this section shall not be applicable to any motor vehicle in the personal service of the governor, except that upon the front doors of any motor vehicle in his personal service there shall be placed the Great Seal of the state of Idaho.

(2) Motor vehicles under the custody and control of the director of the department of law enforcement and used for confidential investigative purposes when necessary to enforce the laws of this state or motor vehicles under the custody and control of the director of the department of health and welfare and used for official state business need not be marked as provided in subsection (1) above. Any other department, agency, or entity of the state shall apply in writing to the director for permission to use one or more unmarked vehicles for confidential investigative purposes. Permission shall be granted only in writing and upon a finding of good cause.

Approved March 14, 1996.

CHAPTER 241
(S.B. No. 1441)

AN ACT

RELATING TO CRIMINAL OFFENSES; AMENDING CHAPTER 41, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-4116, IDAHO CODE, TO PROVIDE FOR THE CRIME OF INDECENT EXPOSURE AND TO PROVIDE PENALTIES.

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

SECTION 1. That Chapter 41, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-4116, Idaho Code, and to read as follows:

18-4116. INDECENT EXPOSURE. Every person who willfully and lewdly, either:

(1) Exposes his or her genitals, in any public place, or in any place where there is present another person or persons who are offended or annoyed thereby; or,

(2) Procures, counsels, or assists any person so to expose his or her genitals, where there is present another person or persons who are offended or annoyed thereby is guilty of a misdemeanor.

Any person who pleads guilty to or is found guilty of a violation of subsection (1) or (2) of this section or a similar statute in another state or any local jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony.

Approved March 14, 1996.

CHAPTER 242
(S.B. No. 1464)

AN ACT

RELATING TO OWNER'S LIABILITY FOR VEHICLE ILLEGALLY PASSING SCHOOL BUS; REPEALING SECTION 49-1423, IDAHO CODE; AND AMENDING CHAPTER 14, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1423, IDAHO CODE, TO PROVIDE FOR INVESTIGATION OF A REPORTED VIOLATION OF FAILING TO OBEY SCHOOL BUS WARNING DEVICES.

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

SECTION 1. That Section 49-1423, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 14, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-1423, Idaho Code, and to read as follows:

49-1423. INVESTIGATION OF REPORTED VIOLATION OF FAILING TO OBEY SCHOOL BUS WARNING DEVICES. (1) The driver of a school bus who observes a violation of section 49-1422, Idaho Code, shall prepare a written report on a form provided by the department of education indicating that a violation has occurred. The school bus driver or a school official shall deliver the report no more than seventy-two (72) hours after the alleged violation occurred to a peace officer of the state or a peace officer of the county or municipality in which the alleged violation occurred. The report shall state the time and the location at which the alleged violation occurred and shall include the motor vehicle license plate number and a description of the vehicle involved in the alleged violation.

(2) Not more than seven (7) calendar days after receiving a report of an alleged violation of section 49-1422, Idaho Code, from a school bus driver or a school official, the peace officer shall initiate an investigation of the reported violation and contact the registered owner of the motor vehicle involved in the reported violation

and request that the owner supply information identifying the driver if the registered owner claims he was not the driver at the time the alleged violation occurred. If, from the investigation, the peace officer is able to identify the driver and has reasonable cause to believe a violation of section 49-1422, Idaho Code, has occurred, the peace officer shall prepare a uniform traffic citation for the violation and shall serve it personally or by certified mail to the driver of the vehicle.

Approved March 14, 1996.

CHAPTER 243
(S.B. No. 1517)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1356, IDAHO CODE, TO PROVIDE THAT IF AN EARLY RETIRED MEMBER IS REEMPLOYED WITH THE SAME EMPLOYER WITHIN NINETY DAYS OR IS GUARANTEED REEMPLOYMENT WITH THE SAME EMPLOYER, RETIREMENT BENEFITS SHALL CEASE AND THE MEMBER SHALL REPAY BENEFITS RECEIVED AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 59-1357, IDAHO CODE; AMENDING SECTION 59-1359, IDAHO CODE, TO REQUIRE REPAYMENT OF A SEPARATION BENEFIT IF THE INACTIVE MEMBER IS REEMPLOYED WITH THE SAME EMPLOYER WITHIN NINETY DAYS OR IS GUARANTEED REEMPLOYMENT WITH THE SAME EMPLOYER; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 59-1356, Idaho Code, be, and the same is hereby amended to read as follows:

59-1356. REEMPLOYMENT OF RETIRED MEMBERS. (1) If an early retired member is reemployed with the same employer within ninety (90) days from retiring, or the early retired member is guaranteed reemployment with the same employer the member shall be considered to have continued in the status of an employee and not to have separated from service. Any retirement allowance payments received by the retired member shall be repaid to the system and the retirement shall be negated. The month of last contribution prior to the negated retirement and the month of initial contribution upon return to reemployment shall be considered consecutive months of contributions in the determination of an appropriate salary base period upon subsequent retirement.

(2) ~~Upon~~ When a retired member~~'s again becoming~~ meets the definition of an employee as defined in section 59-1302(14)(A)(a), Idaho Code, any benefit payable on behalf of such member shall terminate and any contributions payable by such member under sections 59-1331--through 59-1334, Idaho Code, shall again commence, except as provided in subsection (2). The terminated benefit, as adjusted pursuant to section 59-1355, Idaho Code, shall resume upon subsequent retirement, along with a separate allowance computed with respect to only that salary and service credited during the period of reemployment.

(~~2~~3) ~~When~~ If a retired member again becomes employed and an employer certifies to the board that the member does not qualify as an employee as defined in this section and section 59-1302(14)(A)(a), Idaho Code, no contributions shall be made by the member or employer during such reemployment and any benefit payable on behalf of such member shall continue.

(4) For purposes of this section, "same employer" means the employer for which the retired member last worked prior to retirement.

SECTION 2. That Section 59-1357, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 59-1359, Idaho Code, be, and the same is hereby amended to read as follows:

59-1359. SEPARATION BENEFITS. (a) The separation benefit, if any, shall become payable upon the written request of an inactive member who has been separated from employment. ~~and--who~~ If the person who received a separation benefit is ~~not~~ reemployed or reinstated by ~~that~~ the same employer within ~~thirty~~ ninety (~~3~~90) days or is guaranteed a right to employment or reinstatement with the same employer, the person shall repay to the system any separation benefit paid.

(b) A separation benefit shall automatically be payable three (3) years after the person becomes an inactive member if the inactive member has less than five (5) years of membership service, ~~and~~ is not eligible for a vested retirement allowance, and has been separated from employment and is not reemployed or reinstated by the same employer within ninety (90) days.

(c) For purposes of this section, "separated from employment" means the inactive member terminated all employment with the employer. For purposes of this section, "same employer" means the employer for which the person last worked prior to being separated from employment.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 14, 1996.

CHAPTER 244
(H.B. No. 612)

AN ACT

RELATING TO FEES FOR PREPAYMENT OF LOANS SECURED BY MORTGAGES OR DEEDS OF TRUST RELATING TO CONSUMER CREDIT TRANSACTIONS; AMENDING SECTION 28-42-306, IDAHO CODE, TO AUTHORIZE THE PARTIES TO A CONSUMER CREDIT TRANSACTION TO AGREE UPON A PREPAYMENT CHARGE, TO LIMIT THE AMOUNT OF PREPAYMENT CHARGE AND TO PROVIDE FOR DISCLOSURE OF ANY PREPAYMENT CHARGE BY THE CREDITOR TO THE DEBTOR.

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

SECTION 1. That Section 28-42-306, Idaho Code, be, and the same is hereby amended to read as follows:

28-42-306. RIGHT TO PREPAY. (1) Subject to the provisions on rebate upon prepayment, section 28-42-307, Idaho Code, and subject to the provisions of subsection (2) of this section, the debtor may prepay in full the unpaid balance of a regulated consumer credit transaction at any time without penalty.

(2) With respect to a regulated consumer credit transaction which is primarily secured by a mortgage or deed of trust on real property, the parties may agree upon a prepayment charge to be paid by the debtor to the creditor if the debt is repaid in full and prior to its due date, during the first three (3) years of the contract, which prepayment charge shall not exceed the following:

(a) For closed-end loans, the prepayment charge may not exceed an amount equal to six (6) months interest calculated on the average balance for the prior six (6) months at the rate of interest designated in the contract. If the prepayment occurs prior to the expiration of six (6) months from the date of the contract, the prepayment charge may be calculated in the same manner, except the number of months shall be the number of months the loan has existed;

(b) For open-end loans, the amount of the prepayment charge shall not exceed an amount equal to six (6) months finance charge at the annual percentage rate in effect at the time of prepayment, calculated on the average of the average daily balances on the account for the last six (6) billing periods prior to prepayment. If the account has been open for less than six (6) billing periods, the prepayment charge shall be calculated in the same manner, except the number of billing periods shall be the number of billing periods the account has been open.

(3) No prepayment charge may be charged or collected if the loan is refinanced or consolidated with the same lender.

(4) Disclosure of any prepayment charge authorized by this section shall be made by the creditor to the debtor in such manner and form as may be approved by the director.

Approved March 14, 1996.

CHAPTER 245
(H.B. No. 722)

AN ACT

RELATING TO RECIPROCAL INSURERS; AMENDING SECTION 41-706, IDAHO CODE, TO PROVIDE APPLICATION TO DOMESTIC RECIPROCAL INSURERS WHICH EXCLUSIVELY INSURES MEMBERS WHO ARE POLITICAL SUBDIVISIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-2902, IDAHO CODE, TO PROVIDE WHEN ALL PARTICIPANTS IN A RECIPROCAL INSURER ARE POLITICAL SUBDIVISIONS OF THE STATE OF IDAHO, THE INTEREXCHANGE MAY BE ACCOMPLISHED BY A JOINT EXERCISE OF POWERS AGREEMENT; AMENDING SECTION 41-2903, IDAHO CODE, TO PROVIDE THAT POLITICAL

SUBDIVISIONS PARTICIPATING IN A RECIPROCAL INSURANCE PROGRAM SHALL RETAIN ALL RIGHTS, OBLIGATIONS AND IMMUNITIES WHICH INURE TO THEIR RESPECTIVE BENEFIT OR DUTY, WITHOUT COMPROMISE OR MODIFICATION, AS OTHERWISE PROVIDED BY LAW; AMENDING SECTION 41-2907, IDAHO CODE, TO FURTHER DEFINE THE TERM ATTORNEY; AMENDING SECTION 41-2910, IDAHO CODE, TO PROVIDE POWER OF A JOINT POWERS ENTITY; AMENDING SECTION 41-2915, IDAHO CODE, TO PROVIDE WHEN ALL PARTICIPANTS IN A RECIPROCAL INSURER ARE POLITICAL SUBDIVISIONS NO CONTINGENT LIABILITY SHALL ATTACH TO INDIVIDUAL SUBSCRIBERS BY VIRTUE OF SUCH PARTICIPATION; AMENDING SECTION 41-2917, IDAHO CODE, TO PROVIDE DUTIES OF A JOINT POWERS ENTITY REGARDING ANNUAL STATEMENTS; AND AMENDING SECTION 41-2921, IDAHO CODE, TO PROVIDE WHEN ALL PARTICIPANTS IN A RECIPROCAL INSURER ARE POLITICAL SUBDIVISIONS NO LIABILITY SHALL ATTACH TO INDIVIDUAL SUBSCRIBERS WHICH IS NOT CONSISTENT WITH CONSTITUTIONAL OR STATUTORY LIMITATIONS THEREON.

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

SECTION 1. That Section 41-706, Idaho Code, be, and the same is hereby amended to read as follows:

41-706. DIVERSIFICATION OF INVESTMENTS. An insurer shall invest in or hold as assets categories of investments within applicable limits as follows only:

(1) One (1) person. An insurer shall not, except with the consent of the director, have at any one (1) time any combination of investments in or loans upon the security of the obligations, property, or securities of any one (1) person, institution, corporation, or municipal corporation, aggregating an amount exceeding ten per cent (10%) of the insurer's assets. This restriction shall not apply as to investments or deposits fully insured by the Federal Deposit Insurance Corporation or to general obligations of the United States of America or of any state or include policy or annuity contract loans made under section 41-718, Idaho Code, or to assets subject to section 41-715 or 41-3801B, Idaho Code, or to any one (1) domestic reciprocal insurer which exclusively insures members who are political subdivisions, as defined by section 6-902 2., Idaho Code, provided that all such investments comply with the public depository laws.

(2) Voting stock. An insurer shall not invest in or hold at any one (1) time more than ten per cent (10%) of the outstanding voting stock of any corporation, except with the consent of the director given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of subsidiaries of the insurer or a companion company or companies under substantially the same management at the time of purchase, as referred to in section 41-715 or 41-3801B, Idaho Code.

(3) Minimum capital. An insurer (other than title insurer) shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections of this chapter: section 41-707, Idaho Code, (public obligations), and section 41-721, Idaho Code, (real estate mortgages and contracts).

(4) Life insurance reserves. A life insurer shall also invest and keep invested its funds in an amount not less than the reserves under its life insurance policies and annuity contracts in force, as prescribed by section 41-612, Idaho Code, in cash and/or the securities or investments allowed under this chapter, other than in common stocks, insurance stocks and stocks of subsidiaries of the insurer.

(5) Other specific limits. Limits as to investments in the category of real estate shall be as provided in section 41-728, Idaho Code; and other specific limits shall apply as stated in the sections dealing with other respective kinds of investments.

SECTION 2. That Section 41-2902, Idaho Code, be, and the same is hereby amended to read as follows:

41-2902. "RECIPROCAL INSURER" DEFINED. A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. When all participants in a reciprocal insurer are political subdivisions of the state of Idaho, such interexchange may be accomplished by a joint exercise of powers agreement pursuant to chapter 23, title 67, Idaho Code.

SECTION 3. That Section 41-2903, Idaho Code, be, and the same is hereby amended to read as follows:

41-2903. SCOPE OF CHAPTER -- EXISTING INSURERS. (1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals. Political subdivisions of the state of Idaho participating in a reciprocal insurance program shall retain all rights, obligations, and immunities which inure to their respective benefit or duty, without compromise or modification, as otherwise provided by law.

(2) Every reciprocal insurer in its own name as in the case of an individual may purchase, receive, own, hold, lease, mortgage, pledge or encumber, and may by deed of trust or otherwise, manage and sell real estate for the purposes and objects of the reciprocal including, but not limited to, investment for the production of income, or for its accommodation in the convenient transaction of its business. Any contract including, but not limited to, deeds, leases, mortgages, deeds of trust, purchase of sale agreements or any other contract to be executed in the name of the reciprocal insurer, may be executed by the attorney designated by the subscribers of the reciprocal insurer.

(3) Existing authorized reciprocal insurers shall after the effective date of this code comply with the provisions of this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required for such compliance.

SECTION 4. That Section 41-2907, Idaho Code, be, and the same is hereby amended to read as follows:

41-2907. ATTORNEY. (1) "Attorney," as used in this chapter, refers to the attorney in fact of a reciprocal insurer. The attorney

may be an individual, firm, joint powers entity, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

SECTION 5. That Section 41-2910, Idaho Code, be, and the same is hereby amended to read as follows:

41-2910. POWER OF ATTORNEY OR JOINT POWERS ENTITY. (1) The rights and powers of the attorney or designated joint powers entity of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) The powers of the attorney;

(b) That the attorney is empowered to accept service of process on behalf of the insurer and to authorize the director to receive service of process in actions against the insurer upon contracts exchanged;

(c) The general services to be performed by the attorney or joint powers entity;

(d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and

(e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy.

(3) The power of attorney or joint exercise of powers agreement may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this state until approved by the director.

SECTION 6. That Section 41-2915, Idaho Code, be, and the same is hereby amended to read as follows:

41-2915. SERVICE OF PROCESS -- JUDGMENT. (1) Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices or by serving the director as the insurer's process agent under sections 41-333 and 41-334.

(2) Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective

interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though personal service of process was had upon each such subscriber. When all participants in a reciprocal insurer are political subdivisions of the state of Idaho, no contingent liability shall attach to individual subscribers by virtue of such participation.

SECTION 7. That Section 41-2917, Idaho Code, be, and the same is hereby amended to read as follows:

41-2917. ANNUAL STATEMENT. (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney or the administrator of a joint powers entity.

(2) The statement shall be supplemented by such information as may be required by the director relative to the affairs and transactions of the attorney or joint powers entity insofar as they relate to the reciprocal insurer.

SECTION 8. That Section 41-2921, Idaho Code, be, and the same is hereby amended to read as follows:

41-2921. SUBSCRIBERS' LIABILITY. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint. When all participants in a reciprocal insurer are political subdivisions of the state of Idaho, no liability shall attach to individual subscribers which is not consistent with constitutional or statutory limitations thereon.

(2) Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in section 41-2925 of this chapter.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability, set in type of the same prominence as the insuring clause.

Approved March 14, 1996.

CHAPTER 246
(H.B. No. 806)

AN ACT

RELATING TO FRANCHISE FEES COLLECTED BY CITIES FROM ELECTRIC, NATURAL GAS OR WATER PUBLIC UTILITIES OR FROM COOPERATIVE ELECTRICAL ASSOCIATIONS; AMENDING SECTION 50-329A, IDAHO CODE, TO PROVIDE FOR THE COLLECTION OF USER FEES EQUAL TO FRANCHISE FEES WHEN CUSTOMERS UTILIZE SUPPLIERS OTHER THAN THE PUBLIC SERVICE PROVIDER; DECLAR-

ING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 50-329A, Idaho Code, be, and the same is hereby amended to read as follows:

50-329A. FRANCHISE ORDINANCES -- FEES. (1) This section applies to franchises granted by cities to electric, natural gas and water public utilities, as defined in chapter 1, title 61, Idaho Code, and to cooperative electrical associations, as defined in subsection (a) of section 63-3501, Idaho Code, which provide service to customers in Idaho and which shall also be known as "public service providers" for purposes of this section. Notwithstanding any other provision of law to the contrary, cities may include franchise fees in franchises granted to public service providers, only in accordance with the following terms and conditions:

(a) Franchise fees assessed by cities upon a public service provider shall not exceed one percent (1%) of the public service provider's "gross revenues" received within the city without the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. In no case shall the franchise fee exceed three percent (3%), unless a greater franchise fee is being paid under an existing franchise agreement, in which case the franchise agreement may be renewed at up to the greater percentage, with the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. For purposes of this section, "gross revenues" shall mean the amount of money billed by the public service provider for the sale, transmission and/or distribution of electricity, natural gas or water ~~it sells~~ within the city to customers less uncollectibles.

(b) Franchise fees shall be collected by the public service provider from its customers within the city, by assessing the franchise fee percentage on the amounts billed to customers for the sale, transmission and/or distribution of electricity, natural gas or water ~~sold~~ by the public service provider within the city. The franchise fee shall be separately itemized on the public service provider's billings to customers.

(c) Cities collecting franchise fees shall also be allowed to collect user fees from consumers located within the city in the event such consumers purchase electricity, natural gas or water commodities and services from a party other than the public service provider. The user fee shall be assessed on the purchase price of the commodities or services, including transportation or other charges, paid by the consumer to the seller and shall be collected by the city from the consumer. Except as provided in this subsection, user fees shall be subject to all of the same terms, rates, conditions and limitations as the franchise fee in effect in the city and as provided for in this section. This subsection shall not apply to a consumer to the extent that consumer

is purchasing commodities and services from a party other than the public service provider on the effective date of this act, only until such time that the existing franchise agreement for the city in which the consumer is located either expires or is renegotiated.

(d) Franchise fees shall be paid by public service providers within thirty (30) days of the end of each calendar quarter.

(de) Franchise fees paid by public service providers will be in lieu of and as payment for any tax or fee imposed by a city on a public service provider by virtue of its status as a public service provider including, but not limited to, taxes, fees or charges related to easements, franchises, rights-of-way, utility lines and equipment installation, maintenance and removal during the term of the public service provider's franchise with the city.

(2) This section shall not affect franchise agreements which are executed and agreed to by cities and public service providers with an effective date prior to the effective date of this act.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1996.

Approved March 14, 1996.

CHAPTER 247
(S.B. No. 1318)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1314, IDAHO CODE, TO SPECIFY THAT A FINAL DECISION OF THE BOARD SHALL BE SERVED ON ALL INTERESTED PARTIES BY FIRST CLASS AND CERTIFIED MAIL AND TO PROVIDE THAT ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD MUST FILE A NOTICE FOR A HEARING BEFORE THE BOARD WITHIN NINETY DAYS AFTER THE SERVICE DATE OF THE FINAL DECISION.

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

SECTION 1. That Section 59-1314, Idaho Code, be, and the same is hereby amended to read as follows:

59-1314. RULES -- PROCEDURES FOR HEARINGS PRIOR TO APPEALS -- APPEALS. (1) Subject to other provisions of this chapter and pursuant to the policy and standards set out in section 59-1301, Idaho Code, the board shall have the power and authority to adopt, amend or rescind such rules and administrative policies as may be necessary for the proper administration of this chapter.

(2) A final decision of the board shall be served by first class

and certified mail, postage paid, on all interested parties. Any person aggrieved by any otherwise final decision or inaction of the board must, before he appeals to the courts, file with the executive director of the board by mail or personally, within ninety (90) days after the service date of the final decision on the aggrieved party, a notice for a hearing before the board. The notice of hearing shall set forth the grounds of appeal to the board.

(3) A hearing shall be held before the board in Ada County, Idaho, at a time and place designated by the board or may be undertaken or held by or before any member(s) thereof or any hearing officer appointed by the board for that purpose. The proceedings before the board shall be governed by the provisions of chapter 52, title 67, Idaho Code. Members of the board or the hearing officer shall have power to administer oaths, to preserve and enforce order during such hearings, to issue subpoenas for and to compel the attendance and testimony of witnesses or the production of books, papers, documents and other evidence and to examine witnesses.

(4) Every finding, order~~, decision~~ or award made by any member or hearing officer pursuant to such hearing, as confirmed or modified by the board, and ordered filed in its office, shall be deemed to be the finding, order~~, decision~~ or award of the board. The recommended order of the hearing officer shall be considered by the board and the decision and order of the majority of the members shall be the ~~decision and~~ order of the board. Every such ~~final decision and~~ order rendered by the board shall be in writing and a copy thereof shall be mailed by first class and certified mail to each party to the appeal and to his attorney of record.

(5) If any person in proceedings herein disobeys or resists any lawful order or process or misbehaves during a hearing, or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper, document or other evidence, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the board shall certify the facts to the district court having jurisdiction, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if doing of the forbidden act had occurred with reference to the proceedings, or in the presence of the court.

(6) Any party aggrieved by a final ~~decision and~~ order of the board may seek judicial review thereof pursuant to the provisions of chapter 52, title 67, Idaho Code. The decision or judgment of the district court shall be subject to appeal to the Supreme Court in the same manner and by the same procedure as appeals are taken and perfected to the court in civil actions at law.

Approved March 14, 1996.

CHAPTER 248
(S.B. No. 1353)

AN ACT
RELATING TO CONVEYANCE OF TRUST DEEDS; AMENDING SECTION 45-1502, IDAHO CODE, TO PROVIDE THAT PROVISIONS FOR COMPENSATION FOR RECONVEYANCE SERVICES TAKE PRECEDENCE OVER PROVISIONS OF THE DEED OF TRUST.

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

SECTION 1. That Section 45-1502, Idaho Code, be, and the same is hereby amended to read as follows:

45-1502. DEFINITIONS -- TRUSTEE'S CHARGE. As used in this act:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) "Trust deed" means a deed executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest.

(5) "Real property" means any right, title, interest and claim in and to real property owned by the grantor at the date of execution of the deed of trust or acquired thereafter by said grantor or his successors in interest. Provided, nevertheless, real property as so defined which may be transferred in trust under this act shall be limited to either (a) any real property located within an incorporated city or village at the time of the transfer, or (b) any real property not exceeding twenty (20) acres, regardless of its location, and in either event where the trust deed states that the real property involved is within either of the above provisions, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make such transfer and trust and power of sale conferred in this act.

(6) The trustee shall be entitled to a reasonable charge for duties or services performed pursuant to the trust deed and this chapter, <u>including compensation for reconveyance services notwithstanding any provision of a deed of trust prohibiting payment of a reconveyance fee by the grantor or beneficiary, or any provision of a deed of trust which limits or otherwise restricts the amount of a reconveyance fee to be charged and collected by the trustee. A trustee shall be entitled to refuse to reconvey a deed of trust until the trustee's reconveyance fees and recording costs for recording the reconveyance instruments are paid in full.</u> The trustee shall not be entitled to a foreclosure fee in the event of judicial foreclosure or work done prior to the recording of a notice of default. If the default is cured

prior to the time of the last newspaper publication of the notice of sale, the trustee shall be paid a reasonable fee~~;-such-fee-subject--to approval-of-the-director-of-the-department-of-insurance~~.

Approved March 14, 1996.

CHAPTER 249
(S.B. No. 1362)

AN ACT

RELATING TO SEX OFFENDER REGISTRATION; AMENDING SECTION 18-8305, IDAHO CODE, TO PROVIDE THAT THE REGISTRATION REQUIREMENT SHALL CONTINUE FOR LIFE WHILE THE PERSON IS RESIDING IN IDAHO; AND AMENDING CHAPTER 83, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-8305A, IDAHO CODE, TO PROVIDE FOR A PETITION AND HEARING TO EXEMPT A PERSON FROM LIFETIME REGISTRATION, TO PROVIDE THE CONTENTS OF THE PETITION AND TO PROVIDE FOR THE GRANTING OF AN EXEMPTION FROM THE REPORTING REQUIREMENT UPON PROOF BY CLEAR AND CONVINCING EVIDENCE THAT THE PETITIONER IS NOT A RISK TO COMMIT A VIOLENT CRIME OR OTHER SPECIFIED SEX CRIMES.

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

SECTION 1. That Section 18-8305, Idaho Code, be, and the same is hereby amended to read as follows:

18-8305. DURATION OF REGISTRATION REQUIREMENT. Any person to whom this chapter applies shall be required to register during any period of probation or parole and shall continue to comply with the provisions of this chapter for ~~a-period-of-ten-(10)-years-after-the-date-of discharge-from-probation;-parole-or-release-from-incarceration;-whichever-is-greater~~ <u>life while residing in Idaho.</u>

SECTION 2. That Chapter 83, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a <u>NEW SECTION,</u> to be known and designated as Section 18-8305A, Idaho Code, and to read as follows:

18-8305A. EXEMPTION FROM LIFETIME REGISTRATION. Any person to whom this chapter applies may, after a period of ten (10) years from the date of discharge from probation, parole or release from incarceration, whichever is greater, petition the district court for a show cause hearing to determine whether the person should be exempted from the duty to register as a sex offender. In the petition the petitioner shall:

(1) Provide clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8303, Idaho Code;

(2) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in

section 18-8303, Idaho Code;

(3) Provide proof of service of such petition upon the county prosecuting attorney for the county in which the application is made; and

(4) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sex offender.

The district court may grant a hearing if it finds that the petition is sufficient. The court shall provide at least sixty (60) days prior notice of the hearing to the petitioner and the county prosecuting attorney.

The court may exempt the petitioner from the reporting requirement only after a hearing on the petition in open court and only upon proof by clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8303, Idaho Code.

Approved March 14, 1996.

CHAPTER 250
(S.B. No. 1455)

AN ACT

RELATING TO THE IDAHO REAL ESTATE BROKERAGE REPRESENTATION ACT; AMENDING CHAPTER 20, TITLE 54, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 54-2060 THROUGH 54-2074, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE THAT A WRITTEN AGREEMENT IS REQUIRED TO ESTABLISH AN AGENCY RELATIONSHIP BETWEEN A BUYER OR SELLER AND A BROKERAGE, TO PROVIDE DISCLOSURE REQUIREMENTS, TO PROVIDE FOR AN AGENCY DISCLOSURE BROCHURE, TO PROVIDE WHEN A BROKERAGE'S RELATIONSHIP WITH A BUYER AND SELLER MUST BE DETERMINED, TO PROVIDE FOR REPRESENTATION CONFIRMATION AND TO PROVIDE THE EFFECT OF A FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE ACT REGARDING DISCLOSURE AND CONFIRMATION, TO PROVIDE THE DUTIES OF A BROKERAGE AND ITS LICENSEES TO A CUSTOMER, TO PROVIDE THE DUTIES OF A BROKERAGE AND ITS LICENSEES TO A CLIENT, TO PROVIDE FOR A LIMITED DISCLOSED DUAL AGENCY, TO PROVIDE FOR A CONSENT TO LIMITED DUAL REPRESENTATION AND THE DUTIES OWED BY A LIMITED DISCLOSED DUAL AGENT, TO PROVIDE THAT PAYMENT OF COMPENSATION OR A WRITTEN AGREEMENT ONLY FOR PAYMENT OF COMPENSATION TO A BROKERAGE SHALL NOT CONSTITUTE AN AGREEMENT TO CREATE AN AGENCY RELATIONSHIP, TO REQUIRE A WRITTEN OFFICE POLICY IDENTIFYING THE TYPES OF REPRESENTATION IN WHICH THAT BROKERAGE AND ITS LICENSEES MAY ENGAGE, TO PROVIDE FOR THE DURATION OF EXPRESS REPRESENTATION, TO PROVIDE THE DUTIES AND OBLIGATIONS OWED AFTER THE TERMINATION OF REPRESENTATION, TO PROVIDE WHEN VICARIOUS LIABILITY OF A CLIENT OR A LICENSEE OR BROKERAGE SHALL NOT ATTACH, TO PROVIDE THAT REPRESENTATION UNDER THE PROVISIONS OF THE ACT IS NOT FIDUCIARY IN NATURE, TO PROVIDE FOR CONFLICTS WITH OTHER LAW AND TO PROVIDE THE RULEMAKING AUTHORITY OF THE COMMISSION.

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

SECTION 1. That Chapter 20, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 54-2060 through 54-2074, Idaho Code, and to read as follows:

54-2060. SHORT TITLE. Sections 54-2060 through 54-2074, Idaho Code, shall be known and may be cited as "The Idaho Real Estate Brokerage Representation Act."

54-2061. DEFINITIONS. As used in this act:

(1) "Adverse material fact" means a fact that would significantly affect the desirability or value of the property to a reasonable person or which establishes a reasonable belief that a party to the transaction is not able to or does not intend to complete that party's obligations under a real estate contract.

(2) "Agency representation" or "representation" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties defined in section 54-2065, Idaho Code, are applicable. See also "representation."

(3) "Brokerage" means a licensed designated broker, the licensed real estate business represented by that broker and its affiliated licensees.

(4) "Client" means a buyer or seller or both who have entered into an express written contract or agreement with a brokerage for agency representation in a regulated real estate transaction.

(5) "Confidential client information" means information gained from or about a client that:

(a) Is not a matter of public record;

(b) The client has not disclosed or authorized to be disclosed to third parties;

(c) If disclosed, would be detrimental to the client; and

(d) The client would not be personally obligated to disclose to another party to the transaction. Information which is required to be disclosed by statute or rule or where the failure to disclose would constitute fraudulent misrepresentation is not confidential client information within the provisions of this act. Information generally disseminated in the marketplace, including "sold" prices of property, is also not confidential client information within the provisions of this act.

(6) "Customer" means a buyer or seller who is not represented in an agency relationship in a regulated real estate transaction.

(7) "Express agreement" or "express contract" means a written agreement by the parties to undertake brokerage representation. An express agreement under this statute can only be made in writing, and cannot be made orally or by assumption or implication.

(8) "Idaho real estate license law and rules" means chapter 20, title 54, Idaho Code, and all administrative rules promulgated thereunder.

(9) "Limited disclosed dual agent" means only that limited brokerage representation in which both a buyer and a seller are clients for the purposes of a regulated real estate transaction, and as specifically allowed in this act.

(10) "Ministerial acts" means reasonably necessary and customary acts typically performed by real estate licensees in assisting a transaction to its closing or conclusion.

(11) "Nonagent" means a brokerage and its licensees working with or assisting a buyer or seller as a customer to which the duties provided in section 54-2064, Idaho Code, are applicable.

(12) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(13) "Representation" or "brokerage representation" or "represented" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties provided in section 54-2065, Idaho Code, are applicable.

54-2062. BROKERAGE AGENCY RELATIONSHIPS -- CREATION. For all regulated real estate transactions first executed on or after July 1, 1996, a buyer or seller is not represented by a brokerage in a regulated real estate transaction unless the buyer or seller and the brokerage agree, in writing, to such representation. No type of agency representation may be assumed by a buyer or seller or created orally or by implication.

54-2063. DISCLOSURE AND WRITING REQUIREMENTS -- AGENCY DISCLOSURE BROCHURE. (1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure established by the Idaho real estate commission. The commission by rule shall establish the form and contents of the brochure in accordance with the provisions of this act.

(2) The agency disclosure brochure shall list the types of representation available to a buyer or seller in a regulated real estate transaction, the legal duties and obligations owed to the buyer or seller in each type of representation and a conspicuous notice that no representation will exist absent a written agreement between the buyer or seller and the brokerage.

(3) A brokerage's relationship with a buyer and seller as an agent, nonagent, or limited dual agent must be determined and all necessary agreements executed no later than the preparation of a purchase and sale agreement. A brokerage must disclose its relationship to both buyer and seller in any transaction no later than the preparation or presentation of a purchase and sale agreement.

(4) In addition, a purchase and sale agreement or other document drafted in connection with a real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved:

REPRESENTATION CONFIRMATION

In this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER ("agent" or "nonagent" or "limited dual agent"):

Listing broker acted as a(n) ..... for the buyer.

Selling broker acted as a(n) ..... for the buyer.

In this transaction, the brokerage(s) involved had the following relationship(s) with the SELLER ("agent" or "nonagent" or "limited dual agent"):

Listing broker acted as a(n) ..... for the seller.

Selling broker acted as a(n) ..... for the seller.

Each party signing this document confirms that he or she has received, read and understood the Agency Disclosure Brochure and has elected the relationship confirmed above. In addition, each party confirms that the broker's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKER UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

(5) The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this act shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of section 54-2040, Idaho Code.

54-2064. DUTIES TO A CUSTOMER. (1) If a buyer or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer to whom the brokerage and its licensees are nonagents and owe only the following legal duties and obligations:

(a) To perform ministerial acts to assist the buyer or seller in the sale or purchase of real estate;

(b) To perform these acts with honesty, good faith, reasonable skill and care;

(c) To properly account for moneys or property placed in the care and responsibility of the brokerage;

(d) To disclose to the buyer/customer all adverse material facts actually known or which reasonably should have been known by the licensee;

(e) To disclose to the seller/customer all adverse material facts actually known or which reasonably should have been known by the licensee;

(2) A nonagent brokerage and its licensees owe no duty to a buyer/customer to conduct an independent inspection of the property for the benefit of that buyer/customer and owe no duty to independently verify the accuracy or completeness of any statement or representation made by the seller or any source reasonably believed by the licensee to be reliable.

(3) A nonagent brokerage and its licensees owe no duty to a seller/customer to conduct an independent investigation of the buyer's financial condition for the benefit of that seller/customer and owe no duty to independently verify the accuracy or completeness of statements made by the buyer or any source reasonably believed by the licensee to be reliable.

54-2065. DUTIES TO A CLIENT. If a buyer or seller enters into a

written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

(1) To perform the terms of the written agreement with the client;

(2) To exercise reasonable skill and care;

(3) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:

(a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;

(b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or

(c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;

(d) For the benefit of a client/buyer: conducting a reasonable investigation of the property and material representations about the property made by the seller or seller's agent, or when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;

(e) For the benefit of a client/seller: requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.

(4) To maintain the confidentiality of specific client information as defined by and to the extent required in this act.

(5) To properly account for moneys or property placed in the care and responsibility of the brokerage.

54-2066. LIMITED DISCLOSED DUAL AGENCY PERMITTED. (1) A brokerage may act as a limited disclosed dual agent only with the express written consent of all parties to the transaction. Such consent shall contain separate signatures of all parties to the transaction and shall contain the following language:

CONSENT TO LIMITED DUAL REPRESENTATION

The undersigned have received, read and understand the Agency Disclosure Brochure. The undersigned understand that the brokerage involved in this transaction will be or may be providing agency representation to both the buyer(s) and the seller(s). The undersigned each understand that as agents for both buyer and seller, the brokerage(s) will be limited dual agents and cannot legally disclose to either party certain confidential information concerning price negotiations, terms or factors motivating the buyer to buy or the seller to sell without specific written permission of the disclosing party. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2063, Idaho Code. The undersigned each

understand that a limited dual agent does not have a duty of undivided loyalty to either client.

(2) All duties and obligations owed to a buyer or a seller client under section 54-2065, Idaho Code, apply to limited disclosed dual agency relationships to the extent they do not unreasonably conflict with duties and obligations owed to the other client, except that:

(a) A limited disclosed dual agent shall not disclose any of the following without express written consent of the client to whom the information pertains:

(i) That a buyer is willing to pay more than the listing price of the property;

(ii) That a seller is willing to accept less than the listing price for the property;

(iii) The factors motivating the buyer to buy or the seller to sell;

(iv) That a buyer or seller will agree to a price or financing terms other than those offered.

(b) A limited disclosed dual agent does not have a duty of undivided loyalty to either buyer/client or seller/client, and by consenting to limited dual agency, the buyer and seller agree to those limitations.

(3) No cause of action for any buyer or seller shall arise against a limited disclosed dual agent for making any required or permitted disclosure under this act, nor does making such disclosure terminate the limited disclosed dual agency.

(4) Receipt of the agency disclosure brochure required by section 54-2063, Idaho Code, and the signed consent to dual representation by buyer and seller agreeing to limited disclosed dual agency representation shall be sufficient informed legal consent to dual representation under this act. A consent by the buyer and seller to possible dual representation in the future, such as may be contained in a written marketing or representation agreement between a brokerage and client, shall also be considered effective and informed legal consent to dual representation.

54-2067. BROKER COMPENSATION. Payment of compensation or a written agreement only for payment of compensation to a brokerage shall not constitute an express agreement creating an agency relationship.

54-2068. WRITTEN OFFICE POLICY REQUIRED. Each designated broker shall be responsible to adopt and maintain in each office, including branch offices, a written policy which identifies and describes the types of representation in which that brokerage and its affiliated licensees may engage with any buyer or seller, or both, as a part of that office's real estate brokerage services.

54-2069. DURATION OF EXPRESS REPRESENTATION. (1) A brokerage representation under this act shall commence on the date indicated on the written agreement between the brokerage and a buyer/client or seller/client and shall end at the earliest of:

(a) Performance or completion of the representation;

(b) Agreement by the parties;

(c) Expiration of the agency relationship agreement.

(2) Nothing in this act shall prohibit the brokerage and the buyer or seller from changing the legal nature of their relationship or representation in accordance with this act during the course of the real estate transaction. However, the brokerage is not relieved thereby from meeting the disclosure requirements and obtaining the written agreements, consents or confirmations required by this act.

54-2070. DUTIES AND OBLIGATIONS OWED AFTER TERMINATION OF REPRESENTATION. Except as otherwise agreed in writing, a brokerage owes no further duty or obligation to a client after termination of the agreed representation except:

(1) Accounting for all moneys and property received by the brokerage during the representation; and

(2) Maintaining the confidentiality of all information defined as confidential client information by this act.

54-2071. VICARIOUS LIABILITY ABOLISHED. (1) A client, as defined in this act, whether buyer or seller, shall not be liable for a wrongful act, error, omission or misrepresentation of his broker/representative or subagent unless the client had actual knowledge of or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(2) A licensee or brokerage engaged in representation of a client shall not be liable for a wrongful act, error, omission or misrepresentation of the client or of any subagent unless the licensee or brokerage had actual knowledge or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(3) Nothing in this section shall be construed to diminish or limit any of the broker's or licensee's responsibilities under chapter 20, title 54, Idaho Code, or the rules promulgated thereunder.

54-2072. REPRESENTATION NOT FIDUCIARY IN NATURE. While this act is intended to abrogate the common law of agency as it applies to regulated real estate transactions, nothing in this act shall prohibit a brokerage from entering into a written agreement with a buyer or seller which creates an agency relationship in which the duties and obligations are greater than those provided in this act. However, unless greater duties are specifically agreed to in writing between the brokerage and a represented client, the duties and obligations owed to a represented client in a regulated real estate transaction are not fiduciary in nature and are not subject to remedies for breach of fiduciary duty.

54-2073. CONFLICTS WITH OTHER LAW. If the provisions of this act are found to be in conflict with any other provision of Idaho law, the provisions of this act shall control.

54-2074. RULEMAKING AUTHORITY OF THE COMMISSION. The Idaho real estate commission shall have authority to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, to implement the provisions of this act.

Approved March 14, 1996.

CHAPTER 251
(S.B. No. 1532)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1326, IDAHO CODE, TO PROVIDE THAT A POLITICAL SUBDIVISION MAY BY RESOLUTION DECLARE ITS INTENT TO WITHDRAW FROM THE SYSTEM, TO PROVIDE FOR A VOTE OF THE ACTIVE MEMBERS ON THE QUESTION OF WITHDRAWAL, TO PROVIDE FOR NOTICE TO THE SYSTEM, TO PROVIDE THE MANNER IN WHICH ACTIVE MEMBERS SHALL VOTE ON WITHDRAWAL AND TO REQUIRE AN AFFIRMATIVE VOTE FOR WITHDRAWAL BY MORE THAN FIFTY PERCENT OF THE ACTIVE MEMBERS FOR WITHDRAWAL TO OCCUR, TO PROVIDE FOR COMPLETE WITHDRAWAL, TO PROVIDE THAT EMPLOYEES OF THE WITHDRAWING POLITICAL SUBDIVISION BECOME INELIGIBLE FOR FUTURE BENEFITS FROM THE SYSTEM AND TO PROVIDE THAT THE WITHDRAWING POLITICAL SUBDIVISION SHALL BE INELIGIBLE TO REENTER THE SYSTEM FOR FIVE YEARS, TO PROVIDE WHEN A RETIREMENT ALLOWANCE OR SEPARATION BENEFIT SHALL BE PAID AND WHEN IT MUST BE REPAID BY THE PERSON RECEIVING IT, TO PROVIDE A POLITICAL SUBDIVISION'S LIABILITY UPON COMPLETE WITHDRAWAL AND UPON PARTIAL WITHDRAWAL, TO PROVIDE FOR A CONTRACT WITH THE POLITICAL SUBDIVISION FOR PAYMENT OF ITS WITHDRAWAL LIABILITY, TO PROVIDE FOR PAYMENT OF INTEREST, TO PROVIDE THE DURATION OF THE CONTRACT AND TO DEFINE CURRENT AMORTIZATION PERIOD, TO PROVIDE THE LIMITS OF LIABILITY OF THE SYSTEM TO THE WITHDRAWING POLITICAL SUBDIVISION AND ITS EMPLOYEES, TO PROVIDE FOR INDEMNIFICATION OF THE SYSTEM AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 59-1326, Idaho Code, be, and the same is hereby amended to read as follows:

59-1326. PROCEDURE FOR COMPLETE OR PARTIAL WITHDRAWAL OF POLITICAL SUBDIVISIONS FROM THE SYSTEM -- CALCULATION OF WITHDRAWAL ~~CONTRIBUTIONS~~ LIABILITY -- INDEMNIFICATION. (1) ~~An employer incurring complete withdrawal or partial withdrawal after December 31, 1980, shall be required to make withdrawal contributions, all as provided in this section~~ A political subdivision, through its governing body, may by resolution adopted by two-thirds (2/3) of the members of the governing body, declare its intent to withdraw completely from the system and to submit the question of withdrawing from the system to the active members of the political subdivision. The political subdivision shall notify its employees and the retirement board, in writing, of its action, and shall advise the active members of their right to vote for or against withdrawal, as provided in subsection (2) of this section. A political subdivision shall automatically be considered to have requested a complete withdrawal from the system the date the political subdivision permanently ceases to employ active members. A withdrawing political subdivision shall be required to make withdrawal liability payments as provided in this section.

(2) ~~Complete withdrawal occurs for a political subdivision on the date it permanently ceases to employ active members~~ All active members

of the withdrawing political subdivision shall be allowed to vote by secret ballot for or against allowing the political subdivision to completely withdraw from the system. More than fifty percent (50%) of the withdrawing political subdivision's active members must approve the complete withdrawal at least thirty (30) days before the effective withdrawal date. All active members of the withdrawing political subdivision who are on the political subdivision's payroll thirty (30) days before the effective withdrawal date shall be allowed to vote. If more than fifty percent (50%) of the withdrawing political subdivision's active members fail to vote for complete withdrawal, the political subdivision shall not be allowed to withdraw. Fifteen (15) days before the effective withdrawal date the governing board of the withdrawing political subdivision shall certify to the retirement board the results of the voting by the active members.

(3) Partial withdrawal occurs for a political subdivision when its average membership declines from one fiscal year to the next by more than twenty-five (25) members and twenty-five ~~per-cent~~ percent (25%) of the average membership in the earlier year. The effective date of partial withdrawal is the first day after the end of the later year.

~~(4)~~ "Average membership" for a fiscal year shall equal one-twelfth (1/12) of the sum of the number of active members employed during each month of that year.

~~(5)--Withdrawal--contributions--shall-commence-on-the-first-day-of the-fourth-month-after-the-date--of--complete--withdrawal--or--partial withdrawal.--The--monthly--amount--of--withdrawal--contribution--of-an employer-incurring-complete-withdrawal-shall-be-one-twelfth-(1/12)--of the-employer's-contribution-during-the-last-complete-fiscal-year-prior to--such--date.--The--monthly--amount-of-withdrawal-contribution-of-an employer-incurring-partial-withdrawal-shall-be-one-twelfth--(1/12)--of (c)-reduced-proportionately-by-the-ratio-of-(a)-to-(b)-as-follows:~~

~~(a)--The-average-membership-of-the-employer-estimated-by-the-board for-the-year-commencing-on-such-date;~~

~~(b)--The-average-membership-of-the-employer-during-the-second-complete-fiscal-year-prior-to-such-date;~~

~~(c)--The--employer's--contribution--payable-during-the-second-complete-fiscal-year-prior-to-such-date.~~

~~(6)--Withdrawal-contributions-shall-continue-until-the--withdrawal liability-becomes-nil.~~

(4) Complete withdrawal by a political subdivision shall be the first day of the month following the date the political subdivision ceases to employ active members or the first day of the month following sixty (60) days from the date the board receives the political subdivision's written request to withdraw. However, the complete withdrawal date shall not occur before the withdrawal liability is determined, as provided in subsection (7) of this section.

(5) After complete withdrawal, all employees of the withdrawing political subdivision shall be ineligible to accrue future benefits with the system due to employment with the withdrawing political subdivision. The withdrawing political subdivision shall be ineligible to request to be included in the system, as provided in section 59-1321, Idaho Code, for five (5) years after its complete withdrawal date.

(6) All active or inactive members of the political subdivision

shall be eligible for benefits accrued with the system up to the complete withdrawal date. However, no retirement allowance or separation benefit shall be paid until the member actually separates from service with the withdrawing political subdivision, and there is no guarantee of right to re-employment made by the withdrawing political subdivision. If the person returns to employment with the same withdrawing political subdivision within ninety (90) days, any separation benefit or retirement allowance paid to the person shall be repaid to the system.

(7) On the date of complete withdrawal, the withdrawal liability of an employer is (a) multiplied by the ~~fraction~~ ratio of (b)~~/~~ to (c) as follows:

(a) The excess of the actuarial present value of the vested accrued benefits of the system's members over the fair value of its assets, both as of the date of the last actuarial valuation ~~for the fiscal year preceding such date~~ adopted by the board prior to the complete withdrawal date based on the assumption that thirty percent (30%) of all terminating employees will eventually return to employment covered by the system and that future cost-of-living allowances as provided in section 59-1355, Idaho Code, will be at a rate of two percent (2%) per year;

(b) The total ~~employer contributions of the employer during the five (5) complete fiscal years immediately prior to such date~~ present value of accrued benefits of all active members of the withdrawing political subdivision as of the last actuarial valuation adopted by the board prior to the complete withdrawal date;

(c) The total ~~employer contributions of all employers during the five (5) complete fiscal years immediately prior to such date~~ present value of accrued benefits of all active members of the system as of the last actuarial valuation adopted by the board prior to the complete withdrawal date.

The actuarial costs to determine the amount described in subsection (7)(b) of this section shall be paid by the withdrawing political subdivision.

(8) On the date of partial withdrawal, the withdrawal liability of an employer is the same as if complete withdrawal had occurred, ~~reduced proportionately~~ multiplied by one (1) minus the ratio of (a) to (b) as follows:

(a) The average membership of the employer estimated by the board for the year commencing on such date;

(b) The average membership of the employer during the second complete fiscal year prior to such date.

(9) ~~After the date of an employer's complete withdrawal or partial withdrawal, the withdrawal liability is the initial withdrawal liability decreased by the accumulation of withdrawal contributions, all adjusted for interest. Interest charges shall be on the basis used in determining the original withdrawal liability. Interest credits shall be based upon quarter-year investment earnings of the system. If partial withdrawal occurs, the amounts of withdrawal liability and withdrawal contribution shall be adjusted by appropriate recalculations after the average membership of the employer is known for the year commencing on the date of partial withdrawal. If the average membership of an employer which has incurred a partial with-~~

~~drawal--exceeds--for--each--of--three-(3)-consecutive-fiscal-years-the average-membership-during-the-second-fiscal-year-prior-to-the-date--of partial-withdrawal,-the-withdrawal-liability-shall-become-nil-upon-the final--day--of--the-last-of-such-three-(3)-fiscal-years,-regardless-of the-accumulation-of-the-previously-computed-withdrawal--liability~~ The withdrawing political subdivision shall enter into a contract with the system which establishes terms for the political subdivision's payment of its withdrawal liability. The contract shall use an interest rate equal to the interest rate used in the actuarial valuation adopted by the board prior to the withdrawal date, net of actuarially assumed investment expenses. The contract shall not extend the duration of the withdrawal liability payments beyond ten (10) years or the end of the current amortization period whichever is less. The contract shall be a financial obligation of the withdrawing political subdivision and any of its successors and assigns. "Current amortization period" means the period over which the amortization payment rate times the actuarial present value of the projected salaries is equivalent to the unfunded actuarial liability, all determined by the current valuation last adopted by the board prior to the complete withdrawal date.

(10) Upon the complete withdrawal of the political subdivision, the system shall have no further legal obligation to the political subdivision or its employees, nor shall the system be held accountable for the continued future accrual of any retirement benefit rights to which such employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the political subdivision's complete withdrawal from the system shall be the sole legal responsibility of the withdrawing political subdivision and the withdrawing political subdivision shall indemnify and hold harmless the system, its board, its employees and the state of Idaho, from any claims, losses, costs, damages, expenses, and liabilities, including without limitation, court costs and reasonable attorney's fees, asserted by any person or entity as a result of the political subdivision's withdrawal from the system.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 14, 1996.

CHAPTER 252
(S.B. No. 1516, As Amended)

AN ACT

RELATING TO SITE REMEDIATION; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 72, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS, TO DEFINE TERMS, TO PROVIDE PARTICIPATION REQUIREMENTS, TO PROVIDE FOR WORK PLANS, TO PROVIDE FOR EVALUATION AND REVIEW RESPONSIBILITIES, TO PROVIDE FOR COVENANTS NOT TO SUE, TO PROVIDE FOR RECISION OF A VOLUNTARY REMEDIATION AGREEMENT OR CONVENANT NOT TO SUE UPON CERTAIN CONDI-

TIONS, TO PROVIDE FOR LENDER LIABILITY AND TO PROVIDE FOR RULES; AMENDING CHAPTER 1, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-105II, IDAHO CODE, TO PROVIDE A PARTIAL EXEMPTION FROM AD VALOREM TAXATION FOR REMEDIATED LAND; AND TO PROVIDE EFFECTIVE DATES.

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

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 72, Title 39, Idaho Code, and to read as follows:

CHAPTER 72
IDAHO LAND REMEDIATION ACT

39-7201. SHORT TITLE. This chapter may be known and cited as the "Idaho Land Remediation Act."

39-7202. LEGISLATIVE FINDINGS. The legislature hereby finds and declares:

(1) That it is the policy of the state of Idaho to provide for the protection of the public health, welfare, safety, and environment; and to foster the remediation, transfer, reuse, or redevelopment of sites or groups of sites based on the risk to human health and the environment where releases or threatened release of hazardous substances or petroleum exists. The minimization of risk to public health and the environment on a commercial and industrial site offers significant potential economic benefit to local communities and is vital to their use and reuse as sources of employment, housing, recreation and open-space areas.

(2) That establishing a voluntary program for the remediation of hazardous substance or petroleum contaminated sites will encourage innovation and cooperation between the state, local communities, and interested persons and will promote the economic revitalization of property. It is intended that this program will provide for an expedited remediation process by eliminating the need for many adversarial enforcement actions and delays in remediation plan approvals.

39-7203. GENERAL DEFINITIONS. As used in this chapter:

(1) "Board" means the board of health and welfare.

(2) "Department" means the department of health and welfare.

(3) "Hazardous substance" has the meaning set forth in section 101(14) of the comprehensive environmental, response, compensation and liability act (CERCLA), 42 U.S.C. 9601 (14) as amended.

(4) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(5) "Petroleum" includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute).

(6) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum.

(7) "Remediation" means any of the following:

(a) Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment, which may otherwise result from a release or threat of a release; or

(b) Actions consistent with a permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment; or

(c) The cleanup or removal of released hazardous substances or petroleum from the environment.

(8) "Site" means a parcel of real estate for which an application has been submitted under section 39-7204, Idaho Code.

39-7204. PARTICIPATION. (1) To participate in the remediation program a person must submit an application to the department as described under subsection (2) of this section.

(2) An application submitted under this section must meet the following conditions:

(a) Contain the following general information concerning:

(i) the person,

(ii) the site, and

(iii) other background information as requested by the department;

(b) An environmental assessment that conforms to ASTM Standard Practice E 1527, as amended, or equivalent.

(3) Not more than thirty (30) days after receiving an application under subsection (2) of this section, the department shall determine if the person is eligible to participate in the remediation program under this chapter.

(4) The department may reject an application submitted under subsection (2) of this section for any of the following reasons:

(a) Remediation is required pursuant to sections 39-101 through 39-129, sections 39-4401 through 39-4432, or sections 39-7401 through 39-7420, Idaho Code, or rules promulgated thereunder, or other applicable statutory or common law; or

(b) The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment; or

(c) The application is not complete.

(5) If the application is rejected under subsection (4)(c) of this section, the department shall provide the person with a list of all information needed to make the application complete. If the department fails to comply with this subsection, the application shall be considered completed for the purposes of this chapter.

(6) If the department rejects an application, the department

shall do the following:

(a) Notify the person that the department rejected the application;

(b) Explain the reason the department rejected the application.

39-7205. WORK PLANS. (1) If the department determines an application is eligible under this chapter, the person may submit a proposed voluntary remediation work plan to the department. Before the department evaluates a proposed voluntary remediation work plan, the person who submitted the work plan and the department must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan.

(a) A voluntary remediation agreement must include the following:

(i) An estimation of costs the department may incur under this chapter;

(ii) A payment schedule of all reasonable costs estimated to be incurred by the department in the review and oversight of the work plan;

(iii) A provision for the department's oversight including access to site and pertinent site records;

(iv) A timetable for the department to do the following:

1. reasonably review and evaluate the adequacy of the work plan, or

2. make a determination concerning the approval or rejection of the work plan;

(v) A provision to modify the voluntary remediation agreement and voluntary remediation work plan based upon unanticipated site conditions;

(vi) Any other conditions considered necessary by the department or the person concerning the effective and efficient implementation of this chapter.

(b) A proposed voluntary remediation work plan must include a proposed statement of work and schedule to accomplish the remediation in accordance with rules established by the board.

(2) If a voluntary remediation agreement is not reached between a person and the department within a reasonable time after good faith negotiations have begun, the person or the department may withdraw from the negotiations.

39-7206. EVALUATION AND REVIEW RESPONSIBILITIES. (1) Pursuant to the signed voluntary remediation agreement, the department or a person under contract with the department shall do the following:

(a) Review and evaluate the site and the affected area surrounding the site;

(b) Review and evaluate the proposed voluntary remediation work plan for protection of public health and the environment based on rules promulgated by the board.

(2) At any time during the evaluation of a proposed voluntary remediation work plan, the department may request that a person submit additional or corrected information to the department. A person may:

(a) Comply with the request; or

(b) Withdraw the person's proposed voluntary remediation work plan from consideration and terminate the voluntary remediation

agreement.

(3) Before the department approves a proposed voluntary remediation work plan under this section, the department must:

(a) Notify local government units located in a county affected by the proposed voluntary remediation work plan of the work plan; and,

(b) Provide that a copy of the proposed voluntary remediation work plan and a copy of the voluntary remediation agreement be placed in at least one (1) public library in a county affected by the work plan; and,

(c) Notify by reasonable public notice potentially affected persons to request comments concerning the proposed voluntary remediation work plan; and,

(d) Provide a comment period of at least thirty (30) days following publication of a notice under this section. During the comment period, interested potentially affected persons may do the following:

(i) submit written comments to the department concerning the proposed voluntary remediation work plan,

(ii) request a public hearing concerning the proposed voluntary remediation work plan.

(4) If the department receives a significant number of written requests from potentially affected persons, the department may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to modify, approve or reject the work plan. All written comments and public testimony shall be considered by the department.

(5) The department shall:

(a) Approve;

(b) Modify and approve; or

(c) Reject the proposed voluntary remediation work plan.

(6) If the department rejects a proposed voluntary remediation work plan under this section:

(a) The department shall notify the person and specify the reasons for rejecting the work plan; and

(b) The person may appeal the department's decision under chapter 52, title 67, Idaho Code.

(7) If the department approves, or modifies and approves, a proposed voluntary remediation work plan under this section, the department shall:

(a) Notify the person in writing, under the applicable provisions set forth in this chapter, that the voluntary remediation work plan has been approved, or modified and approved;

(b) Incorporate the approved voluntary remediation work plan into the voluntary remediation agreement.

39-7207. COVENANT NOT TO SUE. (1) If the department determines that a person has successfully completed a voluntary remediation work plan approved under this chapter, the department shall certify that the work plan has been successfully implemented or satisfied by issuing the person a certificate of completion. The issuance of a certificate of completion under this section is a final agency action for purposes of this chapter.

(2) A person who receives a certificate of completion under this section shall record a copy of the certificate of completion with the deed for the site on which the remediation took place.

(3) If the department determines that the person has not successfully implemented a voluntary remediation work plan approved under this chapter, the department shall notify the person of this determination under this chapter.

(4) If the department issues a certificate of completion to a person under this chapter, the department, upon request, shall also negotiate and provide the person a covenant not to sue for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan successfully implemented under this chapter. The covenant not to sue shall extend to any current or future owner or operator of the site or portion thereof who did not cause, aggravate, or contribute to the release or threatened release.

(5) A covenant not to sue issued under this section shall not apply to claims for a condition or the extent of a condition that:

(a) Was present on the site involved in an approved and implemented voluntary remediation work plan; and

(b) Was not known to the department at the time the department issued the certificate of completion under this chapter.

(6) Except as provided under federal law or agreed to by a federal governmental entity, a covenant not to sue issued under this section shall not release a person from liability to the federal government for claims based on federal law.

(7) During the implementation of an approved voluntary remediation work plan, the department shall not bring an action, including an administrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the voluntary remediation work plan, against a person who entered into a voluntary remediation agreement and who is implementing the voluntary remediation work plan in accordance with such agreement implementing the voluntary remediation work plan.

39-7208. RECISION. (1) This chapter does not prohibit or limit the department's recision of the voluntary remediation agreement or the covenant not to sue at any time if:

(a) The person implementing the work plan fails substantially to comply with the terms and conditions of:

(i) a voluntary remediation agreement, or

(ii) covenant not to sue;

(b) A hazardous substance or petroleum release becomes an imminent and substantial threat to human health or the environment.

(2) The department shall also notify the county in which the said site exists of recision of the covenant not to sue for the purposes of determining ad valorem exemptions provided under section 63-105II, Idaho Code.

39-7209. LENDER LIABILITY. Pursuant to rules adopted by the board, a person who maintains indicia of ownership primarily to pro-

tect a security interest in a site, and who does not participate in the management of the site, shall not be considered an owner or operator of that site, nor liable under any pollution control or other environmental protection law, rule or regulation, or otherwise responsible for any environmental contamination or response activity costs consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended. This section shall apply to all indicia of ownership existing at the time of passage of this chapter and those arising thereafter.

39-7210. RULES. Within one (1) year after the effective date of this section, the board shall, through negotiated rulemaking, adopt rules to carry out the purposes of this provision consistent with federal and state law which shall provide for the following:

(1) The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal and state standards and are consistent with 42 U.S.C. 9621, taking into consideration scientific information regarding the following:

(a) protection of public health and the environment,

(b) the future industrial, commercial, residential, or other use of the site to be remediated and of surrounding properties,

(c) the availability of institutional or engineering controls that are protective of public health and the environment, including deed restrictions, and

(d) natural background levels for hazardous constituents;

(2) The establishment of administrative procedures that minimize delay and expense of the remediation, processing submissions and overseeing remediation;

(3) The issuance of certificates of completion once the voluntary remediation work plans is implemented;

(4) Consistent with applicable local, state and federal law, guidelines to assist in the issuance of any permits required to initiate and complete a voluntary remediation work plan;

(5) Collection and payment of fees to defray the actual reasonable costs of the voluntary remediation program.

(6) Lender liability consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended.

SECTION 2. That Chapter 1, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-105II, Idaho Code, and to read as follows:

63-105II. PARTIAL EXEMPTION FOR REMEDIATED LAND. (1) During the tax year 1997 and each year thereafter, a site as defined in section 39-7203, Idaho Code, and qualifying under chapter 72, title 39, Idaho Code, shall be eligible for an ad valorem tax exemption not to exceed seven (7) years.

(2) "Remediated value" shall mean market value for assessment purposes of the land on January 1, less the market value for assessment purposes of the land on the January 1 prior to the year in which

the remediation was completed.

(3) The exemption shall amount to fifty percent (50%) of the remediated land value. The exempted value assessed under this formula shall remain constant throughout the period of the exemption.

(4) The exemption allowed by this section may be granted only if:

(a) The covenant not to sue as provided in section 39-7207, Idaho Code, remains in full force and effect for the entire period of exemption;

(b) The site remains in the possession of the owner for the entire exemption period.

(5) The exemption allowed by this section may be rescinded if:

(a) The covenant not to sue as provided in section 39-7207, Idaho Code, is rescinded by the department;

(b) The site is transferred to a new owner.

(6) The owner need only make application for the exemption described in this section once over the course of the seven (7) year period.

(7) No owner of a site shall be granted the exemption provided in this section if said site has been:

(a) Previously granted the exemption provided in this section regardless of whether the entire seven (7) years of the exemption have been used;

(b) Denied by the department as a qualifying site pursuant to chapter 72, title 39, Idaho Code.

(8) The legislature declares this exemption to be necessary and just.

SECTION 3. This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in Section 39-7210, Idaho Code, contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997.

Approved March 14, 1996.

CHAPTER 253
(S.B. No. 1296)

AN ACT

RELATING TO THE IDAHO HOUSING AGENCY; AMENDING SECTIONS 67-6202 AND 67-6203, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-6204, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6205, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-6206, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY, TO CLARIFY AGENCY POWERS TO COOPERATE WITH OTHER PUBLIC AND PRIVATE ENTITIES, TO MAINTAIN A GENERAL OBLIGATION RATING AND OTHER CREDIT RATINGS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 67-6207 AND 67-6207A, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING

AGENCY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6207B, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY, TO CLARIFY THAT LOANS SECURED BY HOUSING PROJECTS NEED NOT BE A FIRST LIEN THEREON AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 67-6207C AND 67-6207D, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6208, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO PROVIDE FOR PAYMENT OF TAX ON THE ASSOCIATION'S OFFICE PROPERTY; AMENDING SECTIONS 67-6209 AND 67-6210, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-6211, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO ELIMINATE THE CONTINUING APPROPRIATION OF SALES TAX FOR FUTURE AGENCY BONDS; AMENDING SECTIONS 67-6212, 67-6213, 67-6214 AND 67-6215, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-6215A, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6215B, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-6216, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 67-6218, 67-6219, 67-6220, 67-6221 AND 67-6222, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-6223, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO CLARIFY AGENCY AUTHORITY TO UTILIZE BLOCK GRANT FUNDS; AMENDING SECTIONS 67-6223A, 67-6224 AND 67-6224A, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING CHAPTER 62, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6226, IDAHO CODE, TO REQUIRE THE AGENCY TO ESTABLISH AND MAINTAIN A PUBLIC DISCLOSURE POLICY APPROVED BY THE GOVERNOR; AMENDING SECTION 63-3638, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-8102, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-8103, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 67-8104 AND 67-8105, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AMENDING SECTION 67-8106, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 67-8107, 67-8108 AND 67-8109, IDAHO CODE, TO CHANGE THE NAME OF THE IDAHO HOUSING AGENCY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-6202, Idaho Code, be, and the same is hereby amended to read as follows:

67-6202. IDAHO HOUSING ~~AGENCY~~ <u>AND FINANCE ASSOCIATION</u> CREATED. There is hereby created an independent public body corporate and politic to be known as the Idaho housing ~~agency~~ <u>and finance association.</u>

SECTION 2. That Section 67-6203, Idaho Code, be, and the same is hereby amended to read as follows:

67-6203. COMMISSIONERS -- CHAIRMAN -- APPOINTMENTS. The governor

shall appoint seven (7) persons to be commissioners of the Idaho housing ~~agency~~ and finance association. Preference shall be given to persons representing persons of low income and to persons with experience in the fields of mortgage lending, finance, banking, real estate, or home building. The governor shall appoint a chairman from among the seven (7) commissioners. The commissioners shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term, and provided that the terms of the first seven (7) commissioners appointed shall end on July 1, 1976, and that the terms of three (3) commissioners next appointed shall end on July 1, 1978, and that the terms of the remaining four (4) commissioners so next appointed shall end on July 1, 1980. A commissioner shall hold office until his successor has been appointed and qualifies. A certificate of the appointment or reappointment of any commissioner shall be filed in the office of the secretary of state and in the office of the ~~agency~~ association, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The governor, the state treasurer, the state controller and the administrator of the division of financial management shall serve as advisors to the commissioners of the ~~agency~~ association.

In addition, two (2) members of the Idaho senate, one (1) from the majority party and one (1) from the minority party, and two (2) members of the Idaho house of representatives, one (1) from the majority party and one (1) from the minority party, shall be appointed by the legislative council to serve as advisors to the commissioners of the ~~agency~~ association. Such appointments shall be for a term of two (2) years beginning on January 1 of each odd-numbered year, and no appointee shall serve more than two (2) terms. Actual and necessary expenses and per diem shall be allowed as provided for members of the legislative council, and shall be paid from legislative funds. The legislative council shall appoint advisory members as provided herein for terms beginning on July 1, 1980, and expiring January 1, 1981, which terms shall not be included in the prohibition against more than two (2) terms.

SECTION 3. That Section 67-6204, Idaho Code, be, and the same is hereby amended to read as follows:

67-6204. VICE-CHAIRMAN, EXECUTIVE DIRECTOR AND OTHER PERSONNEL -- APPOINTMENTS -- QUORUM. As soon as possible after their appointment, the commissioners shall organize for the transaction of business by choosing a vice-chairman and by adopting ~~by-laws~~ bylaws and rules ~~and regulations~~ suitable to the purpose of organizing the ~~agency~~ association and conducting the business thereof. The powers of the ~~agency~~ association shall be vested in the commissioners thereof. A majority of the commissioners of the ~~agency~~ association then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the ~~agency~~ association, and the affirmative vote of a majority of the commissioners present at any meeting, at which there is a quorum present, shall be necessary for any action taken by the ~~agency~~ association. The commissioners may hold any of their meetings by telephone or video facilities. No vacancy in the membership of the ~~agency~~ association shall impair the right of a

quorum to exercise all the rights and perform all the duties of the ~~agency~~ association. The commissioners shall appoint an executive director, who shall serve at the pleasure of the ~~agency~~ association, and such other officers and employees as they may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee.

SECTION 4. That Section 67-6205, Idaho Code, be, and the same is hereby amended to read as follows:

67-6205. DEFINITIONS. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "~~Agency~~ Association" or "housing ~~agency~~ association" shall mean the Idaho housing ~~agency~~ and finance association created by section 67-6202, Idaho Code.

(b) "Housing project" shall mean any work or undertaking:

(1) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or

(2) to construct, sell, lease, finance, improve, operate or otherwise provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property which are necessary, convenient or desirable appurtenances, such as, but not limited to, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, and welfare or other purposes; or

(3) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, for either single or multi-family housing, the acquisition of property, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration and repair of the buildings and improvements and all other work in connection therewith.

(c) "Governing body" shall mean the city council, board of commissioners, board of trustees or other body having charge of the locality in which the ~~agency~~ association desires to undertake a housing project.

(d) "Federal government" shall include the United States of America, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) "City" shall mean any city in the state of Idaho, including each city having a special charter.

(f) "County" or "counties" shall include all counties in the state of Idaho as designated in chapter 1, title 31, Idaho Code.

(g) "Clerk" shall mean the clerk of the city or county as the case may be or the officer charged with the duties customarily imposed on such clerk.

(h) "Area of operation" shall mean the state of Idaho.

(i) "Slum" shall mean any area where dwellings predominate which,

by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(j) "Person of low-income" means persons deemed by the ~~agency~~ association, including those defined as "elderly" in the United States Housing Act of 1937 [42 U.S.C., sec. 1437--1437dd], as amended, to require assistance available under this act on account of insufficient personal or family income, to pay the rents or carrying charges required by the unaided operation of private enterprise in providing an adequate supply of decent, safe and sanitary housing and in making such determination the ~~agency~~ association shall take into consideration, without limitation, such factors as:

(1) the amount of the total income of such persons available for housing needs,

(2) the size of the family,

(3) the cost and condition of housing facilities available,

(4) standards established for various federal programs determining eligibility based on income of such persons, and

(5) the ability of such persons to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing.

(k) "Bonds," "notes" or "bond anticipation notes," and "obligations" shall mean any bonds, notes, interim certificates, debentures or other evidences of financial indebtedness issued by the ~~agency~~ association pursuant to this chapter.

(l) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(m) "Housing authority" or "authority" means a housing authority established pursuant to the "housing authorities and cooperation law" constituting chapter 19, title 50, Idaho Code.

(n) "Rent" shall mean the periodic payment made by a person of low-income in a housing project whether such money is being used as rent, or for the development of equity by such person.

(o) "Interim financing" means a short-term construction loan for planning and/or development of residential housing for persons of low-income and other persons which loan shall run until financing can be assumed through other federal, state or private financing.

(p) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, and corporations, cooperatives, and condominiums, approved by the ~~agency~~ association as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing project, subject to the regulatory powers of the ~~agency~~ association and other terms and conditions set forth in this chapter. A "housing sponsor" shall be either a "limited profit" sponsor or a "nonprofit" sponsor.

(q) "Mortgage lender" means any bank or trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, building and loan asso-

ciation, life insurance company, and any other financial institution authorized to transact business in the state.

(r) "Mortgage loan" means an interest-bearing obligation secured by a deed of trust, a mortgage, bond, note, or other instrument which is a lien on property in the state except in the case of loans insured by the federal housing administration or the ~~agency~~ association and which are made for the rehabilitation or improvement of existing dwellings; in such case the loans need not be secured by an instrument constituting a lien on property in the state.

(s) "Mixed ~~I~~income ~~H~~housing ~~P~~project" means a housing project which contains dwellings occupied or to be occupied by persons of low-income constituting at least twenty percent (20%) of such occupancy.

SECTION 5. That Section 67-6206, Idaho Code, be, and the same is hereby amended to read as follows:

67-6206. POWERS OF ~~AGENCY~~ ASSOCIATION. The housing ~~agency~~ and finance association is an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers which are hereby declared to be public purposes necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the ~~agency~~ association; and to make and from time to time amend and repeal bylaws, rules ~~and regulations~~, not inconsistent with this act, to carry into effect the powers and purposes of the ~~agency~~ association.

(b) To conduct its operations within any or all of the counties of the state.

(c) To cooperate with housing authorities throughout Idaho in the development of housing projects.

(d) To assign priorities for action and revise or modify said priorities from time to time.

(e) To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the ~~agency~~ association under this act, including contracts with any housing sponsor, mortgage lender, person, firm, corporation, governmental agency, or other entity; and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project and to designate mortgage lenders to act for and in behalf of the ~~agency~~ association, with respect to originating or servicing and processing mortgage loans of the ~~agency~~ association, and to pay the reasonable value of service rendered to the ~~agency~~ association by such mortgage lenders pursuant to contracts with mortgage lenders.

(f) To lease, sell, construct, finance, reconstruct, restore, rehabilitate, operate or rent any housing projects or any dwellings,

houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this act, to establish and revise the rents or charges therefor.

(g) To own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein.

(h) To acquire any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein.

(i) To insure or provide for the insurance of any real or personal property or operation of the ~~agency~~ association against any risks or hazards, and to procure or agree to the procurement of insurance or guarantees from the federal government or other source for the payment or purchase of any bonds or parts thereof issued by the ~~agency~~ association, including the power to pay for any such insurance or guarantees.

(j) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which a bank, as defined in the "bank act," title 26, Idaho Code, may legally invest funds including without limitation, to agree to purchase the obligations of any federal, state or local government upon such conditions as the ~~agency~~ association may determine to be prudent and in its best interest.

(k) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low-income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low-income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(l) To participate in cooperative ventures with any agencies, organizations and individuals ~~eligible~~ in order to undertake the ~~construction~~ provision of housing for persons of low-income.

(m) To provide research and technical assistance to eligible agencies, organizations and individuals eligible to develop low cost housing and to research new low cost housing development and construction methods.

(n) To make and undertake commitments to make or participate in the making of mortgage loans to persons of low-income and to housing sponsors, including without limitation federally insured mortgage loans, and to make temporary loans and advances in anticipation of permanent loans to housing sponsors; said mortgage loans to housing sponsors shall be made to finance the construction, improvement, or rehabilitation of housing projects for persons of low-income, and/or mixed income housing projects upon the terms and conditions set forth in this act; provided, however, that such loans shall be made only upon the determination by the ~~agency~~ association that mortgage loans

are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions.

(o) To purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders which loans have been made for the construction, improvement, or rehabilitation of housing projects for persons of low-income and/or mixed income housing projects or loans which have been made to persons of low-income for residential housing, upon terms set forth in this act; provided, however, that any such purchase shall be made only upon the determination by the ~~agency~~ association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions. Also, to purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders whether or not said loans were made to persons of low-income, upon terms set forth in this act; provided, however, that the proceeds from such purchase or the equivalent thereof shall be reinvested in obligations of the ~~agency~~ association, in mortgage loans to persons of low-income or in mortgage loans for housing projects for persons of low-income and/or mixed income housing projects, and provided that any such purchase shall be made only upon the determination by the ~~agency~~ association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions.

(p) To provide interim financing for housing projects including mixed income housing projects approved by the ~~agency~~ association, provided that the ~~agency~~ association has determined that such financing is not otherwise available from mortgage lenders upon reasonably equivalent terms and conditions.

(q) To prescribe rules~~,~~ ~~regulations~~ and policies in connection with the performance of its functions and duties.

(r) To do all other things deemed necessary and desirable to accomplish the objectives of this act.

(s) To borrow money and issue bonds and notes or other obligations, to invest the proceeds thereof in any lawful manner and to fund or refund the same, and to provide for the rights of the holders of its obligations as provided in this act and in connection therewith, to waive, by resolution or other document of the ~~agency~~ association, the exemption from federal income taxation of interest on any of the ~~agency's~~ association's obligations under existing or future federal law and to establish, maintain and preserve the association's general obligation rating and any rating on its bonds, notes or other obligations.

(t) To receive and accept aid or contributions from any source.

(u) To employ architects, engineers, attorneys, accountants, housing construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation.

(v) To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing projects upon such terms and conditions as the ~~agency~~ association may prescribe.

(w) To fix and revise from time to time and charge and collect fees and charges in connection with loans made or other services pro-

vided by the ~~agency~~ association pursuant to this act, and to make and publish rules ~~and regulations~~ respecting the making and purchase of mortgage loans.

(x) To organize a nonprofit corporation to assist the ~~agency~~ association in providing for housing projects.

(y) To enter upon and inspect any housing project, including housing projects undertaken by housing sponsors, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management and maintenance, and to examine all books and records with respect to capitalization, income and other matters relating thereto.

(z) To order such alterations, changes or repairs as may be necessary to protect the security of its investment in a housing project or the health, safety, and welfare of the occupants thereof.

SECTION 6. That Section 67-6207, Idaho Code, be, and the same is hereby amended to read as follows:

67-6207. MANAGEMENT AND OPERATION OF HOUSING PROJECTS -- PRIORITY OF APPLICATIONS -- LIMITED PROFIT SPONSORS. (a) It is hereby declared to be the policy of the state that the Idaho housing ~~agency~~ and finance association shall manage and operate housing projects or cause its housing projects to be managed and operated in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with providing adequate, safe and sanitary accommodations, and shall not construct or operate any such project for profit or as a source of revenue. The ~~agency~~ association shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income and receipts of the ~~agency~~ association from whatever sources derived, will be sufficient:

(1) To pay, as the same become due, the principal and interest on the bonds of the ~~agency~~ association; and

(2) To pay its cost of operation.

(b) In considering any application for a mortgage loan, the ~~agency~~ association shall give first priority to applications for housing projects which will be well planned and well designed; and shall also give consideration to:

(1) The comparative need for housing for persons of low-income in the area to be served by the proposed project;

(2) The ability of the applicant to carry out, operate, manage and maintain the proposed housing project; and

(3) The existence of zoning or other regulations to protect adequately the proposed housing project against detrimental future uses which could cause undue depreciation in the value of the project.

(c) The ~~agency~~ association shall have authority to set from time to time the interest rates at which it shall make loans and commitments therefor. Such interest rates shall be established by the ~~agency~~ association in its sole discretion at the lowest level consistent with the ~~agency's~~ association's cost of operation and its responsibilities to the holders of its bonds, notes or other obligations.

(d) A limited profit housing sponsor shall not make distributions in any one (1) year with respect to a housing project financed by the ~~agency~~ association in excess of such percentage of a housing sponsor's equity in such housing project as shall be prescribed by rules ~~and regulations~~ of the ~~agency~~ association, nor shall any of the principals or stockholders of such a housing sponsor at any time earn, accept, or receive a return greater than such percentage of its investment in such housing project as shall be prescribed by rules ~~and--regulations~~ of the ~~agency~~ association. A housing sponsor's equity in a housing project shall consist of its investment in the housing project as determined by the board of commissioners of the ~~agency~~ association.

SECTION 7. That Section 67-6207A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6207A. ADDITIONAL POWERS. In addition to all other powers, the ~~agency~~ association also shall have the following specific powers:

(a) To make and publish rules ~~and-regulations~~ respecting making mortgage loans pursuant to this act, the regulations of borrowers, housing sponsors, mortgage lenders, and the construction of ancillary commercial facilities.

(b) To make rules ~~and-regulations~~ respecting the qualifications for admission to housing projects pursuant to this act.

(c) To invest in, purchase, sell, or to make commitments to purchase, and take assignments from mortgage lenders, of notes and mortgages or other obligations evidencing loans for housing projects, at public or private sale, with or without public bidding.

(d) To make loans to mortgage lenders under terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans for housing projects.

(e) To enter into mortgage insurance agreements with mortgage lenders in connection with the lending of money by such institutions for housing projects.

(f) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders and acquire or take possession of such collateral and sell the same at public or private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interest of the ~~agency~~ association therein.

SECTION 8. That Section 67-6207B, Idaho Code, be, and the same is hereby amended to read as follows:

67-6207B. MORTGAGE LOANS -- RULES ~~AND-REGULATIONS~~ -- PURCHASE. The ~~agency~~ association shall promulgate rules ~~and-regulations~~ governing the various programs which it has authorized to be undertaken. In promulgating such ~~regulations~~ rules it shall consider the following:

(a) The ~~agency~~ association shall from time to time adopt, modify or repeal rules ~~and-regulations~~ governing the making of loans to housing sponsors and the purchase and sale of mortgage loans from mortgage lenders and the application of the proceeds thereof, including rules ~~and-regulations~~ as to any or all of the following:

(1) Restrictions as to the interest rates on mortgage loans or the return realized therefrom by mortgage lenders;

(2) Requirements as to disbursements and commitments by mortgage lenders with respect to mortgage loans;

(3) Rules ~~and regulations~~ relative to the purchase and sale of mortgage loans shall be designed to effectuate the general purposes of this act and the following specific objectives:

(i) the expansion of the supply of funds in this state available for mortgage loans for persons of low-income;

(ii) the provision of the additional housing for persons of low-income needed to remedy the shortage of adequate housing in this state and eliminate the existence of a large number of substandard dwellings;

(iii) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions; and

(iv) standards as to the number of dwelling units and housing projects and other characteristics of dwelling units for persons of low-income and housing projects to be financed by mortgage loans.

(b) The ratio of loan to total housing project cost and the amortization period of loans made under this act which are insured by the federal housing administration (FHA) shall be governed by the FHA mortgage insurance commitment for each housing project; but in no event shall such amortization period exceed fifty (50) years. In the case of a mortgage loan not insured by FHA the amount of the loan to:

(1) limited profit housing sponsors shall not exceed ninety-five ~~per cent~~ percent (95%) of the total housing project cost as determined by the ~~agency~~ association, and

(2) nonprofit housing sponsors shall not exceed one hundred ~~per cent~~ percent (100%) of the total housing project cost as determined by the ~~agency~~ association.

The amortization period of such loan shall be determined in accordance with ~~regulations~~ rules formulated and published by the ~~agency~~ association, but in no event shall such amortization period exceed fifty (50) years.

(c) A mortgage loan made hereunder may be prepaid to maturity after such period of years and under such terms and conditions as shall be determined by the ~~agency~~ association.

(d) No mortgage loan purchased from a mortgage lender shall be eligible for purchase or commitment to purchase by the ~~agency~~ association hereunder unless at or before the time of transfer thereof to the ~~agency~~ association such mortgage lender certifies:

(1) That in its judgment the mortgage loan would in all respects be a prudent investment; and

(2) That, except for mortgage loans purchased under a preexisting commitment with the ~~agency~~ association for the origination and purchase of such loans, the proceeds of sale or its equivalent shall be reinvested in obligations of the ~~agency~~ association or in mortgage loans to provide housing for persons of low-income within this state, or, if required by the ~~agency~~ association, invested in short term obligations pending the purchase of such ~~agency~~ associ-

ation obligations or the making of such mortgage loans.

(e) The ~~agency~~ association shall purchase mortgage loans at a purchase price equal to the outstanding principal balance; provided, however, that discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return, as determined by the ~~agency~~ association, in its discretion, based upon the rate of interest payable by the ~~agency~~ association on its obligations issued to purchase such mortgages, its administrative expenses, and market conditions and any other relevant factors existing at the time of purchase.

(f) Each mortgage loan to a housing sponsor for a newly constructed rental housing project shall be evidenced by a mortgage or deed of trust, note or bond and by a mortgage or deed of trust which shall be a ~~first~~ lien on the housing project and on all of the real property constituting the site of or relating to such housing project and which shall contain such terms and provisions and be in a form approved by the ~~agency~~ association.

(g) Each mortgage loan shall be subject to an agreement between the ~~agency~~ association and the housing sponsor which will subject said sponsor and its principals or stockholders to limitations established by the ~~agency~~ association as to rentals and other charges, builders' and developers' profits and fees, and the disposition of its property and on all of the real property constituting the site of or relating to such housing project.

(h) The ~~agency~~ association shall require as a condition of each loan to a mortgage lender, and (except for mortgage loans to persons of low-income or for housing projects for persons of low-income and/or for mixed income housing projects which were made by a mortgage lender pursuant to a preexisting commitment with the ~~agency~~ association to purchase such mortgage loans) as a condition of the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender, that such mortgage lender shall following the receipt of the loan proceeds or sale proceeds have entered into written commitments with the ~~agency~~ association to make, and shall thereafter proceed as promptly as practicable to make and disburse from such loan proceeds, mortgage loans to persons of low-income or mortgage loans for housing projects or to purchase obligations of the ~~agency~~ association in an aggregate principal amount equal to the amount of such prior loan; and the ~~agency~~ association shall not purchase nor make commitment to purchase such mortgage loans or obligations from a mortgage lender from which it has previously purchased such mortgage loans nor make a loan to a mortgage lender to which it has previously made a loan unless said mortgage lender has either restored or made commitments to restore to its portfolio of mortgage loans in this state, mortgage loans to provide residential housing for persons of low-income from the date thereof or has added to or made commitments to add to its portfolio of ~~agency~~ association obligations in an aggregate principal amount equal to the proceeds of prior sale to said mortgage lender.

(i) To assure repayment loans from the ~~agency~~ association to mortgage lenders, the ~~agency~~ association shall require that loans made to mortgage lenders shall be secured as to payment of both principal and interest by a pledge of and lien upon collateral security, including without limitation direct obligations of, or obligations

(including, without limitation, mortgages) guaranteed or insured as to payment of principal and interest by, the federal government or this state.

SECTION 9. That Section 67-6207C, Idaho Code, be, and the same is hereby amended to read as follows:

67-6207C. HOUSING SPONSORSHIP. The ~~agency~~ association shall have the power to supervise housing sponsors, including limited profit housing sponsors, and their real and personal property in the following respects:

(a) The reorganization of any housing sponsor shall be subject to the supervision and control of the ~~agency~~ association, and no such reorganization shall be had without the consent of the ~~agency~~ association.

(b) In the event of violation by a housing sponsor of any provisions of a loan, the terms of any agreement between the ~~agency~~ association and the housing sponsor, the provisions of this act, or of any rules ~~or regulations~~ duly promulgated pursuant to this act, the ~~agency~~ association may remove any or all of the existing directors or officers of such housing sponsor and may appoint such person or persons whom the ~~agency~~ association in its sole discretion deems advisable as new directors or officers to serve in the places of those removed, notwithstanding the provisions of any other law; provided, however, that any such directors or officers so appointed by the ~~agency~~ association shall serve only for a period coexistent with the duration of such violation or until the ~~agency~~ association is assured in a manner satisfactory to it against violations of a similar nature. Officers or directors so appointed need not be stockholders or meet other qualifications which may be prescribed by the certificate or articles of incorporation, or ~~by-laws~~ bylaws, or by other instruments or laws governing such housing sponsor.

(c) The ~~agency~~ association shall require the housing sponsor receiving a loan or its contractor to post labor and materials, construction performance, surety bonds or make other assurances of completion in amounts related to the housing project cost as established by the ~~agency's regulations~~ association's rules, and to execute such other assurances and guarantees as the ~~agency~~ association may deem necessary.

(d) The ~~agency~~ association shall:

(1) prescribe uniform systems of accounts and records for housing sponsors,

(2) require such housing sponsors to make reports,

(3) make certifications as to expenditures made by such housing sponsors, and

(4) examine all books and records with reference to capital structure, income, expenditures and other payments of a housing sponsor.

(e) The ~~agency~~ association shall supervise the operation and maintenance of any housing project.

(f) The ~~agency~~ association shall fix and may alter from time to time a schedule of rents and charges for any housing project.

(g) The ~~agency~~ association shall determine standards for, and

shall control tenant selection by a housing sponsor.

(h) The ~~agency~~ association may require the housing project sponsor to demonstrate to the ~~agency~~ association that the housing project will be occupied to the maximum extent feasible by persons whose incomes fall in the lowest twenty-five ~~per-cent~~ percent (25%) of all persons who are eligible to occupy the housing project under the income guidelines established by the ~~agency~~ association for admission to such housing projects.

(i) The ~~agency~~ association shall prescribe ~~regulations~~ rules specifying the categories of cost which shall be allowable in the construction, reconstruction, remodeling, improvement or rehabilitation of a housing project. The ~~agency~~ association shall require any housing sponsor to certify the actual housing project costs upon completion of the housing project, subject to audit and determination by the ~~agency~~ association. Notwithstanding the provisions of this subsection, the ~~agency~~ association may accept, in lieu of any certification of housing project costs as provided herein, such other assurances of the said housing project costs, in any form or manner whatsoever, as will enable the ~~agency~~ association to determine with reasonable accuracy the amount of said housing project costs.

(j) The ~~agency~~ association shall regulate the retirement of any capital investment or the redemption of stock of a limited profit housing sponsor where any such retirement or redemption when added to any dividend or other distribution will exceed in any one (1) fiscal year such percentage as shall be prescribed by rules ~~and--regulations~~ of the ~~agency~~ association of such sponsor's investment or equity in any housing project.

(k) Notwithstanding any other provision of this chapter, the ~~agency~~ association is not empowered to finance any housing project undertaken by a housing sponsor unless, prior to the financing of any housing project hereunder, the ~~agency~~ association finds:

(1) That there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons of low-income can afford within the general housing market area to be served by the proposed housing project.

(2) That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe, and sanitary housing at rentals or prices which persons of low-income can afford or to provide sufficient mortgage financing for residential housing for occupancy by such persons.

SECTION 10. That Section 67-6207D, Idaho Code, be, and the same is hereby amended to read as follows:

67-6207D. PERIODIC EXAMINATION OF INCOME OF PERSONS RESIDING IN HOUSING PROJECTS. (a) The ~~agency~~ association shall, by rules ~~and-regulations~~, provide for the periodic examination of the income of any person or family residing in and renting a dwelling unit in any rental housing project, assisted by virtue of the powers granted the ~~agency~~ association under this act. In the event that the gross aggregate income of such persons or families residing in any such housing project increases and the ratio to the current rental or carrying charges of the dwelling unit becomes greater than the ratio prescribed for

admission by the ~~agency~~ association for admission to the project, the owner or managing agent of such housing project shall permit such persons to continue to occupy the unit.

(b) The ~~agency~~ association or the housing sponsor (with the approval of the ~~agency~~ association) of any such rental housing project, may terminate the tenancy or interest of any such person or family residing in such housing project whose gross aggregate income exceeds amounts prescribed by ~~regulation~~ rule of the ~~agency~~ association and which continues to exceed the same for a period of six (6) months or more; provided, that no tenancy or interest of any such person in any such housing project shall be terminated except upon reasonable notice and opportunity to obtain suitable alternate housing, in accordance with rules ~~and regulations~~ of the ~~agency~~ association; provided further, that any such person, with the approval of the ~~agency~~ association, shall be permitted to continue to occupy the unit, subject to payment of rent or carrying charges or a surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by the ~~agency~~ association.

(c) Any person residing in a housing project who has acquired equity in such housing project, including equity in a housing project which is a cooperative, and is required to be removed from the housing project because of excessive income as herein provided, shall be discharged from liability on any note, bond, or other evidence of indebtedness relating thereto and shall be reimbursed, in accordance with the rules of the ~~agency~~ association, for all sums paid by such person to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for such purpose.

SECTION 11. That Section 67-6208, Idaho Code, be, and the same is hereby amended to read as follows:

67-6208. TAX EXEMPT STATUS. As set forth in the declaration and statement of intent herein, the ~~agency~~ association will be performing an essential governmental function in the exercise of the powers conferred upon it by this act, and the notes and bonds of the ~~agency~~ association issued pursuant to this act, and the income therefrom, including any profit made on the sale thereof, and all its fees, charges, gifts, grants, revenues, receipts and other moneys received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state.

The property of the ~~agency~~ association is declared to be public property used for essential public purposes and such property and the income and operations of the ~~agency~~ association shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision or municipalities thereof; provided, however, that the association's office property shall be subject to property taxes and that in lieu of such taxes on its other property, the ~~agency~~ association shall negotiate an agreement with the city, the county, the state, as the case may be, to make payments, if any be required, to the city, county, or the state for improvements, services and facilities furnished by the said city, county or state for the

benefits of a housing project, or in lieu of such taxes, the ~~agency~~ association may agree to make payments to a school district or school districts, which district or districts include within its boundaries all or a portion of the real property of the ~~agency~~ association, for school services and facilities furnished by said school district or districts, for the benefit of the residents of a housing project.

SECTION 12. That Section 67-6209, Idaho Code, be, and the same is hereby amended to read as follows:

67-6209. HOUSING PROJECTS SUBJECTED TO ORDINANCES AND REGULATIONS. All housing projects of the ~~agency~~ association shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality of any housing project and the ~~agency~~ association shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing ~~agency~~ association functions.

SECTION 13. That Section 67-6210, Idaho Code, be, and the same is hereby amended to read as follows:

67-6210. POWER TO ISSUE BONDS. The ~~agency~~ association shall have power and is hereby authorized to issue, from time to time, its negotiable notes and bonds in conformity with the applicable provisions of the uniform commercial code in such principal amount as the ~~agency~~ association shall determine to be necessary for sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the ~~agency~~ association, establishment of reserves to secure such notes and bonds, and all other expenditures of the ~~agency~~ association incidental and necessary or convenient to carry out its corporate purposes and powers; provided, however, that the ~~agency~~ association shall provide in its resolution authorizing such bonds that all revenues received by the ~~agency~~ association as a result of the issuance of such bonds shall be pledged first to the payment of principal and interest on such bonds.

(a) The ~~agency~~ association shall have the power, from time to time, to issue:

(1) notes to renew notes and

(2) bonds to pay notes, including the interest thereon, and

(3) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

The refunding bonds may be:

(1) exchanged for the bonds to be refunded or

(2) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(b) Except as may otherwise be expressly provided by the ~~agency~~ association, every issue of its notes and bonds shall be payable exclusively from the revenues or income of the ~~agency~~ association, including grants and contributions from the United States of America, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(c) The notes and bonds shall be authorized by resolution or resolutions of the ~~agency~~ association, shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the ~~agency~~ association may be sold by the ~~agency~~ association, at public or private sale, at such price or prices as the ~~agency~~ association shall determine.

(d) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(2) pledging all or any part of the assets of the ~~agency~~ association including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(3) the use and disposition of the gross income from mortgages owned by the ~~agency~~ association and payment of principal of mortgages owned by the ~~agency~~ association;

(4) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;

(8) limitations on the amount of moneys to be expended by the ~~agency~~ association for operating expenses of the ~~agency~~ association;

(9) vesting in a trustee or trustees such property, rights, powers and duties in trust as the ~~agency~~ association may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act; and limiting or abrogating the right of the bondholders to appoint a trustee under this act, or limiting the rights, powers and duties of such trustee;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the ~~agency~~ association to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of

such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and the other provisions of this act;

(11) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(e) Any pledge made by the ~~agency~~ association shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the ~~agency~~ association shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the ~~agency~~ association, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(f) Neither the commissioners of the ~~agency~~ association nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(g) The ~~agency~~ association, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the ~~agency~~ association, which shall thereupon be canceled, at a price not exceeding:

(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or

(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(h) In the discretion of the ~~agency~~ association, the bonds may be secured by a trust indenture by and between the ~~agency~~ association and a corporate trustee, which may be any trust company or bank having the power of a trust company in the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the ~~agency~~ association in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The ~~agency~~ association may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the ~~agency~~ association. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(i) Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the uniform

commercial code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes and bonds for registration.

(j) In case any of the commissioners or officers of the ~~agency~~ association whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

SECTION 14. That Section 67-6211, Idaho Code, be, and the same is hereby amended to read as follows:

67-6211. ADDITIONAL DEFINITIONS AND CAPITAL RESERVE FUND PROCEDURES. As used in this section, the following words and phrases shall have the following meanings unless the context shall indicate another or different meaning or intent:

(a) "Maximum capital reserve fund requirement" shall mean the amount set forth in the ~~agency's~~ association's resolution or indenture authorizing the bonds or other obligations secured by a capital reserve fund, or, if no amount is stated in such resolution or indenture, then, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any future fiscal year of the ~~agency~~ association, of annual debt service of the ~~agency~~ association, such annual debt service for any fiscal year being the amount of money equal to the aggregate of:

(1) All interest payable during such fiscal year on all bonds secured by such capital reserve fund of the ~~agency~~ association outstanding on said date of computation, plus

(2) The principal amount of all bonds of the ~~agency~~ association secured by such capital reserve fund, outstanding on said date of computation which matures during such fiscal year, plus

(3) The amount of all annual sinking fund payments payable during such fiscal year with respect to any bonds of the ~~agency~~ association secured by such capital reserve fund, outstanding on said date of computation.

(b) "Annual sinking fund payment" shall mean the amount of money specified in the resolution authorizing term bonds as payable into a sinking fund during a particular fiscal year for the retirement of term bonds which mature after such fiscal year, but shall not include any amount payable by reason only of the maturity of a bond.

(c) "Available operating revenues" shall mean all amounts received on account of rentals and fees and other charges imposed by the ~~agency~~ association, if any, and income or interest earned or added to funds of the ~~agency~~ association due to the investment thereof and not required under the terms or provisions of any covenant or agreement with holders of any bonds or notes of the ~~agency~~ association to be applied to any purposes other than payment of expenses of the ~~agency~~ association.

(d) "Amortized value," when used with respect to securities purchased at a premium above or a discount below par, shall mean the value as of any given date obtained by dividing the total premiums or

discount at which such securities were purchased by the number of interest payments remaining to maturity on such securities after such purchase, and by multiplying the amount so calculated by the number of interest payment dates having passed since the date of such purchase; and

(1) In the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and

(2) In the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

(e) The ~~agency~~ association shall create and establish one or more special funds (herein referred to as "capital reserve funds"), and shall credit each such capital reserve fund:

(1) Any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of the ~~agency~~ association authorizing the issuance thereof,

(2) Any funds directed to be transferred by the ~~agency~~ association to such fund, and

(3) Any other moneys which may be made available to the ~~agency~~ association for the purpose of such fund from any other source or sources.

(f) All moneys held in or credited to each such capital reserve fund, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments hereinafter mentioned with respect to such bonds, the purchase or redemption of bonds, the payment of interest on bonds or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however:

(1) That moneys in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum capital reserve fund requirement, except for the purposes of making payment, when due, with respect to such bonds, of principal or redemption price of, interest and the sinking fund payments, as the same become due, and for the payment of which other moneys of the ~~agency~~ association are not available.

(2) Any income or interest earned by, or increment to, any capital reserve fund due to the investment thereof may be transferred by the ~~agency~~ association to other funds or accounts of the ~~agency~~ association to the extent it does not reduce the amount of such capital reserve fund below the maximum capital reserve fund requirement.

(g) Within sixty (60) days after the close of the ~~agency's~~ association's fiscal year, the chairman of the ~~agency~~ association shall certify to the state tax commission the amount, if any, required to maintain the capital reserve funds established pursuant to this section at the maximum capital reserve fund requirement, but only for any capital reserve fund of the ~~agency~~ association which is required by a resolution of the ~~agency~~ association to be maintained by a continuing appropriation from the sales tax account. The chairman of the ~~agency~~ association shall not be entitled to so certify to the state tax commission for any capital reserve fund of the association for bonds issued by the association after January 1, 1996, or at any time that the total principal amount of the ~~agency's~~ association's outstanding bonds exceeds the sum of one thousand four hundred million

dollars ($1,400,000,000).

(h) The ~~agency~~ association shall not issue bonds at any time if upon issuance there will be created a capital reserve fund and the amount in the capital reserve fund securing such bonds will be less than the maximum capital reserve fund requirement, unless the ~~agency~~ association, at the time of issuance of such bonds, shall deposit in such fund, from the proceeds of the bonds so to be issued, or sources other than the state sales tax fund, an amount which, together with the amount then in such fund, will not be less than the maximum capital reserve fund requirement.

(i) Moneys in a capital reserve fund not required for immediate use or disbursement may be invested in obligations of the state or the United States of America or obligations the principal of and interest on which are guaranteed by the state or the United States of America or obligations of agencies of the United States of America or any obligations which may from time to time be legally purchased by banks under title 26, Idaho Code, as investment of funds belonging to them or in their control. In computing the amount of a capital reserve fund for the purposes of this section, securities in which all or a portion of such fund are invested shall be valued at par if purchased at par or, if purchased at other than par, at amortized value.

(j) The ~~agency~~ association shall create and establish such other fund or funds as may be necessary or desirable for its corporate purposes.

(k) In the event of the dissolution of the ~~agency~~ association, any funds or assets of the ~~agency~~ association remaining after paying its bonds, notes or other obligations shall revert to the state.

(l) The total principal amount of the ~~agency's~~ association's outstanding bonds secured by a capital reserve fund entitled to appropriation from the state sales tax account pursuant to section 67-6211(g), Idaho Code, and section 63-3638(d)(1), Idaho Code, shall not exceed the sum of ~~four-hundred~~ eighty-nine million dollars ($~~400~~89,000,000).

SECTION 15. That Section 67-6212, Idaho Code, be, and the same is hereby amended to read as follows:

67-6212. REFUNDING OF OBLIGATIONS. The ~~agency~~ association may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any corporate purpose of the ~~agency~~ association. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the ~~agency~~ association in respect of the same shall be governed by the provisions of this act which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this act and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations,

with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

SECTION 16. That Section 67-6213, Idaho Code, be, and the same is hereby amended to read as follows:

67-6213. DEPOSIT OF FUNDS. All moneys of the ~~agency~~ <u>association</u> except as otherwise authorized or provided in this act shall be deposited as soon as practicable in a separate account or accounts in banks organized under the laws of the state or national banking associations. All deposits of such moneys shall, if required by the ~~agency~~ <u>association,</u> be secured by obligations of the United States, of the state or of any municipalities or political subdivisions or agencies of the state at a market value equal at all times to the amount of the deposit, and all banks are authorized to give such security for such deposits.

Notwithstanding the provisions of this section, the ~~agency~~ <u>association</u> shall have power to contract with the holders of any of its <u>notes</u> or bonds as to the custody, collection, securing, investment and payment of any moneys of the ~~agency~~ <u>association</u> and of any moneys held in trust or otherwise for the payment of notes or bonds, and to carry out such contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such moneys may be secured in the same manner as moneys of the ~~agency~~ <u>association,</u> and all banks are authorized to give such security for such deposits.

SECTION 17. That Section 67-6214, Idaho Code, be, and the same is hereby amended to read as follows:

67-6214. RIGHTS OF BONDHOLDER. A bondholder of the ~~agency~~ <u>association</u> shall have the right, in addition to all other rights, which may be conferred on such bondholder, subject only to any contractual restrictions binding upon such bondholder, by mandamus, suit, action or proceedings at law or in equity to compel said ~~agency~~ <u>association</u> and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said ~~agency~~ <u>association,</u> with or for the benefit of such bondholder, and to require the carrying out of any or all such covenants and agreements of said ~~agency~~ <u>association</u> and the fulfillment of all duties imposed upon said ~~agency~~ <u>association</u> by this act.

SECTION 18. That Section 67-6215, Idaho Code, be, and the same is hereby amended to read as follows:

67-6215. RIGHTS NOT TO BE IMPAIRED BY STATE. The state does hereby pledge to and agree with the holders of any notes or bonds issued under this act that the state will not limit or alter the rights hereby vested in the ~~agency~~ association to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The ~~agency~~ association is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

SECTION 19. That Section 67-6215A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6215A. REMEDIES OF BONDHOLDERS. In the event that the ~~agency~~ association shall default in the payment of principal of or interest on any issue of notes and bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or in the event that the ~~agency~~ association shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five ~~per cent~~ percent (25%) in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Ada, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

(a) Such trustee may, and upon written request of the holders of twenty-five ~~per--cent~~ percent (25%) in principal amount of such notes or bonds then outstanding shall, in his or its own name:

(1) by suit, action or proceeding in accordance with the Idaho Code, enforce all rights of the noteholders or bondholders, including the right to require the ~~agency~~ association to carry out any agreements with such holders and to perform its duties under this chapter;

(2) bring suit upon such notes or bonds;

(3) by action or suit, require the ~~agency~~ association to account as if it were the trustee of an express trust for the holders of such notes or bonds;

(4) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;

(5) declare all such notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five ~~per-cent~~ percent (25%) of the principal amount of such notes or bonds then outstanding, annul such declaration and its consequences.

(b) The district court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county of Ada.

(c) Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty (30) days' notice in writing to the ~~agency~~ <u>association.</u>

SECTION 20. That Section 67-6215B, Idaho Code, be, and the same is hereby amended to read as follows:

67-6215B. LEGAL INVESTMENTS. The notes and bonds of the ~~agency~~ <u>association</u> shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

SECTION 21. That Section 67-6216, Idaho Code, be, and the same is hereby amended to read as follows:

67-6216. AUTHORITY TO MAKE LOANS. The ~~agency~~ <u>association</u> is authorized to make loans to housing sponsors for the necessary expenses, prior to construction, in planning, and obtaining financing for, the rehabilitation or construction of housing projects. Such loans shall be made without interest and shall not exceed eighty ~~per cent~~ <u>percent</u> (80%) of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including, but not limited to preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. The ~~agency~~ <u>association</u> shall require repayment of loans made under this section, under such terms and conditions as it may require, upon completion of the project or sooner, and may cancel any part or all of a loan if it determines that it cannot be recovered from the proceeds of any permanent loan made to finance the rehabilitation or construction of the housing project.

SECTION 22. That Section 67-6218, Idaho Code, be, and the same is

hereby amended to read as follows:

67-6218. FEASIBILITY. The ~~agency~~ association shall encourage economically sound innovative approaches to housing development projects and, without limiting the foregoing, shall encourage consolidated financing through such techniques as blanket mortgages.

SECTION 23. That Section 67-6219, Idaho Code, be, and the same is hereby amended to read as follows:

67-6219. TECHNICAL ASSISTANCE. The ~~agency~~ association may provide technical assistance to eligible housing sponsors of housing projects, including assistance in arranging financing.

SECTION 24. That Section 67-6220, Idaho Code, be, and the same is hereby amended to read as follows:

67-6220. AUDITS -- ANNUAL REPORTS. (1) The legislative council is authorized to conduct a post audit of the books and records of the Idaho housing ~~agency~~ and finance association on the same basis as audits are conducted of state agencies.

(2) The ~~agency~~ association shall file its financial report for the year then ended with the secretary of state within one hundred twenty (120) days after the close of its fiscal year describing its activities during the preceding year. In such report it may make recommendations regarding additional legislation or other action it deems necessary to permit it to carry out the purposes of this act.

SECTION 25. That Section 67-6221, Idaho Code, be, and the same is hereby amended to read as follows:

67-6221. CONFLICT OF INTEREST. Any member, officer or employee of the ~~agency~~ association who is interested either directly or indirectly, or who is an officer or employee of, or has an ownership interest in any firm or agency interested directly or indirectly in any contract with the ~~agency~~ association, including any loan to any housing sponsor, shall disclose this interest to the ~~agency~~ association. This interest shall be set forth in the minutes of the ~~agency~~ association, and the member, officer or employee having the interest shall not participate on behalf of the ~~agency~~ association in the authorization of any such contract.

SECTION 26. That Section 67-6222, Idaho Code, be, and the same is hereby amended to read as follows:

67-6222. EXEMPTION OF REAL PROPERTY OF ~~AGENCY~~ ASSOCIATION FROM LEVY AND SALE BY EXECUTION. All real property of the ~~agency~~ association shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the ~~agency~~ association be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of bondholders to foreclose or otherwise enforce any mortgage or other security of the

~~agency~~ association or the right of obligees and bondholders to pursue any remedies for the enforcement of any pledge or lien given by the ~~agency~~ association on its rents, fees or revenue or the right of obligees or bondholders to pursue any remedies conferred upon the same pursuant to this act.

SECTION 27. That Section 67-6223, Idaho Code, be, and the same is hereby amended to read as follows:

67-6223. BORROWING POWER -- FINANCIAL ASSISTANCE -- COOPERATION WITH FEDERAL GOVERNMENT. In addition to the powers conferred upon the ~~agency~~ association by other provisions of this act, the ~~agency~~ association is empowered to administer any other state or federal assistance program including without limitation all tax credit programs and block grants and to borrow money or accept contributions, grants or other financial assistance from the state or federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize the ~~agency~~ association to do any and all things necessary or desirable to secure the financial aid or cooperation of the state or federal government in the undertaking, construction, maintenance or operation of any housing project by the ~~agency~~ association.

SECTION 28. That Section 67-6223A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6223A. DONATIONS TO HOUSING ~~AGENCY~~ AND FINANCE ASSOCIATION. The state of Idaho or any city or county located in the state of Idaho shall have the power, from time to time, to donate money, real property, or personal property to the Idaho housing ~~agency~~ and finance association; provided, however, that nothing contained in this provision or in any other provision of law shall be construed as authorizing the state or any political subdivision thereof to give credit or make loans to the ~~agency~~ association or create any debts or indebtedness on behalf of the ~~agency~~ association.

SECTION 29. That Section 67-6224, Idaho Code, be, and the same is hereby amended to read as follows:

67-6224. CONSTRUCTION OF ACT. Nothing in this act or any other law shall be construed as authorizing the ~~agency~~ association to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the city, the county, the state or any subdivision thereof and the notes, bonds or other obligations of the ~~agency~~ association shall not be, constitute or become an indebtedness, debt or liability of the state of Idaho, the legislature thereof, or of any county, city, town, township, board of education or school district, or other subdivision of the state, or of any other political subdivision or body corporate

and politic of or municipality within the state and neither the state of Idaho, the legislature thereof, or any county, city, town, township, board of education or school district, or other subdivision of the state or any other political subdivision or body corporate and politic or municipality within the state shall be liable thereon nor shall such notes, bonds or obligations of the ~~agency~~ association constitute the giving, pledging or loaning of the credit of the state of Idaho, the legislature thereof, or of any county, city, town, township, board of education or school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic of or municipality within the state, nor shall they be payable out of any funds other than those of the ~~agency~~ association; and such notes and bonds shall contain on the face thereof a statement to such effect.

SECTION 30. That Section 67-6224A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6224A. LEGISLATIVE CONSTRUCTION. Neither this act nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the ~~agency~~ association might otherwise have under any laws of this state, and this act is cumulative to any such powers. This act does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes and other obligations and refunding bonds under the provisions of this act need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations and contracts for the construction and acquisition of any housing projects undertaken pursuant to this act need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state-owned property. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this act.

SECTION 31. That Chapter 62, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6226, Idaho Code, and to read as follows:

67-6226. DISCLOSURE OF RECORDS. It is recognized that the association is not, and has not been since its inception, a state or local agency for purposes of Idaho law including chapter 3, title 9, Idaho Code. Therefore, in order to assure reasonable public disclosure of its records, the association shall prepare and maintain a written policy, acceptable in form and content to the governor, providing for the disclosure of its records to the public. Prior to such policy or any amendments thereto becoming effective, the association shall submit the same to the governor for his written approval.

SECTION 32. That Section 63-3638, Idaho Code, be, and the same is

hereby amended to read as follows:

63-3638. SALES TAX -- DISTRIBUTION. All moneys collected under this chapter, except as may otherwise be required in section 63-3203, Idaho Code, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) Five hundred thousand dollars ($500,000) per year is continuously appropriated and shall be distributed to the permanent building account, provided by section 57-1108, Idaho Code.

(c) Four million eight hundred thousand dollars ($4,800,000) per year is continuously appropriated and shall be distributed to the water pollution control account established by section 39-3605, Idaho Code.

(d) (1) An amount equal to the sum required to be certified by the chairman of the Idaho housing ~~agency~~ and finance association to the state tax commission pursuant to section 67-6211, Idaho Code, in each year is continuously appropriated and shall be paid to any capital reserve fund, established by the Idaho housing ~~agency~~ and finance association pursuant to section 67-6211, Idaho Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of the Idaho housing ~~agency~~ and finance association shall be repaid for distribution under the provisions of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing ~~agency~~ and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the ~~agency~~ association determines will keep it self-supporting.

(2) An amount equal to the sum required by the provisions of section 63-124, Idaho Code, is continuously appropriated and shall be paid as provided by section 63-124, Idaho Code.

(3) An amount required by the provisions of section 33-1002D, Idaho Code.

(e) Six per cent (6%) is hereby appropriated and shall be paid to the county treasurer of each county in amounts to be determined as follows:

(1) Each taxing district other than school districts shall be entitled to a base share of sales tax moneys equal to the amount distributed to that district for the fourth calendar quarter of 1979. The computation shall not include any distributions made to the credit of either the former county school levy or the state water pollution control levy. The percentage so determined for each taxing district shall be applied each quarter to the above percentage of sales tax. The resulting sums shall be paid to the county treasurer of each county for distribution to each taxing district, except school districts, which received sales tax moneys in 1979. Whenever a taxing district is dissolved, the dissolved district's share of sales moneys shall be credited continuously to the county current expense fund.

(2) Whenever the amount of nonschool district sales tax moneys distributed exceeds in any quarter the total amount of moneys dis-

tributed to nonschool districts for the base quarter, which is the fourth calendar quarter of 1979, by ten per cent (10%), or more, the excess of the base quarter shall be paid to the county treasurer of each county for distribution to each taxing district in the county, except school districts, in the following manner.

The state tax commission shall compute the percentage that the average amount of taxes collected from assessments for the years 1965, 1966 and 1967 on the personal property described as business inventory in section 63-105Y, Idaho Code, for each county bears to the average total amount of taxes collected from assessments for said years on the personal property described as business inventory in section 63-105Y, Idaho Code, for all counties in the state. The percentage so determined for each county shall be applied to the sales tax distributed under this subsection and the resulting sum shall be paid to the county treasurer of each county for distribution to each taxing district, except school districts, in the county as follows:

(i) The county commissioners in each county shall take the tax charge, applicable to the first real and personal property rolls equalized by county commissioners sitting as a board of equalization, of each taxing district within the county, except school districts, and divide it by the total current tax charges applicable to those first real and personal property rolls of all taxing districts, except school districts, within said county and the resulting percentages shall be applied to the county's proportionate share of said sales tax account and the resulting amount shall be distributed to each taxing district in the county periodically but not less frequently than quarterly by the county auditor and applied by such taxing districts in the same manner and in the same proportions as revenues from ad valorem taxation.

(ii) The moneys set aside and appropriated to the county treasurer out of the sales tax account above may be considered by the counties and other taxing districts and budgeted against at the same time, in the same manner and in the same year as revenues from taxation on all classes of personal property which these moneys replace.

(3) All moneys distributed pursuant to subsection (e) shall be subject to the redistribution provisions of section 40-801, Idaho Code, where applicable.

(f) One dollar ($1.00) on each application for certificate of title to a motor vehicle, or initial application for registration processed by the county assessor or the Idaho transportation department excepting those applications in which any sales or use taxes due have been previously collected by a retailer, shall be a fee for the services of the assessor of the county or the Idaho transportation department in collecting such taxes, and shall be paid into the current expense fund of the county or state highway account established in section 40-702, Idaho Code.

(g) Seven and three-quarters per cent (7.75%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state operating fund, and the moneys in the revenue sharing account will be paid by the tax commission as follows:

(1) One-half (1/2) shall be paid to the various cities as follows:

(i) Fifty per cent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the population of that city bears to the population of all cities within the state; and

(ii) Fifty per cent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the preceding year's market value for assessment purposes for that city bears to the preceding year's market value for assessment purposes for all cities within the state.

(2) One-half (1/2) shall be paid to the state's general account or to the various counties as follows:

(i) One million three hundred twenty thousand dollars ($1,320,000) shall be distributed one forty-fourth (1/44) to each of the various counties; and

(ii) The balance of such amount shall be paid to the various counties, and each county shall be entitled to an amount in the proportion that the population of that county bears to the population of the state.

(h) Any moneys remaining over and above those necessary to meet and reserve for payments under other subsections of this section shall be distributed to the general account.

SECTION 33. That Section 67-8102, Idaho Code, be, and the same is hereby amended to read as follows:

67-8102. DEFINITIONS. As used in this chapter:

(1) "Advisory commission" means the housing trust fund advisory commission established in section 67-8106, Idaho Code.

(2) "Advocacy organization" means a not-for-profit organization which conducts, in part or in whole, activities to influence public policy on behalf of low-income or very low-income households.

(3) "~~Agency~~ Association" means the Idaho housing ~~agency~~ and finance association.

(4) "Allocation plan" means the plan, approved and revised annually by the advisory commission, providing for the method and priorities of allocation of housing trust fund moneys and providing the procedures for loan and grant application for housing trust fund moneys.

(5) "Community-based organization" means a not-for-profit entity whose governing body includes a majority of members who reside in the community served by the organization.

(6) "Director" means the executive director of the Idaho housing ~~agency~~ and finance association.

(7) "Home program" means the housing funding program authorized under title II of the Cranston-Gonzalez national affordable housing act (P.L. 101-625).

(8) "Housing trust fund" means the moneys transmitted to the ~~agency~~ association by state, federal, local or private sources, and so designated for such purpose.

(9) "Low-income household" means a single person, family or unrelated persons living together whose adjusted income is more than fifty

percent (50%), but less than eighty percent (80%), of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States department of housing and urban development for purposes of the home program, or if such program ceases to be funded, then for purposes of section 8 of the U.S. housing act of 1937.

(10) "Very low-income household" means a single person, family or unrelated persons living together whose adjusted income is not more than fifty percent (50%) of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States department of housing and urban development for purposes of the home program, or if such program ceases to be funded, then for purposes of section 8 of the U.S. housing act of 1937.

SECTION 34. That Section 67-8103, Idaho Code, be, and the same is hereby amended to read as follows:

67-8103. USE OF FUNDS FOR LOANS AND GRANT PROJECTS TO PROVIDE HOUSING -- ELIGIBLE ACTIVITIES. (1) The ~~agency~~ association shall use at least seventy-five percent (75%) of funds from the housing trust fund to assist very low-income households.

(2) Activities eligible for assistance include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of housing units for occupancy by low-income and very low-income households;

(b) Rent subsidies in new construction or rehabilitated multifamily units for low-income and very low-income households;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects for low-income and very low-income households;

(d) Technical assistance, design and finance services and consultation and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations which provide housing when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless;

(g) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units for low-income and very low-income households;

(h) Mortgage insurance or guarantees for eligible projects for low-income and very low-income households;

(i) Acquisition of housing units for the purpose of preservation as housing for low-income and very low-income households; and

(j) The ~~agency~~ association may use money from the housing trust fund account to match federal, local, or private money, including without limitation the home program funds, to be used for projects authorized under this chapter.

(3) The ~~agency~~ association may use money from the the housing trust fund account to pay reasonable expenses incurred in connection

with the provisions of this chapter.

SECTION 35. That Section 67-8104, Idaho Code, be, and the same is hereby amended to read as follows:

67-8104. ELIGIBLE ORGANIZATION. Organizations that may receive assistance from the ~~agency~~ association under the provisions of this chapter are local governments, local housing authorities, nonprofit community or neighborhood-based organizations, and regional or statewide nonprofit housing assistance or advocacy organizations, and for-profit housing developers.

SECTION 36. That Section 67-8105, Idaho Code, be, and the same is hereby amended to read as follows:

67-8105. NOTICE OF GRANT AND LOAN APPLICATION PERIOD -- PRIORITIES -- CRITERIA FOR EVALUATION. (1) During each calendar year in which funds are available for use by the ~~agency~~ association from the housing trust fund, the ~~agency~~ association shall announce to all known interested parties and through major media in each of the seven (7) planning regions of the state, the grant and loan application period specified in the current allocation plan of the advisory commission in the manner specified in the allocation plan.

(2) The ~~agency~~ association shall give preference for applications based on the following criteria or other criteria:

(a) The degree funds will be used to match other funds;

(b) Recipient contributions to total project costs and contributions from other sources such as professional, craft and trade services, as well as lender interest rate subsidies;

(c) Local government project contributions in the form of infrastructure improvements, fee waivers and others;

(d) Projects that encourage ownership, management, and other project-related responsibility opportunities for tenants;

(e) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least forty (40) years;

(f) The demonstrated ability, stability and resources to implement the project;

(g) Projects which demonstrate serving the greatest need;

(h) Projects that provide housing for persons and families with the lowest incomes; and

(i) Projects to be owned by nonprofit organizations.

SECTION 37. That Section 67-8106, Idaho Code, be, and the same is hereby amended to read as follows:

67-8106. ADVISORY COMMISSION. There is hereby created the Idaho housing trust fund advisory commission. The advisory commission shall consist of seven (7) members, appointed by the governor. At least two (2) members shall be representatives of advocacy organizations or community-based organizations engaged in the development or operation of housing for low-income and very low-income households. Two (2) of the members shall represent the real estate brokers, one (1) member

from the Idaho association of realtors, and one (1) members from the Idaho real estate commission. One (1) member shall represent the ~~agency~~ association; one (1) member shall represent the Idaho department of commerce; and one (1) member shall represent the Idaho department of health and welfare. The advisory commission shall, if possible, have at least one (1) member from each of the seven (7) planning regions of the state. Members appointed to the commission shall serve a term of two (2) years. However, four (4) members first appointed under the provisions of this chapter shall serve a term of one (1) year, and three (3) members shall serve a term of two (2) years. Individual terms shall be chosen by lot at the initial meeting of the advisory commission.

Members of the advisory commission shall not be entitled to compensation, but shall receive reimbursement for actual and reasonable expenses incurred in the performance of their duties.

The advisory commission shall meet at least annually and its duties and responsibilities are:

(1) To review and approve annually an allocation plan and a proposed budget therefor submitted by the ~~agency~~ association setting forth priorities, policies and procedures for the year's expenditure of housing trust fund moneys, including policies which assure equitable distribution of funds statewide;

(2) Prior to approving the allocation plan, to publish notice of the proposed plan, requesting written comments thereon and holding one (1) or more public hearings thereon to solicit public comment;

(3) To monitor and review all allocations of funds under the housing trust fund;

(4) To make recommendations to the legislature for further legislation that may be necessary in the area of affordable housing.

SECTION 38. That Section 67-8107, Idaho Code, be, and the same is hereby amended to read as follows:

67-8107. ~~AGENCY~~ ASSOCIATION TO IMPLEMENT THE ALLOCATION PLAN. The ~~agency~~ association shall implement the procedures and policies as set forth in the allocation plan and may use its discretion in interpreting the allocation plan. The ~~agency~~ association shall not be required to implement an allocation plan of the advisory commission which it deems to be too costly to administer or which the ~~agency~~ association deems not consistent with its legislative mandate under the provisions of chapter 62, title 67, Idaho Code.

SECTION 39. That Section 67-8108, Idaho Code, be, and the same is hereby amended to read as follows:

67-8108. PRECONSTRUCTION TECHNICAL ASSISTANCE. (1) The ~~agency~~ association may use moneys from the housing trust fund to provide preconstruction technical assistance to eligible recipients seeking to construct, rehabilitate, or finance housing-related services for the low-income and very low-income persons. In so doing, the ~~agency~~ association shall emphasize providing preconstruction technical assistance services to rural areas and small cities and towns. The ~~agency~~ association may contract with nonprofit organizations to provide this tech-

nical assistance. The ~~agency~~ association may contract for any of the following services:

(a) Financial planning and packaging for housing projects, including alternative ownership programs, such as limited equity partnerships and syndications;

(b) Project design, architectural planning and siting;

(c) Compliance with planning requirements;

(d) Securing matching resources for project developments;

(e) Maximizing local government contributions to project development in the form of land donations, infrastructure improvements, waivers of development fees, locally and state-managed funds, zoning variances, or creative local planning;

(f) Coordination with local planning, economic development, and environmental, social service and recreational activities;

(g) Construction and materials management; and

(h) Project maintenance and management.

(2) The ~~agency~~ association may publish requests for proposals which specify contract performance standards, award criteria and contractor requirements. In evaluating proposals, the ~~agency~~ association shall consider the ability of the contractor to provide technical assistance to low-income and very low-income persons and to persons with special housing needs.

SECTION 40. That Section 67-8109, Idaho Code, be, and the same is hereby amended to read as follows:

67-8109. COMPLIANCE MONITORING. The director shall monitor the activities of recipients of grants and loans under the provisions of this chapter to determine compliance with the terms and conditions set forth in its application or stated by the ~~agency~~ association in connection with the grant or loan.

SECTION 41. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 14, 1996.

CHAPTER 254
(H.B. No. 595, As Amended)

AN ACT

RELATING TO THE OPEN CONTAINER LAW; AMENDING SECTION 23-505, IDAHO CODE, TO PROVIDE PROHIBITIONS AND TO PROVIDE THAT VIOLATION IS A MISDEMEANOR.

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

SECTION 1. That Section 23-505, Idaho Code, be, and the same is hereby amended to read as follows:

23-505. TRANSPORTATION OF ALCOHOLIC BEVERAGES. Alcoholic liquor lawfully purchased may be transported, but no person shall break open, or allow to be broken or opened any container of alcoholic liquor, or drink, or use, or allow to be drunk, or used any alcoholic liquor therein while the same is being transported.

No person in actual physical control of a motor vehicle, as "actual physical control" is defined in section 18-8004, Idaho Code, may drink or physically possess any open beverage containing alcoholic liquor, as defined in section 23-105, Idaho Code, beer as defined in section 23-1001, Idaho Code, or wine as defined in section 23-1303, Idaho Code. Violation of this section is a misdemeanor.

Approved March 15, 1996.

CHAPTER 255
(H.B. No. 679)

AN ACT

RELATING TO ENFORCEMENT OF TRAFFIC LAWS; AMENDING SECTION 49-1404, IDAHO CODE, TO PROVIDE THAT EMERGENCY LIGHTS OR SIREN USED BY PEACE OFFICERS WHEN IN PURSUIT ARE EXEMPT FROM THE STANDARDS FOR DECIBEL RATINGS AND LIGHT VISIBILITY OTHERWISE REQUIRED OF EMERGENCY AND POLICE VEHICLES.

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

SECTION 1. That Section 49-1404, Idaho Code, be, and the same is hereby amended to read as follows:

49-1404. FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER -- PENALTY. (1) Any driver of a motor vehicle who wilfully flees or attempts to elude a pursuing police vehicle when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by a peace officer may be by emergency lights or siren. The signal given by a peace officer by emergency lights or siren need not conform to the standards for decibel ratings or light visibility specified in section 49-623(3), Idaho Code. It is sufficient proof that a reasonable person knew or should have known that the visual or audible signal given by a peace officer was intended to bring the pursued vehicle to a stop.

(2) An operator who violates the provisions of subsection (1) and while so doing:

(a) Travels in excess of thirty (30) miles per hour above the posted speed limit;

(b) Causes damage to the property of another or bodily injury to another;

(c) Drives his vehicle in a manner as to endanger or likely to endanger the property of another or the person of another; or

(d) Leaves the state;

is guilty of a felony.

(3) The department shall suspend the driver's license or privi-

leges of a person who has pled guilty or is found guilty of a misdemeanor violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, as provided in section 49-326, Idaho Code. Any person who has pled guilty or is found guilty of a felony violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, shall have his driving privileges suspended by the court for a minimum of one (1) year, which may extend to three (3) years, at the discretion of the court, during which time he shall have absolutely no driving privileges of any kind.

Approved March 15, 1996.

CHAPTER 256
(H.B. No. 680)

AN ACT

RELATING TO COURT FEES; AMENDING SECTION 1-402, IDAHO CODE, TO INCREASE FEES OF THE SUPREME COURT; AND AMENDING SECTION 31-3201A, IDAHO CODE, TO INCREASE CERTAIN COURT FEES.

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

SECTION 1. That Section 1-402, Idaho Code, be, and the same is hereby amended to read as follows:

1-402. FEES. The clerk of the supreme court shall charge, demand and receive the following fees for services rendered in discharging the duties imposed upon him by law:

For filing an appeal in each civil case appealed to the supreme court, sixty-~~six~~eight dollars ($66~~8~~.00), to be paid by appellant or cross-appellant, such fee to be in full for all services rendered or to be rendered in filing papers, entering orders or judgments, recording opinion, issuing process and sending down remittitur, unless after the decision of the court has been rendered a petition for rehearing be presented, when a fee of ~~fifty-nine~~ sixty-one dollars ($59~~6~~1.00) shall be paid by the petitioner for filing such petition; for filing an application for any writ commencing an original action in said court, other than writs in habeas corpus or criminal proceedings, sixty-~~four~~six dollars ($64~~6~~.00), to be paid by the party presenting the application, in full for all services rendered or to be rendered, as hereinbefore designated, unless after the decision of the court a petition for rehearing be presented, when a fee of ~~fifty-nine~~ sixty-one dollars ($59~~6~~1.00) shall be paid by the petitioner for filing such petition, for each certificate given at request, and under seal, two dollars and fifty cents ($2.50); for copy of record, opinion of the court or other paper, an amount to be set by order of the supreme court, but an amount not less than the actual cost of preparing the copy; providing, that one (1) copy of every opinion or decision of the court shall be forthwith mailed to each litigant or his counsel in the suit or proceeding free of charge; for certificate of admission as an

attorney including seal, oath and order, four dollars ($4.00); for administering oaths or affirmations, including jurat, two dollars and twenty-five cents ($2.25); for taking an acknowledgment or proof of a deed or other instrument, including seal and writing of the certificate, two dollars and fifty cents ($2.50).

SECTION 2. That Section 31-3201A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201A. COURT FEES. The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law;

(a) A fee of $3~~2~~4.00 for filing a civil case of any type in the district court or in the magistrate's division of the district court including cases involving the administration of decedents' estates, whether testate or intestate, and conservatorships of the person or of the estate or both with the following exceptions:

The filing fee shall be $1~~0~~2.00 in each case where the amount of money or damages or the value of personal property claimed does not exceed $300. The filing fee shall be $1~~2~~4.00 in the following types of cases:

(1) Where the amount of money or damages or the value of personal property claimed exceeds $300 but does not exceed $1,000;

(2) Where a case is brought for forcible or unlawful entry or detainer whether brought for rent or possession or both and regardless of the amount;

(3) Where a case is brought under chapter 20, title 16, Idaho Code, for the termination of parent-child relationship;

(4) Where a case is brought under chapter 2, title 32, Idaho Code, for permission to marry;

(5) Where a case involving the administration of a decedent's estate is brought under the Summary Administration of Small Estates Act;

(6) In cases where a court order is issued only for a certain specific reason other than the administering of an estate, including but not limited to proceedings brought under sections 14-114, 15-514, 15-1401, 15-1518 and/or 15-1709, Idaho Code, or for some specific reason;

(7) In cases brought to determine heirship without administration;

(8) In cases brought to determine inheritance or transfer tax;

(9) In proceedings brought for adoption;

(10) In proceedings brought for letters of guardianship of the person or of the estate or both.

No filing fee shall be charged in the following types of cases:

(1) In cases brought under chapter 3, title 66, Idaho Code, for commitment of mentally ill persons;

(2) In cases brought under the Youth Rehabilitation Act;

(3) In cases brought under the Child Protective Act.

In all cases in which a filing fee of $3~~2~~4.00 is paid, $17.00 of such filing fee shall be paid to the county treasurer for deposit in

the district court fund of the county; and $1~~5~~7.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $1~~2~~4.00 is paid, $4.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $8~~1~~0.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $1~~0~~2.00 is paid, $3.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $~~7~~9.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(b) A fee of $1~~5~~7.50 shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, ~~or found to have committed an infraction or any minor traffic, conservation or ordinance violation~~ except when the court orders such fee waived because the person is indigent and unable to pay such fee~~; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee~~. If the magistrate court facilities are provided by the county, $5.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $1~~0~~2.50 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account. If the magistrate court facilities are provided by a city, $5.00 of such fee shall be paid to the city treasurer for deposit in the city general fund, $2.50 of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrates court facilities, and $8~~1~~0.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(c) A fee of $16.50 shall be paid, but not in advance, by each person found to have committed an infraction or any minor traffic, conservation or ordinance violation; provided that the judge or magistrate may in his or her discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, $5.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $11.50 of such fee shall be paid to the county treasurer, who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account. If the magistrate court facilities are provided by a city, $5.00 of such fee shall be paid to the city treasurer for deposit in the city general fund, $2.50 of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrate court facilities, and $9.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay

such fees to the state treasurer for deposit in the state general account.

(d) A fee of $1~~2~~4.00 shall be paid by any party, except the plaintiff, making an appearance in any civil action in the district court or in the magistrate's division of the district court. Of such fee, $4.00 shall be paid to the county treasurer for deposit in the district court fund of the county; and $8~~1~~0.00 of such fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(~~d~~e) A fee of $9.00 shall be paid by the person or persons required to make an account pursuant to either chapter 11 or chapter 18, title 15, Idaho Code, at the time such account is filed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~e~~f) A fee of $1~~7~~9.00 shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, $6.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $1~~1~~3.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(~~f~~g) A fee of $7.00 shall be paid by an intervenor upon making an appearance in any civil action in the district court or in the magistrate's division of the district court. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~g~~h) A fee of $8.00 shall be paid by a party filing a third party claim as defined in the Idaho Rules of Civil Procedure. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~h~~i) A fee of $8.00 shall be paid by any party filing a cross-claim. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~i~~j) A fee of $9.00 shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~j~~k) A fee of $9.00 shall be paid by any party appearing after judgment or applying to reopen a case. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~k~~l) A fee of $9.00 shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court. No additional fee shall be required if a new trial is granted. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~l~~m) A fee of $9.00 shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(mn) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(no) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(op) That portion of the filing fees required to be remitted to the state treasurer for deposit in the state general account shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer.

(pq) Of the fees derived from the filing of any divorce action required to be transmitted to the state treasurer for deposit in the general account, the county treasurer shall retain $5.00, which shall be separately identified and deposited in the district court fund of the county. Such moneys shall be used exclusively for the purpose of establishing a uniform system of qualifying and approving persons, agencies or organizations to conduct evaluations of persons convicted of domestic assault or battery as provided in section 18-918, Idaho Code. No provision of chapter 52, title 39, Idaho Code, shall apply to the moneys provided for in this subsection.

(qr) In consideration of the aforesaid fees the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law.

Approved March 15, 1996.

CHAPTER 257
(H.B. No. 681)

AN ACT

RELATING TO THE SALARIES OF JUSTICES, JUDGES, MAGISTRATES AND INDUSTRIAL COMMISSIONERS; AMENDING SECTION 1-2222, IDAHO CODE, TO REVISE THE METHOD FOR DETERMINING SALARIES OF ATTORNEY MAGISTRATES AND TO INCREASE THE BASE ANNUAL SALARIES AND THE MAXIMUM ANNUAL SALARIES FOR NONATTORNEY MAGISTRATES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 59-502, IDAHO CODE, TO INCREASE THE SALARIES OF JUSTICES AND JUDGES; AND AMENDING SECTION 72-503, IDAHO

CODE, TO REVISE THE METHOD OF ESTABLISHING THE SALARIES FOR MEMBERS OF THE INDUSTRIAL COMMISSION AND TO ESTABLISH THE SALARY.

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

SECTION 1. That Section 1-2222, Idaho Code, be, and the same is hereby amended to read as follows:

1-2222. SALARY SCHEDULE -- ATTORNEY AND NONATTORNEY MAGISTRATES. The salaries of magistrates of the district court shall be as follows:

(1) The annual salary of each magistrate who is an attorney shall be~~:-for-an-attorney-magistrate-whose-combined-years--of--admission--to practice--as-an-attorney-and-years-of-service-as-a-magistrate-are-less than-ten-(10)-years,-the-annual-salary-shall-be-eighty--percent--(80%) of--the--annual-salary-of-a-district-judge;-for-an-attorney-magistrate whose-combined-years-of-admission-to-practice-as-an-attorney-and-years of-service-as-a-magistrate-are-more-than-ten-(10)-years-but-less--than fifteen--(15)--years,--the--annual-salary-shall-be-eighty-five-percent (85%)-of-the-annual-salary-of-a-district-judge;-for-an-attorney-magistrate-whose-combined-years-of-admission-to-practice-as-an-attorney-and years-of-service-as-a-magistrate-are-more-than-fifteen-(15)-years,-the annual-salary-shall-be~~ ninety percent (90%) of the annual salary of a district judge.

(2) The following schedule is adopted as the base annual salary schedule for all nonattorney magistrates:

STATE OF IDAHO
BASE ANNUAL SALARY SCHEDULE FOR NONATTORNEY MAGISTRATES

Pay Class	Annual Case Dispositions	Annual Salary
Nonattorney Magistrate Judge I	more than 4,500 cases	$28,000
Nonattorney Magistrate Judge II	3,000 to 4,500 cases	25,000
Nonattorney Magistrate Judge III	1,750 to 3,000 cases	22,000
Nonattorney Magistrate Judge IV	under 1,750 cases	18,000

Commencing on July 1, 1988, the amount of the base annual salary for all nonattorney magistrates shall be increased by five percent (5%), and again commencing on July 1, 1989, the amount of the base annual salary for all nonattorney magistrates shall be increased by five percent (5%), and again commencing on July 1, 1990, the amount of the base annual salary for all nonattorney magistrates shall be increased by eight percent (8%), and again commencing on July 1, 1991, the amount of the base annual salary for all nonattorney magistrates shall be increased by five percent (5%), and again commencing on July 1, 1993, the amount of the base annual salary for all nonattorney magistrates shall be increased by six percent (6%), and again commencing on July 1, 1996, the amount of the base annual salary for all nonattorney magistrates shall be increased by five percent (5%), and again commencing on July 1, 1997, the amount of the base annual salary for all nonattorney magistrates shall be increased by four percent (4%).

(3) The administrative director of the courts shall certify annually the case dispositions of each nonattorney magistrate judge and

designate the salary classification for each nonattorney magistrate prior to the beginning of each fiscal year. Any increases or decreases in salary as a result of the provisions of this section shall become effective to coincide with the start of the fiscal year.

(4) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (1) of this section, receive an additional seven hundred fifty dollar ($750) longevity increment added to his base salary for each complete five (5) year period of service as a magistrate. No additional longevity increment shall be awarded after the twentieth year of service. For purposes of this subsection, magistrates who entered state service on January 11, 1971, shall receive credit for years of service as a police court judge, city court judge, justice of the peace, or probate judge.

(5) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (2) of this section, and separate and apart from the longevity increment established by subsection (4) of this section, receive an additional jurisdiction credit of thirty percent (30%) of his base salary upon being granted full statutory jurisdiction by the supreme court.

(6) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (2) of this section, separate and apart from the longevity increment established by subsection (4) of this section and separate and apart from the jurisdiction credit established by subsection (5) of this section, receive an additional jurisdiction credit of three thousand five hundred dollars ($3,500) to be added to his base salary during the fiscal year subsequent to any fiscal year in which the administrative director of the courts certifies that the nonattorney magistrate has disposed within a one (1) year period of over two hundred twenty-five (225) cases filed under section 18-8004, Idaho Code, and charging a defendant with being under the influence of intoxicating beverages or drugs or any other intoxicating substance.

(7) Regardless of any other provision of this section, until June 30, 1988, no nonattorney magistrate shall receive an annual salary of more than thirty-five thousand five hundred dollars ($35,500); provided, however, that commencing on July 1, 1988, the amount of the maximum salary limitation in this section shall be increased by five percent (5%), and again commencing on July 1, 1989, the amount of the maximum salary limitation in this section shall be increased by five percent (5%), and again commencing on July 1, 1990, the amount of the maximum salary limitation in this section shall be increased by eight percent (8%), and again commencing on July 1, 1991, the amount of the salary limitation in this section shall be increased by five percent (5%), and again commencing on July 1, 1993, the amount of the salary limitation in this section shall be increased by six percent (6%), and again commencing on July 1, 1996, the amount of the salary limitation in this section shall be increased by five percent (5%), and again commencing on July 1, 1997, the amount of the salary limitation in this section shall be increased by four percent (4%).

(8) All nonattorney magistrates are full-time state officers, are required to be available on a twenty-four (24) hour basis to perform duties incident to their office such as the issuance of search and arrest warrants, and are required to hold such office hours as may be

necessary to conduct court business or as required by the supreme court.

SECTION 2. That Section 59-502, Idaho Code, be, and the same is hereby amended to read as follows:

59-502. SALARIES OF JUDGES. Commencing on July 1, 1985, and until June 30, 1986, the salary of the justices of the supreme court shall be fifty-four thousand seven hundred and seventy dollars ($54,770) per annum, and the salary of the judges of the district courts shall be fifty-one thousand seven hundred and twenty dollars ($51,720) per annum. Commencing on July 1, 1986, the salary of justices of the supreme court shall be fifty-nine thousand seven hundred fifty dollars ($59,750) per annum, and the salary of judges of the district court shall be fifty-six thousand dollars ($56,000) per annum; provided, however, that commencing on July 1, 1988, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by five percent (5%), and again commencing on July 1, 1989, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by five percent (5%), and again commencing on July 1, 1990, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by eight percent (8%), and again commencing on July 1, 1991, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by five percent (5%), and again commencing on July 1, 1993, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by six percent (6%), and again commencing on July 1, 1996, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by five percent (5%), and again commencing on July 1, 1997, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by four percent (4%). Salaries of magistrates shall be as prescribed by chapter 22, title 1, Idaho Code. Salaries shall be paid on regular pay periods not less frequently than monthly as determined by order of the supreme court as due out of the state treasury, but no justice of the supreme court or judge of the district court or magistrate shall be paid his salary, or any part thereof, unless he shall first take and subscribe an oath that there is not in his hands any matter in controversy not decided by him, which has been finally submitted for his consideration and determination thirty (30) days prior to his taking and subscribing said oath.

SECTION 3. That Section 72-503, Idaho Code, be, and the same is hereby amended to read as follows:

72-503. SALARY. The annual salary of each member of the industrial commission shall be ~~ninety-per-cent-(90%)-of-the--annual--salary of--a-district-judge~~ sixty-six thousand seven hundred ninety-four dollars ($66,794), notwithstanding the provisions of section 59-510, Idaho Code, and shall be paid from sources set by the legislature.

Approved March 15, 1996.

CHAPTER 258
(H.B. No. 707)

AN ACT

RELATING TO ACTIONS IN PARTICULAR CASES; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 22, TITLE 6, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE THE PURPOSE OF THE CHAPTER AND THE DEFINITION OF CONSTITUTIONALLY BASED EDUCATIONAL CLAIM, TO PROVIDE FOR THE SYSTEM OF PUBLIC, FREE COMMON SCHOOLS; TO PROVIDE RESPONSIBILITY FOR PROVIDING EDUCATIONAL SERVICES REQUIRED BY THE CONSTITUTION OF THE STATE OF IDAHO, TO PROVIDE FOR A RIGHT OF ACTION AND WHO HAS STANDING TO SUE, TO PROVIDE THAT PATRON COMPLAINTS BE FORWARDED TO THE ATTORNEY GENERAL, TO PROVIDE FOR A BENCH TRIAL, TO PROVIDE FOR DISTRICT COURT FINDINGS, TO PROVIDE REMEDIES IN SUITS AGAINST SCHOOL DISTRICTS AND TO PROVIDE JURISDICTION AND PROCEDURES TO THE COURT, TO PROVIDE FOR CONTINUING JURISDICTION TO THE DISTRICT COURT, TO PROVIDE FOR INQUIRY ABOUT TAX LEVIES AND ORDERS, TO PROVIDE FOR STATE SUPERVISION OF A LOCAL SCHOOL DISTRICT, TO PROVIDE FOR A SUIT AGAINST THE STATE OF IDAHO, TO PROVIDE FOR THE CREATION OF AN EDUCATIONAL NECESSITY LEVY, TO PROVIDE THE EFFECT ON PENDING LAWSUITS AND TO PROVIDE SEVERABILITY; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 22, Title 6, Idaho Code, and to read as follows:

CHAPTER 22
CONSTITUTIONALLY BASED EDUCATIONAL CLAIMS ACT

6-2201. SHORT TITLE. This chapter shall be known and may be cited as the "Constitutionally Based Educational Claims Act."

6-2202. PURPOSE OF CHAPTER -- DEFINITION OF CONSTITUTIONALLY BASED EDUCATIONAL CLAIM. Section 1, article IX, of the constitution of the state of Idaho provides: "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools." The purpose of this chapter is to provide a mechanism for adjudicating the performance of that duty when there are allegations that public schools do not provide educational services that they are required to provide as part of a general, uniform and thorough system of public, free common schools. In this chapter, a constitutionally based educational claim is defined as a claim that public schools are not providing educational services that they are required to provide under section 1, article IX, of the constitution of the state of Idaho, and constitutionally required educational services are defined as the educational services that must be provided under section 1, article IX, of the constitution of the state of Idaho. In particular,

this chapter provides procedures for adjudicating constitutionally based educational claims and administrative and judicial remedies to be implemented when public schools in a specific local school district are not providing constitutionally required educational services as part of a general, uniform and thorough system of public, free common schools that has been established by the legislature. It is the policy of this chapter whenever possible that constitutionally based educational claims shall be settled locally through consent agreements or plans proposed by local school districts and that state intervention in local school districts be a last resort.

6-2203. SYSTEM ESTABLISHED UNDER SECTION 1, ARTICLE IX. The legislature hereby declares that the statutes allowing the creation of or chartering local school districts and giving them authority to raise and spend moneys and to provide educational services are designed to establish and maintain a general, uniform and thorough system of public, free common schools. The legislature hereby declares that the public schools operated by and the educational services provided by local school districts, together with any public schools operated by the state, constitute the system of public, free common schools described in section 1, article IX of the constitution of the state of Idaho.

6-2204. RESPONSIBILITY FOR PROVIDING EDUCATIONAL SERVICES REQUIRED BY THE CONSTITUTION. The legislature has established a system of public, free common schools by its authorization of the creation of or chartering of local school districts. Local school districts are hereby declared to have the primary responsibility for provision of constitutionally required educational services and for assuring themselves and the public that the local school districts are operating their schools as part of a general, uniform and thorough system of public, free common schools. When a local school district is unable to meet its responsibilities under this chapter because it does not provide constitutionally required educational services, this chapter provides judicial and administrative remedies to bring schools operated by the local school district into compliance with section 1, article IX, of the constitution of the state of Idaho and first prescribes local solutions where possible.

6-2205. RIGHT OF ACTION -- STANDING TO SUE. (1) Patron suits against local school districts. Any person who is a schoolchild, the parent or guardian of a schoolchild, or the parent or guardian of a child who will enter public school in the next two (2) years has standing to sue and may bring suit against the local school district in which the schoolchild or potential schoolchild resides on the ground that the local school district is not providing constitutionally required educational services. These complaints may be known as patron complaints, and the persons who are plaintiffs may be known as patrons. The patron complaint must list with specificity the manner in which the patrons contend that the local school district is not providing constitutionally required educational services. No other person, except the state as parens patriae, has standing to bring suit against a school district on the ground that the school district is

not providing constitutionally required educational services.

(2) Parens patriae suit against districts. The state of Idaho, through the legislature or through the superintendent of public instruction, may bring suit against a school district on the ground that the school district is not providing constitutionally required educational services.

(3) Patron suits against the state. No person other than a patron authorized to bring suit against a school district under subsection (1) of this section has standing to bring suit against the state, the legislature, or any of the state's officers or agencies on the ground that the state has not established and maintained a general, uniform and thorough system of public, free common schools. No patron with standing to bring suit against a school district may bring suit against the state, the legislature, or any of the state's officers or agencies on the ground that the state has not established and maintained a general, uniform and thorough system of public, free common schools unless the patron has first brought suit against its local school district pursuant to subsection (1) of this section and the district court has later authorized the patron to add the state as a defendant as authorized by this section. Any patron suit against the state, the legislature, or any of the state's officers or agencies not authorized by the district court pursuant to this section shall be dismissed.

(4) No other suits recognized. School districts are agents of the state for purposes of providing a general, uniform and thorough system of public, free common schools, and they have no standing to bring suit against the state for failure to establish and maintain a general, uniform and thorough system of public, free common schools. Any suit brought by a school district against the state, the legislature, or any of the state's officers or agents contending that the state has not established a general, uniform and thorough system of public, free common schools shall be dismissed. There shall be no right of action by any person contending that there is not a general, thorough and uniform system of free common schools in this state except those authorized in subsections (1), (2) and (3) of this section naming with specificity the local school districts in which the plaintiffs live and with specificity the manner in which they contend that the public schools in that district are not providing constitutionally required educational services. Any other suit contending that there is not a general, thorough and uniform system of free, common schools shall be dismissed.

6-2206. PATRON COMPLAINTS TO BE FORWARDED TO ATTORNEY GENERAL. When a patron complaint is filed against a school district pursuant to this chapter, a copy of the complaint shall also be served on the attorney general, who shall notify the legislature and the superintendent of public instruction that the complaint has been filed. Either the legislature or the superintendent of public instruction may intervene as plaintiffs in the patron suit as a matter of right. No action shall be taken in the patron suit, except for the school district's filing of an answer to the patron complaint, until a copy of the complaint has been forwarded to the attorney general and the legislature and the superintendent of public instruction have been

given thirty-five (35) calendar days to decide whether to intervene as a matter of right as plaintiffs in the patron suit.

6-2207. BENCH TRIAL. When a complaint is filed against a school district pursuant to this chapter, trial shall be before the district court sitting without a jury.

6-2208. DISTRICT COURT FINDINGS. Upon reaching the merits of the constitutionally based educational claim, the district court shall find whether the defendant local school district is providing all constitutionally required educational services. If the district court shall find that the defendant local school district is providing all constitutionally required educational services, it shall issue a declaratory judgment to that effect. If the district court shall find that the defendant local school district is not providing all constitutionally required educational services, the district court shall then conduct further proceedings as necessary to allow it to make the following findings:

(1) The local school district (a) does or does not offer educational or other services that are not constitutionally required, and (b) does or does not offer the constitutionally required educational services that it does offer in a manner that consumes more of the local school district's resources than necessary to offer the constitutionally required educational services that it does offer.

(2) If the local school district (a) offers educational or other services that are not constitutionally required, or (b) offers some of the services that are constitutionally required in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required educational services that it does offer, there is or is not a manner that resources devoted to offering services not constitutionally required or that consume more resources than necessary may be redirected to offer services that are constitutionally required but are not being offered. In making this finding, the district court shall take into account any federal mandates with which the local school district must comply, and the local school district shall not be obligated to redirect its resources from complying with federal mandates.

(3) The local school district (a) does or does not impose maintenance and operations tax levies, supplemental maintenance and operations tax levies, and school emergency fund levies up to the statutory maximum allowed by law without holding further elections, and (b) does or does not impose maintenance and operations tax levies, supplemental maintenance and operations tax levies, and school emergency fund levies in a total amount that equals or exceeds the sum of the maximum statutory maintenance and operations levy and maximum statutory emergency fund levy plus the simple average of all supplemental maintenance and operations levies of all the local school districts in the state. In making this calculation, the district court may take official notice of publications of the superintendent of public instruction or may by order direct the superintendent of public instruction to supply calculations for the district court's use.

6-2209. REMEDIES IN SUIT AGAINST DISTRICT -- CONTINUING JURISDIC-

TION. (1) If the district court finds that the local school district offers educational or other services not federally mandated and not constitutionally required, or offers some of the services that are constitutionally required in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required services that it does offer, it shall issue an order choosing from among the following remedies and retaining jurisdiction as required by this chapter. Any order accepting or modifying a consent agreement under subsection (2) of this section, accepting or modifying a plan under subsection (3) of this section, or directing school district action under subsection (4) of this section, shall be a final order for purposes of rehearing and appeal, but the filing of an appeal shall not itself stay the effect of the order, and the district court shall have continuing jurisdiction over compliance with the order or stay of the order unless stayed from continuing jurisdiction by the supreme court. The supreme court may stay the order or stay the district court's continuing jurisdiction over compliance with the order on such grounds as it finds appropriate.

(2) The parties shall be given a reasonable time not to exceed thirty-five (35) calendar days to attempt to enter into a consent agreement for meeting the local school district's obligations to provide constitutionally required educational services. If the parties cannot agree on a consent agreement within thirty-five (35) calendar days, the district court shall issue an order under subsection (3) or (4) of this section. If the parties submit a consent agreement, the district court shall independently review the consent agreement and may modify the consent agreement as it finds necessary in light of the local school district's obligations to provide constitutionally required educational services. Following review, the district court shall enter an order accepting, modifying or rejecting the consent agreement and retaining jurisdiction over the case. If the district court rejects the consent agreement, it shall issue an order under subsection (3) or (4) of this section. An order accepting or modifying the consent agreement may require the local school district to impose maintenance and operations levies, supplemental maintenance and operations levies and emergency fund levies in the maximum amount allowed by law without an election and to impose an educational necessity levy as authorized in this chapter and defined in section 6-2214, Idaho Code.

(3) The local school district shall be given a reasonable time not to exceed thirty-five (35) calendar days to submit a plan for meeting its obligations to provide constitutionally required educational services. If the local school district does not submit a plan within thirty-five (35) calendar days, the district court shall issue an order under subsection (2) or (4) of this section. If the local school district submits a plan, the district court shall independently review the plan and any of the parties' comments to the plan and may modify the plan as it finds necessary in light of the local school district's obligations to provide constitutionally required educational services. Following review, the district court shall enter an order accepting, modifying or rejecting the plan and retaining jurisdiction over the case. If the district court rejects the plan, it shall issue an order under subsection (2) or (4) of this section.

(4) The district court may issue any of the following orders:

(a) If the local school district offers educational or other services not federally mandated and not constitutionally required, the district court may enjoin the local school district from offering some or all of those services not federally mandated and not constitutionally required.

(b) If the local school district offers some of the services that are constitutionally required in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required services that it does offer, the district court may enjoin the local school district from offering some or all of the constitutionally required services in a manner that consumes more of the local district's resources than necessary.

(c) If the local school district does not impose a maintenance and operations levy, a supplemental maintenance and operations levy, and an emergency fund levy in the maximum amounts allowed by law without an election, or if the sum of the local school district's maintenance and operations levy, supplemental maintenance and operations levy, and emergency fund levy does not equal or exceed the maximum maintenance and operations levy and emergency fund levy that may be imposed by law plus the simple average supplemental maintenance and operations levy of all the school districts in the state, pursuant to section 6-2210, Idaho Code, the district court may order the local school district to impose maintenance and operations levies, supplemental maintenance and operations levies, and emergency fund levies in the maximum amount allowed by law without an election and to impose an educational necessity levy as authorized by this chapter.

(d) If the district court finds that any other order or mandate would assist the local school district in providing constitutionally required educational services, the district court may issue any order that it determines would assist the local school district in providing constitutionally required educational services.

6-2210. FURTHER INQUIRY ABOUT TAX LEVIES -- ORDERS. (1) If the district court finds:

(a) That the local school district cannot offer federally mandated services and constitutionally required educational services because it does not have sufficient revenues; or

(b) That if the local school district were to offer the constitutionally required educational services that it does offer in a manner that consumes no more of the local school district's resources than necessary, it would still be unable to offer federally mandated services and constitutionally required educational services because it does not have sufficient revenues;

then the district court shall then find the sum of the maintenance and operations levies, supplemental maintenance and operations levies, and emergency fund levies imposed by the local school district and compare the sum to the sum of maintenance and operations levies and emergency fund levies in the maximum amount allowed by law plus the simple average of the supplemental maintenance and operations levies imposed by all school districts in the state.

(2) Orders following further inquiry about tax levies.

(a) If the district court finds:

(i) That the local school district cannot offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues;

(ii) That if the local school district were to offer the constitutionally required educational services in a manner that consumes no more of the local school district's resources than necessary, it would still be unable to offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues; and

(iii) That the sum of the local school district's levies totaled in subsection (1) of this section equals or exceeds the comparison made in subsection (1) of this section;

the district court shall issue an order authorizing the plaintiffs to add the state and/or the legislature as defendants.

(b) If the district court finds:

(i) That the local school district cannot offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues;

(ii) That if the local school district were to offer the constitutionally required educational services in a manner that consumes no more of the local school district's resources than necessary, it would still be unable to offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues; and

(iii) The sum of the local school district's levies totaled in subsection (1) of this section do not equal or exceed the comparison made in subsection (1) of this section;

notwithstanding any other provision of law to the contrary, the district court shall issue an order directing the local school board to impose maintenance and operations levies and emergency fund levies in the maximum amount that may be imposed by law. Furthermore, if the sum of the maximum maintenance and operations levy and emergency fund levy that may be imposed by law plus the supplemental maintenance and operations levy does not exceed the comparison made in subsection (1) of this section, the district court shall order the local school board to adopt an educational necessity levy in an amount so that the sum of the maintenance and operations levy, the supplemental maintenance and operations levy, the emergency fund levy, and the educational necessity levy equals the comparison set forth in subsection (1) of this section. The district court shall issue an order directing that all tax revenues from the additional amounts levied pursuant to this subsection be directed first to meeting the local school district's obligations to provide constitutionally required educational services, but may allow the local school district to reduce any of the levies that it was ordered to raise upon the local school district's proof that it is then providing constitutionally required educational services. The district court shall have continuing jurisdiction to see that the

additional tax revenues are spent according to its order.

6-2211. DISTRICT COURT'S CONTINUING JURISDICTION. When the district court has issued an order over which it has continuing jurisdiction under this chapter, the district court may review as necessary, but not less than annually, the question whether the local school district has complied with its obligation to offer constitutionally required educational services. Upon its review, the district court shall take the following actions:

(1) If the district court finds that the local school district has at that time complied with its obligation to provide constitutionally required educational services, it shall issue a declaratory judgment to that effect, and it may dissolve any orders previously in place as it finds appropriate.

(2) If the district court finds that the local school district has not yet complied with its obligations to provide constitutionally required educational services, but is making good faith progress toward compliance with its obligations to provide constitutionally required educational services, it shall issue an interlocutory finding to that effect and continue its jurisdiction.

(3) If the district court finds that:

(a) The local school district has not yet complied with its obligations to provide constitutionally required educational services;

(b) The local school district does not offer educational or other services not federally mandated or constitutionally required;

(c) The local school district does not offer constitutionally required educational services in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required educational services that it does offer;

(d) The sum of the local school district's maintenance and operations levy, supplemental maintenance and operations levy, emergency fund levy, and educational necessity levy equals or exceeds the comparison made in section 6-2210(1), Idaho Code; and

(e) The local school district does not have the resources to meet its obligation to provide constitutionally required educational services;

the district court shall issue an order authorizing the plaintiffs to add the state and/or the legislature as defendants.

(4) If the district court finds that the local school district has not yet complied with its obligations to provide constitutionally required educational services and is not making good faith efforts toward substantial compliance, it shall continue its jurisdiction and may issue such orders as it finds necessary to compel good faith efforts on the local school district's part, including an order for state supervision.

6-2212. STATE SUPERVISION. When authorized in this chapter, the district court may issue an order for state supervision of a local school district. When an order for state supervision of a local school district is entered, the superintendent of public instruction shall within thirty-five (35) calendar days appoint, at local school district expense, an officer to be known as a district supervisor. The

district supervisor shall have authority to approve or disapprove any actions of the board of the local school district, to supervise or dismiss superintendents, assistance superintendents, and any other district administrative personnel, and to take any actions necessary to further the local school district's obligations to provide constitutionally required educational services. The district supervisor shall serve at the pleasure of the superintendent of public instruction until removed by the superintendent of public instruction or the superintendent of public instruction reports to the district court that the local school district is in substantial compliance with its obligations to provide constitutionally required educational services, or until the district court, upon its own motion or upon motion of any of the parties, orders state supervision to end.

6-2213. SUIT AGAINST STATE. When the district court has authorized the plaintiffs to add the state or the legislature as defendants in a suit brought under this chapter, if the legislature is not already party to the suit, the legislature may move to reopen the proceedings to present evidence with regard to the district court's findings that preceded the district court's authorization to sue the state and/or the legislature, or it may stand on the record and findings before the district court. Following any additional evidence that may be offered after the state and/or the legislature is added as a defendant, if the district court finds that:

(1) The local school district has not yet complied with its obligations to provide constitutionally required educational services;

(2) The local school district does not offer educational or other services not federally mandated or constitutionally required;

(3) The local school district does not offer the constitutionally required educational services that it does offer in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required educational services that it does offer;

(4) The sum of the local school district's maintenance and operations levy, supplemental maintenance and operations levy, emergency fund levy, and educational necessity levy equal or exceed the comparison made in section 6-2210(1), Idaho Code; and

(5) The local school district does not have the resources to meet its obligation to provide constitutionally required educational services;

the district court shall enter a declaratory judgment finding that the system of public, free common schools established by law is unconstitutional as applied to the patrons of that local school district. If the district court cannot make all of these five (5) findings, it shall dismiss the complaint against the state and/or the legislature, but retain jurisdiction over the other defendants as necessary. The district court shall not issue any other final judgments or orders against the state and/or the legislature except as authorized by this section.

6-2214. EDUCATIONAL NECESSITY LEVY. There is hereby created an educational necessity levy that may be levied by a local school district as authorized in this chapter. The educational necessity levy

shall expire upon order of the district court having jurisdiction over a suit brought under this chapter or five (5) years after it comes into existence, whichever comes first.

6-2215. EFFECT ON PENDING LAWSUITS. This chapter shall not apply to any lawsuit pending on its effective date, but shall apply to any lawsuit bringing a constitutionally based educational claim filed after its effective date; provided, however, that if section 1, article IX, of the constitution of the state of Idaho is amended to require the legislature to provide procedures and immunities for lawsuits brought under that section, including pending lawsuits, this chapter shall apply to all suits pending when such a constitutional amendment is approved.

6-2216. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1996.

Approved March 15, 1996.

CHAPTER 259
(H.B. No. 715)

AN ACT

RELATING TO APPREHENSION AND RELEASE OF JUVENILES; AMENDING SECTION 20-516, IDAHO CODE, TO PROVIDE THAT A JUVENILE TAKEN INTO CUSTODY MAY BE FINGERPRINTED AND PHOTOGRAPHED AND TO PROVIDE THAT THE COURT MAY UPON GOOD CAUSE ORDER EXPUNGEMENT OF THE FINGERPRINTS AND PHOTOGRAPHS AND TO PROVIDE FOR CREATION OF A JUVENILE FINGERPRINT FILE, ENTRY OF THE FINGERPRINT DATA INTO AN IDENTIFICATION SYSTEM AND MAINTENANCE OF THE FINGERPRINT DATA IN A STATEWIDE JUVENILE OFFENDER INFORMATION SYSTEM CONTROLLED BY THE DEPARTMENT OF JUVENILE CORRECTIONS.

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

SECTION 1. That Section 20-516, Idaho Code, be, and the same is hereby amended to read as follows:

20-516. APPREHENSION AND RELEASE OF JUVENILES -- DETENTION. (1) A peace officer may take a juvenile into custody, or a private citizen may detain a juvenile until the juvenile can be delivered forthwith into the custody of a peace officer, without order of the court:

(a) When he has reasonable cause to believe that the juvenile has

committed an act which would be a felony if committed by an adult; or

(b) When in the presence of a peace officer or private citizen the juvenile has violated any local, state or federal law or municipal ordinance; or

(c) When there are reasonable grounds to believe the juvenile has committed a status offense. Status offenses are truancy, running away from or being beyond the control of parents, guardian, or legal custodian and curfew violations. Status offenders shall not be placed in any jail facility but instead may be placed in juvenile shelter care facilities, except in the case of runaways, when there is a specific detention request from a foreign jurisdiction to hold the juvenile pending transportation arrangements.

(2) A peace officer may take a juvenile into custody upon a written order or warrant signed by a judge. The judge may issue the order or warrant after finding that there is reasonable cause to believe that the juvenile comes within the purview of this chapter. Such taking into custody shall not be deemed an arrest. Jurisdiction of the court shall attach from the time the juvenile is taken into custody. When an officer takes a juvenile into custody, he shall notify the parent, guardian or custodian of the juvenile as soon as possible. Unless otherwise ordered by the court, or unless it appears to the officer taking the juvenile into custody that it is contrary to the welfare of society or the juvenile, such juvenile shall be released to the custody of his parent or other responsible adult upon written promise, signed by such person, to bring the juvenile to the court at a stated time. Such written promise shall be submitted to the court as soon as possible. If such person shall fail to produce the juvenile as agreed, or upon notice from the court, a summons for such person may be issued by the court and a warrant may be issued for apprehension of the juvenile.

(3) A juvenile taken into custody may be fingerprinted and photographed. Any fingerprints and photographs taken shall be forwarded as provided in subsection (8) of this section. If the court finds good cause it may order any fingerprints and photographs expunged.

(~~2~~4) When a juvenile is not released he shall be taken forthwith to the court or place of detention specified by the court and then not later than twenty-four (24) hours, excluding Saturdays, Sundays and holidays, shall be brought before the court for a detention hearing to determine where the juvenile will be placed until the next hearing. Status offenders shall not be placed in any jail facility, but instead may be placed in juvenile shelter care facilities.

Placements may include but are not limited to the following:

(a) Parents of the juvenile;

(b) Relatives of the juvenile;

(c) Foster care;

(d) Group care;

(e) A juvenile detention facility; or

(f) Community-based diversion programs.

(~~3~~5) The person in charge of a detention facility shall give immediate notice to the court that the juvenile is in his custody.

(~~4~~6) No juvenile shall be held in detention longer than twenty-four (24) hours, exclusive of Saturdays, Sundays and holidays, unless

a petition has been filed and the court has signed the detention order.

(~~5~~7) As soon as a juvenile is detained by court order, his parents, guardian or legal custodian shall be informed by notice in writing on forms prescribed by the court that they may have a prompt hearing regarding release or detention.

(~~6~~8) A juvenile taken into detention for an offense shall be fingerprinted and photographed. Fingerprints and photographs taken of juveniles ~~at a detention facility by staff of the facility~~ shall be forwarded to the appropriate law enforcement agency and filed with the bureau of criminal identification of the Idaho department of law enforcement which shall create a juvenile fingerprint file~~, separate and apart from any adult file, in a records system~~ and enter the fingerprint data into the automated fingerprint identification system. The fingerprint data shall then be forwarded to the department to be maintained in a statewide juvenile offender information system. Access to the information in the juvenile offender system shall be controlled by the department, subject to the provisions of section 9-342, Idaho Code. If the court finds ~~a juvenile's detention for an offense to be unlawful, the court shall~~ good cause it may order the fingerprints and photographs of the juvenile ~~taken pursuant to that detention~~ expunged~~, unless the court, after a hearing, orders otherwise~~.

(~~7~~9) Peace officers' records of juveniles shall be kept separate from records of adults and shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

Approved March 15, 1996.

CHAPTER 260
(H.B. No. 716)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-511, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REQUIRE THAT IN AN INFORMAL ADJUSTMENT OF A PETITION FILED UNDER THE ACT, INFORMATION ABOUT THE JUVENILE, THE OFFENSE AND THE TYPE OF PROGRAM UTILIZED BE PROVIDED TO THE DEPARTMENT OF JUVENILE CORRECTIONS TO BE MAINTAINED BY THE DEPARTMENT IN A STATEWIDE JUVENILE OFFENDER INFORMATION SYSTEM.

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

SECTION 1. That Section 20-511, Idaho Code, be, and the same is hereby amended to read as follows:

20-511. DIVERSION OR INFORMAL DISPOSITION OF THE PETITION. (1) Prior to the filing of any petition under this act, the prosecuting attorney may request a preliminary inquiry from the ~~juvenile~~ county probation ~~department~~ officer to determine whether the interest of the public or the juvenile requires a formal court proceeding. If court action is not required, the prosecuting attorney may utilize the

diversion process and refer the case directly to the ~~juvenile~~ county probation ~~department~~ officer or a community based-diversion program for informal probation and counseling. If community service is going to be utilized pursuant to this subsection, the prosecuting attorney shall collect a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile is going to perform and remit the fee to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile performing community service.

(2) After the petition has been filed and where, at the admission or denial hearing, the juvenile admits to the allegations contained in the petition, the court may decide to make an informal adjustment of the petition. Informal adjustment includes, but is not limited to:

(a) Reprimand of the juvenile;

(b) Informal supervision with the probation department;

(c) Community service work;

(d) Restitution to the victim;

(e) Participation in a community-based diversion program.

(3) Information uniquely identifying the juvenile, the offense, and the type of program utilized shall be forwarded to the department. This information shall be maintained by the department in a statewide juvenile offender information system. Access to the information shall be controlled by the department, subject to the provisions of section 9-342, Idaho Code.

Such informal adjustment of the petition shall be conducted in the manner prescribed by the Idaho juvenile rules. When an informal adjustment is made pursuant to this section and the juvenile is to perform community service work, the court shall assess the juvenile a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile is to perform. This fee shall be remitted by the court to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile performing community service.

Approved March 15, 1996.

CHAPTER 261
(H.B. No. 718)

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING CHAPTER 27, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-2732C, IDAHO CODE, TO PROVIDE CRIMINAL PENALTIES FOR PERSONS BEING UNDER THE UNLAWFUL INFLUENCE OF CONTROLLED SUBSTANCES ON A PUBLIC ROADWAY, ON A PUBLIC CONVEYANCE, ON PUBLIC PROPERTY OR ON PRIVATE PROPERTY OR UNDER THE INFLUENCE OF CERTAIN CONTROLLED SUBSTANCES; AMENDING SECTION 18-1502C, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE PROVISIONS OF THE SECTION TO JUVENILES FOR VIOLATIONS OF SECTION 37-2732C, IDAHO CODE; AMENDING SECTION 20-505, IDAHO CODE, TO CLARIFY THE JURISDICTION OF THE COURT WITH RESPECT TO OFFENSES BY JUVENILES UNDER SECTION 37-2732C, IDAHO CODE; AMENDING SECTION 63-2552A, IDAHO CODE, AS AMENDED BY SECTION 3, CHAPTER 368, LAWS OF 1995, TO PROVIDE REMITTANCE OF MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT

FOR DRUG TESTING OF JUVENILES; AMENDING SECTION 63-2552A, IDAHO CODE, AS ENACTED BY SECTION 6, CHAPTER 368, LAWS OF 1995, TO PROVIDE FOR REMITTANCE OF MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT FOR DRUG TESTING OF JUVENILES, TO PROVIDE FOR REVIEW OF THE MONEYS AND TO AUTHORIZE ADULT DRUG TESTING IN CERTAIN CIRCUMSTANCES; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Chapter 27, Title 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 37-2732C, Idaho Code, and to read as follows:

37-2732C. USING OR BEING UNDER THE INFLUENCE -- PENALTIES. (a) Except as authorized in this chapter, it is unlawful for any person on a public roadway, on a public conveyance, on public property or on private property open to the public, to use or be under the influence of any controlled substance specified in subsection (b), (c), (d) and (f) of section 37-2705, Idaho Code, or subsection (b), (c) and (d) of section 37-2707, Idaho Code, or any narcotic drug classified in schedule III, IV or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within this exception.

(b) Any person convicted of violating the provisions of subsection (a) of this section is guilty of a misdemeanor and is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

(c) Any person who is convicted of violating subsection (a) of this section, when the offense occurred within five (5) years of that person being convicted of two (2) or more separate violations of that subsection and who refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subsection (d) shall be punished by imprisonment in the county jail for a mandatory minimum period of time of not less than one hundred twenty (120) days, nor more than one (1) year. The court may not reduce the mandatory minimum period of incarceration provided in this subsection.

(d) The court may, when it would be in the interest of justice, permit any person convicted of a violation of subsection (a) of this section, punishable under subsection (b) or (c) of this section, to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in the county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program. In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subsection, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(e) Notwithstanding subsection (a), (b) or (c) of this section, or any other provision of law to the contrary, any person who is unlawfully under the influence of cocaine, cocaine base, methamphet-

amine, heroin, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense and is punishable by imprisonment in the county jail or the state prison for not more than one (1) year. As used in this subsection, "immediate possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subsection (e) of this section is punishable upon the second and each subsequent conviction by imprisonment in the state prison for a period of time not in excess of four (4) years.

(g) In addition to any fine assessed under this section and notwithstanding the provisions of section 19-4705, Idaho Code, the court may, upon conviction, assess an additional cost to the defendant in the way of restitution, an amount not to exceed two hundred dollars ($200) to the arresting and/or prosecuting agency or entity. These funds shall be remitted to the appropriate fund to offset the expense of toxicology testing.

SECTION 2. That Section 18-1502C, Idaho Code, be, and the same is hereby amended to read as follows:

18-1502C. POSSESSION OF MARIJUANA OR DRUG PARAPHERNALIA BY A MINOR -- USE OF CONTROLLED SUBSTANCES -- FINES. (1) Any person under eighteen (18) years of age who shall have in his possession any marijuana as defined in section 37-2701(s), Idaho Code, which would constitute a misdemeanor for an adult so charged, or who shall have in his possession any drug paraphernalia as defined in section 37-2701(n), Idaho Code, or who shall unlawfully use or be under the influence of controlled substances in violation of the provisions of section 37-2732C, Idaho Code, shall be guilty of a misdemeanor, and upon conviction, may be punished by a fine not in excess of one thousand dollars ($1,000) or by ninety (90) days in a juvenile detention facility or by both or may be subject to the provisions of chapter ~~1~~85, title ~~1~~620, Idaho Code. If the juvenile is adjudicated under the provisions of chapter ~~1~~85, title ~~1~~620, Idaho Code, for a violation of this section he shall be sentenced in accordance with the provisions of this section. The juvenile shall be adjudicated under chapter 5, title 20, Idaho Code, for a violation of section 37-2732C, Idaho Code, unless the court finds that adjudication under chapter 5, title 20, Idaho Code, is not appropriate in the circumstances.

(2) A conviction under this section shall not be used as a factor or considered in any manner for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer, nor shall such conviction be grounds for nonrenewal of any insurance policy as provided in section 41-2507, Idaho Code.

(3) ~~Whenever a~~ Any person who pleads guilty or is found guilty of possession of marijuana pursuant to this section, or who pleads guilty or is found guilty of a violation of section 37-2732C, Idaho Code, then in addition to the penalty provided in subsection (1) of this section:

(a) The court shall suspend the person's driving privileges for a period of not more than one (1) year. The person may request restricted driving privileges during the period of suspension,

which the court may allow, if the person shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

(b) If the person's driving privileges have been previously suspended under this section, the court shall suspend the person's driving privileges for a period of not more than two (2) years. The person may request restricted driving privileges during the period of suspension, which the court may allow, if the person shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

(c) The person shall surrender his license or permit to the court.

(d) The court shall notify the motor vehicle division of the Idaho transportation department of all orders of suspension it issues pursuant to this section.

(~~e~~4) The court, in its discretion, may also order the person convicted of possession of marijuana under subsection (1) of this section, or convicted of using or being under the influence of a controlled substance in violation of section 37-2732C, Idaho Code, to undergo and complete a substance abuse evaluation and to complete a drug treatment program, as provided in section 37-2738(2), Idaho Code.

SECTION 3. That Section 20-505, Idaho Code, be, and the same is hereby amended to read as follows:

20-505. JURISDICTION. Subject to the prior jurisdiction of the United States, the court shall have exclusive, original jurisdiction over any juvenile and over any adult who was a juvenile at the time of any act, omission or status, in the county in which the juvenile resides, or in the county in which the act, omission or status allegedly took place, in the following cases:

(1) Where the act, omission or status is prohibited by federal, state, local or municipal law or ordinance by reason of minority only, regardless of where the same occurred;

(2) Where the act or omission is a violation of any federal, state, local or municipal law or ordinance which would be a crime if committed by an adult, regardless of where the same occurred, except traffic, watercraft, fish and game, failure to obey a misdemeanor citation and criminal contempt violations. A juvenile violator under the age of fourteen (14) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

(3) Concerning any juvenile where the juvenile comes under the purview of the interstate compact on juveniles as set forth in chapter 19, title 16, Idaho Code;

(4) This chapter shall not apply to juvenile violators of beer, wine or other alcohol and tobacco laws; except that a juvenile violator under the age of fourteen (14) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

(5) This chapter shall not apply to the violent juvenile offender, as defined in this chapter;

(6) This chapter shall not apply to juvenile violators of the

provisions of section 18-1502B, Idaho Code, pertaining to the possession and usage of inhalants, or section 18-1502C, Idaho Code, pertaining to the possession of marijuana or paraphernalia, or section 37-2732C, Idaho Code, pertaining to use or being under the influence of controlled substances, unless the court so orders the juvenile violator to come under the purview of this chapter;

(7) This chapter shall not apply to juvenile violators of the provisions of section 18-3302D, Idaho Code, pertaining to the carrying of a concealed weapon on school property.

SECTION 4. That Section 63-2552A, Idaho Code, as amended by Section 3, Chapter 368, Laws of 1995, be, and the same is hereby amended to read as follows:

63-2552A. ADDITIONAL TAX IMPOSED -- RATE. (1) In addition to the tax imposed in section 63-2552, Idaho Code, from and after July 1, 1994, there is levied and there shall be collected an additional tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of five per cent (5%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

(a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

(2) Each distributor, within twenty (20) days after July 1, 1994, shall file a report with the commission, in such form as the commission may prescribe, showing the tobacco products on hand on July 1, 1994, and the amount of tax due thereon. The tax imposed in this subsection shall be due and payable within twenty (20) days after July 1, 1994, and thereafter shall bear interest at the rate of one per cent (1%) per month.

(3) Fifty per cent (50%) of the tax collected pursuant to this section shall be distributed directly to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system of which amount two hundred fifty thousand dollars ($250,000) shall be remitted annually to the department of law enforcement to increase toxicology lab capacity in the bureau of forensic services for drug testing of juveniles, and fifty per cent (50%) shall be distributed quarterly to the counties to be utilized for county juvenile probation services, based upon the percentage the population of the county bears to the population of the state as a whole.

SECTION 5. That Section 63-2552A, Idaho Code, as enacted by Section 6, Chapter 368, Laws of 1995, be, and the same is hereby amended to read as follows:

63-2552A. ADDITIONAL TAX IMPOSED -- RATE. (1) In addition to the tax imposed in section 63-2552, Idaho Code, from and after July 1, 1994, there is levied and there shall be collected an additional tax

upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of five per cent (5%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

(a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

(2) Each distributor, within twenty (20) days after July 1, 1994, shall file a report with the commission, in such form as the commission may prescribe, showing the tobacco products on hand on July 1, 1994, and the amount of tax due thereon. The tax imposed in this subsection shall be due and payable within twenty (20) days after July 1, 1994, and thereafter shall bear interest at the rate of one per cent (1%) per month.

(3) The tax collected pursuant to this section shall be distributed directly to the public school income fund to be utilized for substance abuse programs in the public school system of which sum two hundred fifty thousand dollars ($250,000) shall be remitted annually to the department of law enforcement to increase toxicology lab capacity in the bureau of forensic services for drug testing of juveniles. The moneys remitted to the department of law enforcement shall be reviewed annually and any money excess to the operations needs of the laboratory for juvenile drug testing will be returned to the public school income fund for substance abuse programs in the public school system. The laboratory may utilize this increased toxicology capacity for adult drug testing to the extent that timely testing for juveniles is not adversely impacted.

SECTION 6. Sections 1, 2, 3 and 4 of this act shall be in full force and effect on and after July 1, 1996. Section 5 of this act shall be in full force and effect on and after March 28, 1997.

Approved March 15, 1996.

CHAPTER 262
(H.B. No. 796)

AN ACT

RELATING TO LIENS IN CROPS; AMENDING SECTION 45-302, IDAHO CODE, TO PROVIDE A DEFINITION OF WRITTEN NOTICE; AMENDING SECTION 45-308, IDAHO CODE, TO PROVIDE THAT A CLAIMANT SHALL GIVE WRITTEN NOTICE OF THE CLAIM TO THE PRODUCER AND TO PROVIDE AN ADDITIONAL REQUIREMENT FOR A CLAIM OF LIEN; AND AMENDING SECTION 45-309, IDAHO CODE, TO PROVIDE A PENALTY IF THE PRODUCER HAS FAILED TO GIVE SUFFICIENT NOTICE TO THE PRODUCER.

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

SECTION 1. That Section 45-302, Idaho Code, be, and the same is hereby amended to read as follows:

45-302. DEFINITIONS. For the purposes of this chapter:

(1) "Buyer" means a person who purchases, on his own behalf or as an agent for others, a crop from a producer.

(2) "Claimant" means a provider of seed or farm labor who files a notice of claim of lien in a crop.

(3) "Crop year" means the calendar year in which a crop would normally be harvested.

(4) "Crops" means products of the soil. As it relates to liens for seed, the term "crops" shall be limited to annual crops. As it relates to liens for farm labor, it shall include annual crops as well as fruits, berries, grapes and nursery products.

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Producer" means a farm operator to whom a claimant has provided seed or farm labor.

(7) "Written notice" means information communicated to a person in writing by an authorized person or entity and may include electronic, facsimile, computer or equivalent media.

SECTION 2. That Section 45-308, Idaho Code, be, and the same is hereby amended to read as follows:

45-308. NOTICE OF CLAIM OF LIEN. (1) A claimant must file with the secretary of state a notice of claim of lien between thirty (30) days before and ninety (90) days after completion of his labor for or providing seed to the producer. If a notice of claim of lien is filed before completion of the labor or delivery of the seed, there must exist a written or verbal contract for such labor or seed.

(2) The notice of claim of lien must include:

(a) The nature of the lien (farm laborer's or seed);

(b) The name and address of the producer;

(c) The name and address of the claimant;

(d) The county or counties where the crop or crops covered by the lien are grown;

(e) The type(s) of crop (name of commodity) to which the lien applies;

(f) The crop year of the crop(s) to which the lien applies; ~~and~~

(g) Such other information as the secretary of state shall by administrative rule require; and

(h) The amount of claim exclusive of interest.

(3) The notice of claim of lien shall be signed by the claimant, his agent, or his attorney-in-fact, and the signer shall certify to the truth of the claim. Notarization is not required.

(4) The notice of claim of lien shall be filed on a standard form prescribed by the secretary of state.

(5) A claimant shall give written notice of the claim to the producer.

SECTION 3. That Section 45-309, Idaho Code, be, and the same is hereby amended to read as follows:

45-309. CIVIL PENALTY FOR FALSE CLAIM. (1) Any person who signs and files a notice of claim of lien which he knows or has reason to believe is false shall be liable to the producer in the amount of the actual damages caused by the false claim or five hundred dollars ($500), whichever is greater, plus reasonable attorney's fees and costs. If the claimant has failed to give written notice of a claim which is found to be false, to the producer as required by subsection (5) of section 45-308, Idaho Code, the claimant shall be liable for an additional penalty of five hundred dollars ($500).

(2) If the notice of claim of lien is signed by a person other than the claimant, and the claimant knows or has reason to believe the claim is false, the claimant and the person who signed the claim shall be jointly and severally liable for the amount described in subsection (1) of this section.

Approved March 15, 1996.